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THE STRUGGLE FOR RECOGNITION OR THE VICTORIOUS SLAVE
(AN INCURSION INTO THE SPHERE OF THE
LEGAL AND THEOLOGICAL DEFINITIONS OF THE FAMILY)

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Abstract: The adoption of the Legal Codes has generated a debate regarding use therein of the concept of family. Today, the family is in an area of decline due to profound socio-economic mutations, which have caused several processes to become acute, such as individualization, divorce, abandonment of the prospect of marriage, increase in number of abortions, deterioration of the condition of children and adolescents. In spite of all this, the Legal Codes have preserved the traditional concepts. Likewise, the development of NRTs, insemination, surrogate mothers, demands for rights for the gay couples and their fight for acknowledgement have also contributed to this socio-cultural shift. We use the concept of family in its classical meaning; any other meaning configurations remain in the area signifying a couple/pair that do not have the possibility of procreation in themselves. Under the circumstances, we plead for the reconstruction of the family.

Key Words: family, nuclear family, inclusive family, exclusive family, family law, anthropogenesis, birth, procreation, family decline, family reconstruction.

Prolegomena

Sometimes the words of Francis Fukuyama are perceived as profoundly sceptical, other times as a result of some very objective, prophetic even, analysis.¹ The words *the end of history and the last man*² are more and more often repeated in postmodernity and I see them as sentences issued in a world in which some “abandoned God” and now they cling to faith in morality/ethics³ and who appeal more and more often to the word “justice/equality”.⁴ On re-reading Fukuyama and revisiting his analysis of the evolution of the “family” nowadays⁵, some questions arose concerning the adoption of the legal codes in the field of justice and the use therein of the classical definition of family. I came across a group of terms: family, couple/pair, which set me wondering whether they are equivalent, synonymous, or identical. Are they?

Regarding humanity in general, Philip Allott also has some very pertinent ideas: “after 8000 years of accumulating self-consciousness, humanity has formed a certain idea of itself and its situation ... [man] is the most creative and the most destructive of all animals. This is why humanity is called upon at last to take responsibility for itself and for the whole creation”.⁶ His statements are extremely close to those of the Christian thinking expressed, for example, by father Dumitru Stăniloae in his *Orthodox Dogmatic Theology*: “we are the only beings who belong to the visible world and endowed with rationality, and who is aware of this rationality and with this, of itself. As the only being in the world who is self-conscious, man is also the world’s conscience and the revaluation factor of the world’s rationality”.⁷ Let’s go back to ourselves. A sincere appeal to natural.

Since the last man has already been mentioned, since Kojève⁸ speaks about the end of history, I should say a few words about the first man, about the man who was created and destined to procreate and rule, himself and the world, about the natural man, about the complete man. “Man is a complete unity because his unity as a man is accomplished within the personal ununiform duality, but complementary of man and woman”.⁹ This is why Saint Cyril of Alexandria said that God created coexistence.¹⁰ This man is the responsible reason of the creation through which everything returns doxologically to the Creator. He is constantly called upon to return towards himself and towards taking the responsibility devolved from his status as master of Creation.

In order to make it clear that I do not exclude a priori Kojève’s statement, I offer here the sequence of eternity as conveyed by Pareyson, from which one may conclude that “the inaccessible divine transcendence does not exclude its engagement in time and in the world, but instead requires it even as it withdraws in its remoteness, implacably unless it is mundanized or secularized, that is, it extends the history in which man

lives his tragic story by a past that is more of a past than any historical past and by a future that is more of a future than any historical future; a past that is originary rather than primordial and a future that is not final but rather an ultimatum, the past of protology and the future of eschatology”¹¹, and all filled with life/resurrection.

