

The Charter of the Rights of the Family Genesis and Future

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Today the family is going through a profound crisis in all the Western countries, but also in the other countries touched by the same culture and standard of living of the West, regardless of the prevailing religious confession among the peoples. It is as if the globalization of an individualist, consumer culture results first in the weakening and then the destruction of the family and, with it, the other associative forms.

Of course, we are not facing an explicit project – in fact, everyone is aware of the enormous usefulness of the institution of the family for society too – but rather the result of a series of economic, social and cultural processes set in motion by economic progress and cultural modernization that have intensified with the economic-financial crisis.

In this context, the family's situation appears paradoxical: on the one hand, great value is attributed to family ties to the point that they are made the key to happiness; on the other, the family has become the crossroads of frailties: attachments and bonds are falling to pieces, marital breakdowns are more and more numerous and recompositions are increasingly difficult. By now it is commonly thought that people can “make up a family” in the most diverse ways: any form of “living together” can claim to be a family: what is important – it is said – is love. The family – rather slyly, I would say – is not denied but put side by side with new forms of relational experience that are *apparently* compatible with it but which *demolish* and undermine it at its foundation. And, unhappily, the fact demonstrate that a circle which discourages “having a family” is really gaining ground.

So many individuals, all freer, all lonelier

The growing weight taken on in Western societies by individual freedom, a moral value which we should rightly be proud of, has had the effect of exasperating individualism and self-centeredness detached from the need and the responsibility of lasting social relations and stable affective ties. Today the spaces for self-determination have expanded so much that they are changing the very nature of the

institutions which organize social life, including the family. Globalization, as the scholar Tzvetan Todorov suggests, has led contemporary man to a kind of “disorientation” in a world that has become too big. From this comes the temptation to close oneself into one's “particular”, to stay within one's walls and make the confines rigid in order to save the “self” from the invasion of others. The whole society has become “individualized”, as the sociologist Sigmund Bauman also states. And the French philosopher Gilles Lipovetsky talks about a “second individualist revolution” taking place in contemporary society which is characterized by the privatization of life and a kind of autonomy that tends towards the absolute (*absoluta*), free from any bonds.

But the individualization of associative forms sadly results in the desertification of relations in society. That is, the terrain on which the human ought to grow appears sandy, crumbly, inconsistent and thus unsuited to stable and lasting constructions. For simplicity, we could say: we are all freer, but we are all lonelier too.

It seems, in fact, that society has become an agglomeration of individuals: the *self* prevails over *we* and the *individual* over *society*; the claims of the *individual* prevail over the rules of living together; the rights of the *individual* prevail over the rights of the *family* and *society*, and the needs of groups prevail over the common good. So it is easy to prefer cohabitation to marriage, individual independence – called *freedom* – to reciprocal dependence – called a *bond*, with the increasingly widespread conviction that the individual's free reign can only be achieved over the sacrifice of the family, over its ashes. From the “basic cell of society”, the family appears to have become the “basic cell for the individual”.

Each one thinks of the couple more and more in relation to oneself, to one's well-being and advantage: each of the two persons in the couple seeks his/her own individual fulfillment and not the creation of a “we”, a “plural subject” that transcends the single individuals without annulling them; on the contrary, it brings them to fulfillment and makes them more authentic and responsible. Unfortunately, the social and cultural structures seem to support this perspective, which some scholars describe as “emancipatory individualism”. The *self*, which has become the lord of reality, is also the lord of the family.

Laws reflect this tendency towards the supremacy of the individual: the individual's freedom is perceived to be at the service of the individual's happiness. Let us make no mistake, the recognition of the rights of the person (the fundamental rights of the human being, of minors, etc.) is undoubtedly a positive conquest – also because historically it was asserted as a reaction to the negation of the person typical of the totalitarian systems of the past century –; but individual rights cannot be detached from the other fundamental human dimension represented by the relationship and social cohesion in the different ways in which it is articulated.

There is no doubt, for example, that the rights of the individuals within the family are regulated with prevailing attention to each one's claim to his/her well-being rather than the position in the family unit.