The attempt to identify the exact relationship between the definition of family and the act of procreation¹² comes from the multitude of legal studies regarding the right to paternity, both in the case of adoption¹³ and in the case of *in vitro* fertilization¹⁴, surrogate mothers¹⁵ and gay couples.¹⁶ The development of this type of specialized literature occurred together with the introduction of several legislative changes inspired by the problems that I have already mentioned, problems of maximum interest which started a new era in the history of family.¹⁷ However, all these phenomena ignore three fundamental interests which govern the act of procreation: transmitting self genetic characteristics, choosing the partner and giving birth/raising one's own descendants.¹⁸

In this context, I reconsidered the event of the creation of man in Genesis 1-2 noting the fact that the special act of divine intervention in the case of Eve's creation is not a random one. God does not do, does not accomplish anything without sense. Even though an androgyny¹⁹ stage is mentioned, this doesn't have in itself the force of an evolutive multiplication - the creation act performed by the Creator is mandatory, which is clearly expressed in the divine command: “be fruitful and increase in number” (Genesis 1:28). The conclusion is that we must perceive the family as a spring for the proliferation of life in new hypostases, in new persons.

The decline of family, environmental and mentality factors

Mechanistic progress has obviously marked an advance in health care and life expectancy, yet one may observe the fact that “organisms deteriorate gradually, in the process of aging and finally they die of exhaustion, even though they find themselves in a relatively good state. In order to survive, these species have developed a form of super-repair. Instead of replacing the used or deteriorated parts, they replace the whole body. This is, of course, the reproduction phenomenon, characteristic for the entire living substance”.²⁰ Thus, what has been considered to be innovating and designed to lead to eternity proves to be overridden by the nature of the existent beings. I prefer using the term *the nature of the existent beings* because I consider it unnatural, that in the middle of the 20th century some should use the slogan: “no limits” and behave accordingly.

However, there is a geographical characteristic for each being. According to Philip Allott, there is an inner area, *in personam*, of this geography and an external area, the social environment, between which

there is continuous interaction. The *inner world* is the human habitat perceived as conscience, the place where the personality is created, and the outside world is the *natural world*, meaning the universe and the *social world*, the place of our existence and creation. When the two worlds individualize, a period of crisis begins, more commonly known as a period of decline. In the case of our study, the emphasis falls on the concept of family, consequently we shall pursue this aspect only. Thus, we may notice that “many of the classical works of social theory written at the end of the 19th century supposed that, once the societies are modernized, the family’s importance will fade and it will be replaced with much more impersonal social relationships”.²¹ Such shifts did not take long to appear. In the middle of the 20th century, one may notice the fact that large families are simply transformed into nuclear families, which are much more adapted to the conditions of the industrialized society. From now on, the changes will be extremely rapid due to the technological development of the third wave²² and the feminist movements and the sexual revolution in the 60s-70s. This is why Fukuyama noted that “the great disrupture threw even the nuclear family into a prolonged decline and thus endangered the main function of the family: reproduction”.²³ Not only are there changes in the structural, systemic plane of society generated by what we have already mentioned, but we are talking here of a “vast cultural change”. The British environment was a particular case in point with the result that the Victorian values, which peaked at the end of the 19th century, were defeated by a cultural shift which undermined the Victorian morality on three levels of manifestation: *the level of the abstract ideas* spread by philosophers, scientists, artists and professors, which lay the grounds for major changes; *the level of the popular culture*, where we meet simplified versions of the abstract, complex ideas, disseminated among the masses through books, newspapers and other forms of mass-media; and *the third level*, that of *people’s behaviour*. This corresponds to the action of incorporating within the actions of the masses of the new rules implicit in the abstract ideas or in the popularizing ideas.²⁴

Thus the family decline is also the result of a mental mutation, a mutation which brings along the decline of social morality and all the wild-goose chase definitions generated by the “blushing beast”²⁵, to show that there are no rational reasons for supporting universal rules of behaviour, and thus there is licence to do anything. However, the emphasis of the 20th century on psychology contributed to the justification of the pursuit for individual pleasures and satisfactions. The result of the psychologization of contemporary life is the development of what sociologist James Nolan labelled as the “therapeutic state”, a government whose goal is to satisfy the profound psychological necessities of its citizens, and which remains in power or fails depending on its capacity to make people feel better.²⁶

A second source of ideas regarding sexuality was provided by anthropology. The concept of “cultural relativism” derived from here was applied directly to sexual habits²⁷. When the cultural basis weakens, trust within society wanes. Its loss generates a multitude of distortions in the life of the community. Attempts have been made to expand the area of faith beyond the circle of family and friends, but the result was a complete failure. Analysing the American and, at the same time, the Russian post-Soviet environments²⁸, the conclusion has been reached that a rule of the law correctly and universally applied generates a higher trust, offering to those that don't know each other and are not related the grounds for collaboration and for settling disputes.²⁹ Thus, it follows that the family is a nucleus from which several elements radiate into society and provide its stability, entailing the development of a body of specific laws regarding the family in order to protect it and so that it may achieve its characteristic goals.³⁰

The decline of the family is confirmed by the many studies performed in the European and American environment from which we may conclude: starting with the 70s and the 80s a shift in behavioural patterns has been noticed regarding family: late marriage, early divorces, avoiding marriage after divorce³¹, a decrease in the number of persons who take the responsibility of being parents.³² Statistics rate the Northern countries and Great Britain first in Europe regarding the number of divorces, followed by France and Germany, whereas in the case of the states in which divorce was legalized fairly late, in the second half of the 20th century – Italy, Spain and Portugal – the divorce ratio is quite low.³³ The decline is also confirmed by the increase of the number of childbirths outside marriage, simultaneous with a decrease in the number of childbirths inside the family, the former involving the absence of stability within the family, necessary for the children's development and communication skills³⁴ as future members of society. The Scandinavian countries are also first in this respect, followed by the United States, Germany, the Netherlands, and Japan. In the United States, about 25% of the illegitimate children are the result of concubinage; in France, Denmark and the Netherlands the ratio is much higher, and in Sweden it may go as high as 90%.³⁵ Here the institution of marriage is in an extreme phase of decline³⁶, manifested also in the highest ratio of dissolution of families of all the industrialized countries.³⁷

Demographic studies have shown that family stability is higher in the case of marriages which are not preceded by a concubinage phase³⁸, thus contradicting the widely spread idea that a period of premarital cohabitation provides reciprocal knowledge for both potential spouses. Moreover, concubinage relationships are more prone to family aggression and social isolation than marriage.³⁹ These aspects lead to an inevitable conclusion: the nuclear family goes through a period of decline and its

characteristic functions, especially the reproductive one⁴⁰, are poorly accomplished.⁴¹

There is no way out of this area of decline of the family other than by applying the solution proposed by Phillip Allott: the reconstruction of humanity, in a study carrying a motto by John Milton, which we find quite suggestive because it shows precisely what should be repaired in humanity: “the mind is its own place, and in itself/ can make a heaven of hell, a hell of heaven”: “At the end of a century and of a millennium, in one conventional reckoning of elapsed human time, humanity has the possibility of reconstituting itself as society, the international society of the whole human race, the society of all societies”.⁴²

The society as a structure and a system

When we speak about society as a structure and a system, two main aspects are targeted: functionality and composition: “A structure is an arrangement of parts. A system is a functioning of parts. The structure determines what parts are contained in the society. The system determines how those parts interact with each other. The constitution of a given society is the structure-system of that society, a unique product of all that goes to make societies and of all that has gone to make that particular society”.⁴³ One of the fundamental parts of the system is the family, whether nuclear or extended. The fact that the family was presented as a the main pillar of the society has made some researchers perceive differently the definition of the family as an ideology. Allison Harvison Young said that: “the ideology of a nuclear family does not script a significant role for the extended family, or for other members of the community who may play key roles in the lives of children”⁴⁴ and thus, this ideology might be changed for another one (the ideology of the extended family): “The most familiar critique focuses on the patriarchal nature of the nuclear family, even in this egalitarian age. In addition, there is the more descriptive argument that the traditional nuclear family has failed to live up to its promise”.⁴⁵