The loneliness of families

In the context of this “second individualist revolution”, the family, as it was conceived of for centuries, no longer finds a cultural support. But it is forgotten that its weakening also brings along with it the weakening of the social dimension of life. In fact, we see everywhere in the world that it is no longer “living together”, but being separated from others that has become the main strategy of existence or, we might say, of “survival” in the contemporary megalopolises. We are facing a real crisis of sociality and of the many community forms known until today, which involves every associative form from political parties to the city as *communitas*, and starts precisely from the family as the first associative form in life.

In this context, the surprising numerical growth of the so-called “one-person” families is food for thought. If, on the one hand, we are witnessing a drop in marriages and the so-called “normally constituted” families (mother-father-children), on the other, families made up of only one person are growing, the “one-person” families (in Italy, these have gone from 5.2 million in 2001 to 7.2 million in 2011). In analyzing the data regarding the trends in marriage, some scholars point out that the decrease in religious and civil marriages is not reflected in an increase in new forms of living together which, on the other hand, are echoed very much in the political debate and the mass media as well as in legal transformations. Instead, it is reflected above all in an exponential growth of persons who choose to remain by themselves. Unfortunately, the conclusion is simple and at the same time worrying: any demanding relationship has become an unbearable “bond”. Without realizing it, we are heading quickly towards a “de-familiarized” society made up of single persons who meet with another man or woman occasionally without any commitment. In a word, the crisis of the family (father-mother-children) is not expressed in reality in the growth of different “family” modes but in the increase in the number of people who choose to live alone.

This is the sad result of an unbridled individualist culture.

The family has to return to the center of culture, politics and the economy

In this context, which ought to make us all think, it is urgent to give back cultural

dignity to the family. It must be brought back to the center, “into the heart” of politics and the economy, the life of society as well as the life of the Church.

The globalized society can have hopes in a civilized future if and to the extent that it will promote a real “culture of the family” that will re-evaluate it as the place for personal and collective happiness and as a space of mediation between the private dimension and the public dimension. Otherwise, the danger is the predominance of a globalization of loneliness and indifference, with its dramatic consequences not only on the ethical level, and we already have before our eyes some dramatic examples of this.

We have to affirm courageously that the family is not dead, it is alive and can enjoy good health. Despite the very difficult historical phase it is going through, the family is still the most important resource of contemporary societies where the primary relational goods are created which no other way of life can create. The family is irreplaceable in its ability to generate relationships. No other associative form has its creative relational potentialities. Its “genome” does not cease to exist because it represents what is most humanizing in society.

This affirmation is supported by empirical social research. The figures show that the family is in first place on the scale of what those surveyed desire most: the family is felt by the majority of people in every country of the world as the place of security, refuge and support for personal life (in Italy, approximately 80% of young people of marriageable age state that they prefer marriage, and only 20% choose in favor of cohabitation; out of this 20% it seems that only 3% consider cohabitation a definitive choice and the remaining 17% consider it a transitory experience while awaiting marriage. In France, 77% of French youths wish to build their own family life and stay with the same person for life; the percentage rises to 84% for young people between 18 and 24 years of age).

Conjugal stability continues to be an important value and a deep aspiration, even if the conviction that it is possible to stay together “forever” has lost cultural dignity; in fact, it is commonly felt to be almost impossible.

It is in the family where one learns the “we” of the present and a future outlook through the generation of children. We already know this from ancient Rome when Cicero defined the family as “*principium urbis et quasi seminarium rei publicae*”. Linked to this is the very delicate theme of generation which is becoming more and more crucial. The tendency to have only one child is surely not very far-sighted – just to give an example. If this phenomenon grows, as it appears to be doing in some countries, within a few years even the terms “brother” and “sister” may run the risk of disappearing or, in any case, of changing their meaning in a radical way. Then the living condition of a society that does not generate children would be terrible, also

from the standpoint of individual interest. In the same way, the condition of a society that eliminates the elderly as if they were “rejects” would be terrible . In this regard, Pope Francis talks about a “throwaway culture”.

Without dwelling on this any further, I say that it is important to recognize and defend the fact that the family has its rights as a family, which cannot be resolved in the sum of the rights of the individual members, but must be recognized and protected as an autonomous legal subject, beyond the individual rights, especially today when we are living in a kind of anthropological watershed in which the *self*, the individual, free from any bonds, is put in opposition to the *we*. A close dialogue is urgent between individual rights and social rights starting from the fundamental rights of the family.