Another critique of the nuclear family focuses on its exclusive character, although it has been noticed that in the case of this type of family, when members assume distinctively characteristic responsibilities and duties they function best: “families work best, for both parents and children, when they are exclusive units because authority and responsibility are localized, readily identified and efficient”.⁴⁶ In fact, the critique of the exclusivity does not attack the idea of unity in itself but the subject who benefits of the effects of exclusivity. Thus, from the critique of the nuclear family and of its exclusive character things have moved on to extending the concept of family to the gay couples. Moreover, the development of the artificial fertilization techniques has given gay couples the possibility to “exclude all known donors from playing any parental

role at all”⁴⁷, because, as unconventional families, they are exposed to some interferences from the traditional families. Thus, we observe that “NRTs provide much of the fodder for current controversy over family and family values. An important issue is the establishment of legal parentage or filiation when a child is created through the use of various reproductive technologies”.⁴⁸ The ruling in the Johnson vs. Calvert case underlines the fact that in many similar situations NRTs, lead, among other things, to “the tendency to undermine natural reproduction and the family”.⁴⁹

From the exclusive family we move on to the inclusive family. Katherine Bartlett pays a special attention to the analysis of the concept of inclusive family. As a consequence, she claims that an inclusive notion of the family does not entail only an increase of the number of parents acknowledged by the law and the society: “The challenge is to approach the task with a greater degree of imagination, so that different types and degrees of contribution and potential contribution may be fostered. It also means challenging the nuclear family as the superior and “normal” family paradigm”.⁵⁰ A more inclusive vision of the family would retain a place for the woman who gestates a child.⁵¹

The present tendency to regard the nuclear family as a social norm is determined by its universal character and its functionality, by its efficiency proven statistically⁵², and regarding this as a rule means to reinforcing it as the pattern to which “all families should aspire or conform”.⁵³

“The notion of the nuclear family does not extend to lesbian families. Lesbians are increasingly resorting to anonymous sperm donors.”⁵⁴ Although there may be a number of reasons for this, a prime reason is the concern that donation by a known donor opens the door to intervention by the donor, or, put another way, threatens the integrity of the lesbian core unit”.⁵⁵ Thus, even if from a legal point of view, a non-traditional family could be publicly recognized as a family⁵⁶, at least for now they are marked by some sort of fragility and vulnerability, generated by the absence of general acceptance. And this absence is justified by the fact that the problem of the gay couples is seen from the point of view of certain beliefs, and profound personal principles⁵⁷ which eliminate the possibility of accepting their equality with the traditional families.

It is very difficult to decide in the case of NRTs techniques and non-traditional families because a state of anxiety persists, generated within the nuclear families by the idea of corruption.

We think that now it would be suggestive to analyse several ways of defining the family in order to identify the common fundamental features for a conclusion regarding the concepts of nuclear or extended families, exclusive or inclusive, as well as checking whether our option for the use of the concept of couple in the case of the non-traditional families is justified.⁵⁸

The definition – part of a universal order?

From the Biblical perspective, prior to *family*, a different concept was used expressing the idea of unity, the particular unity we have mentioned above in the case of the nuclear exclusive family. This is why its occurrence in the book of Genesis 2: 23-24 is rather difficult to understand: לְבָשָׁר אֶחָד (lebasar ehad). This is because the expression *yahad* in Jewish thought expresses the idea of the maximum unity, of community. This is why in our previous studies⁵⁹ we have spoken about the restricted and extended family. In fact, from a sociological point of view, the family may be defined as a specific form of human community, consisting of a group of persons linked through marriage, filiation or kinship, which is characterized by community of life, interests and mutual assistance.⁶⁰ Thus, from a legal point of view, a family is “the group of persons linked by rights and obligations that result from marriage, kinship (including adoption), as well as other connections assimilated to the family relationships”.⁶¹

In comparison with this definition from the treatise of family law, the UNESCO dictionary particularizes the aspect that defines the type of relationships between the members of the family: “tight biologic, economic, psychological and spiritual relationships”.⁶² With this definition we enter the sphere of the functionality of the family, where the demographic function (of procreation), the educative function and the economic function stand out⁶³. In other words, in the domestic environment, individuals learn and practise communication, they receive the necessary nurturing and support, and these elements determine the future quality and responsibility of the family members as citizens of the human society.⁶⁴

The concept of family⁶⁵ occurs in the Scriptures with two main meanings: a restrained meaning which appears in Genesis 2-4 and in parallel sections and an extended meaning which expresses the home, the tribe, the nation, the people and which in the prophetic discourse becomes a subject of the corporate technique of expression.⁶⁶ From a sociological point of view, in Biblical times, the family appears to be the fundamental nucleus of the society, a nucleus of stability and health on which the entire nation depended.

From the point of view of the canonical law, the family has been defined as a “divine institution established in the creation. It was constituted through marriage, which has as main features unity and indestructibility. Instituted by God, the family has a sacred character, this sacred character being emphasized by the following characteristics: perfect love, communion, unity and equality between its members”.⁶⁷ In the same respect we presented, in a previous study⁶⁸, the words of Metropolitan Andrei Țăgălaș concerning marriage: “The most important relationship in social life is marriage; it is based on God’s law; it is the

founding support for the Romanian people; it is the religious-church institution which is older than any other establishment ever founded by man".⁶⁹

According to the Code of Canon Law⁷⁰, the family must be characterized by unity, stability and responsibility (Can. 768 §2). The oath of marriage through which a family is formed has for a goal giving birth to and raising children: "The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament" (Can. 1055 §1). Canon 1096 is even clearer regarding this function of the family: "...marriage is a permanent partnership between a man and a woman, ordered to the procreation of children through some form of sexual cooperation." (Can. 1096 §1). These elements of canonical law are relevant in terms of the family, because religion is an important dimension of the human existence which cannot be neglected, but which sometimes can come into contradiction with certain social and institutional rules⁷¹. As a matter of fact, we are now witnesses to the gradual abandonment of the concept of marriage understood in terms characteristic for the canonical law and religious values.⁷²

The notion of "family" has also been understood as designating a group of people who are bonded either biologically, through blood, or through legal procedures, such as marriage⁷³. In the case of the relationships accomplished through marriage, the definitions usually state that they refer to adults of both sexes.⁷⁴ Although the apologists of gay couples plead fervently for the recognition of their family status, and although the border line between homosexuals and heterosexuals seems to gradually fade away⁷⁵, there is, however, a "social sanctuary" which belongs exclusively and rightfully to the family: marriage.⁷⁶

Thus, Murdock considers that the family is a social group whose identity is defined by a common residence, by economic cooperation and reproduction and that it fulfils three main functions, essential to the equilibrium of the society, based on which the family is an institution impossible to replace: the stabilization of the sexual behaviour and reproduction⁷⁷, the insurance of the minimum economic conditions, and providing a communicative environment, especially for the new generation.⁷⁸ The same type of connection, the fundamental functions of the family and the future of the society constitute an argument in favour of the model of the nuclear family.⁷⁹

Although there is no definition of the family unanimously accepted, "there is agreement regarding the role of the family within the society and the functions that it should fulfil: procreation, communication, affection and emotional support".⁸⁰

The fundamental elements common for all these definitions are: the idea of unity/community; the idea of procreation; the idea of protection between generations.⁸¹ This is why we think that the concept of family is adequate to express the union between a man and a woman with the purpose of accomplishing the unity and perpetuating the nation. In the case of the non-traditional families, we consider the term "couple" to be more suitable, because most of these families do not have in themselves the possibility to procreate/perpetuate, although apart from this, they do speak about unity and protection.