The family, the subject of rights

The Charter of the Rights of the Family, which the 1980 Synod of Bishops on the Family requested, is situated on this horizon. John Paul II immediately welcomed the request put forth by the Synod Fathers and gave the Pontifical Council for the Family the task to carry out the project. I should recall that this Dicastery was created with the *Motu Proprio “Familia a Deo Instituta”* of May 9, 1981 and was supposed to be announced on May 13th, the day the assassination attempt took place in St. Peter's Square. This is an occasion that makes me think a lot: obviously the attempt did not stop Pope Wojtyla's commitment to promote and defend the family. The Apostolic Exhortation *Familiaris Consortio* was published on November 22, 1981, and the *Charter of the Rights of the Family* was made public on October 22, 1983. In a month, exactly thirty years will have passed since then.

The immediate reason for drawing up this Charter was already expressed in the pre-synodal document sent to all the Bishops' Conferences in 1979 and confirmed in *Familiaris Consortio*, which states that today we are living “at a moment of history in which the family is the object of numerous forces that seek to destroy it or in some way to deform it” (FC, 3). Very often, society and the State, instead of supporting the family, act to weaken it. “In fact, (...) the situation experienced by many families in various countries is highly problematical, if not entirely negative: institutions and laws unjustly ignore the inviolable rights of the family and of the human person; and society, far from putting itself at the service of the family, attacks it violently in its values and fundamental requirements. Thus the family, which in God's plan is the basic cell of society and a subject of rights and duties before the State or any other community, finds itself the victim of society, of the delays and slowness with which it acts, and even of its blatant injustice” (FC, 46).

The Charter's aim was bold: it was not just a matter of repeating a doctrine but of drawing up through a reflection that was also of a legal nature an organic framework of the rights of the family conceived of as an autonomous juridical subject. This conviction was particularly dear to John Paul II. In the *Letter to Families*, he expresses it in these words:

“As a community of love and life, the family is a firmly grounded social reality. It is also, in a way entirely its own, a *sovereign society*, albeit conditioned in certain ways. This affirmation of the family's sovereignty as an institution and the recognition of the various ways in which it is conditioned naturally leads to the subject of *family rights*”. These rights “are closely linked to the rights of the person: if in fact the family is a communion of persons, its self-realization will depend in large part on the correct application of the rights of its members. Some of these rights concern the family in an immediate way, such as the right of parents to responsible procreation and the education of children. Other rights however touch the family unit only indirectly: among these, the right to property, especially to what is called family property, and the right to work are of special importance” (*Letter to Families*, 17). Just as the family is not the sum of the persons that build it but also a community of persons (*communio personarum*), it is the human “we” created in the model of the divine “We”, and so “the rights of the family are not simply the sum total of the rights of the person, since the family is *much more* than the sum of its individual members” (*ivi*).

The awareness that in addition to individuals some relational entities are also subjects of natural law is not an innovation in the Church's teaching. In *Dignitatis Humanae*, for example, the existence of the rights of the communities to religious freedom is affirmed, while section five is totally dedicated to the family as the subject of the right to religious freedom: “The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive. Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education, and the use of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the right of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all” (DH, 5).

In *Populorum Progressio*, Paul VI speaks about the right to marriage, to procreation and the rights of parents to decide freely regarding the number of children they want: “Finally, it is for parents to take a thorough look at the matter and decide upon the number of their children. This is an obligation they take upon themselves, before their children already born, and before the community to which they belong—

following the dictates of their own consciences informed by God's law authentically interpreted, and bolstered by their trust in Him" (PP, 37).

John Paul II also claims the right of the "nation" to be a legal subject. He said this clearly in his address to UNESCO on June 2, 1980. After referring to the right of the family, he adds: "The right of the nation also needs to be situated in the same line of thinking... the broad community of men who are united by a variety of ties but are above all joined, in fact, by culture...It is that community which has a history going beyond the history of the individual and the family. It is also in that community, in terms of which every family acts as an educator, that the family starts its educational task with the simplest thing first, by imparting language and thereby enabling man in his early years to learn to speak, and thus to become a member of the community formed of his family and of his nation".

I will not go any further. For John Paul II's teaching, the new feature is not simply the idea that the family – and the nation – are subjects of natural law, but the attempt to provide a complete list of the family's rights, just as the effort was original to ensure that these documents will be recognized in the international law system similar to what the United Nations Declaration does for human rights.

What future for the Charter of the Rights of the Family

The Charter, unfortunately, is not very well-known. The Pontifical Council believes that it is useful to take up its perspective again and re-propose it, also because these principles are present in other Church texts and continue to be entirely up-to-date. The Charter's originality lies in the fact that with it the Church presents in an organic way and translates into formulas expressed in technical-juridical terms the "must be" intrinsic to the divine plan for the family. In the *Presentation* we read: "The rights proposed must be understood according to the specific character of a 'Charter'. In some cases, they enunciate real and proper legally binding norms; in other cases, they express postulates and fundamental principles for a legislation to be enacted and for the development of family policy. In all cases, they are a prophetic call in favor of the institution of the family which must be respected and defended from any usurpation". And precisely because they are universal, these affirmations are addressed not only to civil governments to get adequate implementation in laws and family policies, but also "to all the members and institutions of the Church". Indeed, we can say that the ecclesial community has to be the privileged place in which to recognize and protect the fundamental rights of the family.

This Pontifical Council wanted to hold this international meeting together with the Association of Italian Catholic Jurists – whom I thank sincerely starting with

Cardinal Francesco Coccopalmerio and the President, Prof. Francesco D'Agostino – to take up the inspirations of these principles again. It is true that we find ourselves in a new cultural context which puts the institution of the family up for question in an even more radical way than in the past. But the principles which the Charter contains and orders remain solid with all their validity. If anything, when we reread them, we feel the impulse to urge believers to have a new boldness.

And those who love the law among believers are called to take up the challenge in defense of the family from the very violent attacks to which it is subjected, and above all to help the family so it can express its extraordinary riches to make that “we” grow which becomes a school of coexistence. The family is a “patrimony of humanity”, as Benedict XVI liked to stress, and Pope Francis is making it one of the key points of his apostolic mission.

In a word, the family must be brought back into the heart of juridical reflection.

It is not up to me to get into this field. It is the task first of all of Catholic intellectual law scholars. This international meeting is meant to be an encouragement in that direction. My hope is that from these days a reflection on the family in the context of globalization will develop. This reflection, colored by the shades of the different cultural contexts of the scholars present here, should take place – as far as I understand – both on the level of civil law and of canon law. In the latter, in fact, it seems to me that a family law is still absent. In any case, both in the civil and in the canonical areas, the new cultural, social and pastoral context calls for a careful and urgent reflection. And, in my opinion, a co-responsibility of Catholic jurists is also essential, both on the national and international levels. The convergence here of jurists from different nations of the world is a small but very clear sign of the path that must be undertaken.

The responsibility that weighs on Catholic jurists' shoulders is great. In the past – both ancient and recent – humanity's juridical thinking has been enriched decisively by the contribution of Catholics' juridical thinking. If I think of the very close dialogue that took place in the past centuries between Roman law, canon law and humanist thinking, how can we not lament the absence of this alliance in the contemporary world? I think that the moment has come for all of us to re-position ourselves in the global perspective in order to assume a solid responsibility before the great challenges that weigh on the family horizon.

Globalization, in fact, also has considerable repercussions from the juridical standpoint concerning marriage and the family, and from this on culture and social practice. Therefore, Catholic jurists are called to a new cultural commitment which concerns the whole planet without any distinctions. We cannot let the different countries and international centers act where the fate of peoples and families are

decided without the specific, valuable contribution of Catholic and humanistic juridical thinking. We all know to what extent the legislative processes are often invalidated by ideological prejudices or lobbies that pursue partisan interests. It is urgent to raise the cultural level of the debate also in the sphere of law and in this case, of family law.

As I thank you once again for your presence, in conclusion, allow me to take up the dream again which John Paul II had when the *Charter of the Rights of the Family* was launched. He hoped that this Charter could inspire – as it did, moreover, in the formulation of the Charter of Human Rights and the Charter of the Rights of the Child – the drafting of an International Charter of the Rights of the Family, and this is our hope too.