Rediscovering unity as a way out of the doubtful environment (on the Pentateuch of the perennial dilemmas)

Rediscovering unity and reconstructing humanity can only be done by trying to overcome the perennial dilemmas:

(1) "The dilemma of the Self and the Other is the dilemma of Identity. We are a self in relation to an other which is a self in relation to us as an other. All identity is also alterity. The individual (say, a person, a family, a nation, the human race) is another in relation to another individual (person, family etc), that other being also a part of that individual's self".⁸² The recognition of the other is fully accomplished when we live in the sphere of unity, of the unity of a Trinitarian type. This way of living will offer a new perception of the dilemma of power.

(2) "The dilemma of the One and the Many is the dilemma of the Power. The many of society (individual human beings, individual subordinate societies) struggle with the one of society. The one of the individual human being or subordinate society struggles with the many who are society. A society is a society because it is one. A society is a society because it is many. Social consciousness is one because it is the consciousness of a society. Social consciousness is many because it is the consciousness of individual human beings".⁸³ When the law which generates the moral order is one, the power, the dilemma of power, is no longer a problem because power is converted into building, multiplying life.

(3) "The dilemma of Unity of nature, Plurality of value is the dilemma of Will. The willed action of society serves society's purposes. But society's purposes are formed in struggle, including the struggle of perennial dilemmas of society. Society's purposes are not found simply by contemplating the natural order of the universe of all-that-is".⁸⁴ The dilemma of will remains a question because of the somatic-psychic tensions, but it can be solved through what we theologically call "the conformation of wills".

(4) "The dilemma of Justice and Social Justice is the dilemma of Order. Society is a realm of order within a realm of order. It is a self-ordering within the self-ordering of all that is beyond society, the order of the

universe and the order of individual consciousness”.⁸⁵ The conformation of wills generates similitude between the human environment and the eternal environment, hence the instauration of the eschatological peace (Isaiah 9).

(5) “The dilemma of New Citizens, Old Laws is the dilemma of Becoming. Society, in making itself from day to day, is forever surpassing itself, outliving itself, destroying itself. Such is the nature of the growth of living things. Such is the nature of the form of life which is a society. To become what it is, society must cease to be what it is”.⁸⁶ In eschatological terms, what emerges is the new earth and new heavens (2 Peter 3:13) and thus a new citizen, understood as the hypostasis of humankind rebuilt in the nature of Creation, of the man as master of Nature and Creation.

This is why we conclude by saying: the natural is the order and power of the multiplication of life (understood as Many), it is what recognizes someone in the other – the one subjectivising you so that you may find fulfilment through love and the peace brought by the eschatological new, it is this “one body” who gives birth to people for eternity.

Maintaining the classical definitions in the legal codes equals an appeal to the axiology of tradition and a warning regarding the characteristic telos of man: to multiply and rule; to rule not by exclusion, but by assuming and restoring the nature of Creation.

Thus, we may say that in the process of reconstructing humanity there is the stage of recognition, but this stage is not the final point in family evolution, but an intermediate one, where liberty has been achieved only partially, which is why we claim the fight for recognition ends in victory but the victorious remains a slave to his devouring passions.

Notes

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² Francis Fukuyama, *Sfârșitul istoriei și ultimul om* (Bucharest: Paideia, 1992).

³ Friedrich Nietzsche, *Voința de putere*, I, 18 (Oradea: Aion, 1999), 16.

⁴ Justice and equality in the context of family may also mean, from a legal point of view, a law which must be neutral from all the domestic relationships, with all the consequences that it implies, Alafair S. Burke, “When Family Matters,” *The Yale Law Journal* 119 (2010): 1213-4. Family should be the environment in which the principles of equality between sexes are defined, the notion of family itself being defined on the basis of this new paradigm, Ariela R. Dubler, “In the Shadow of Marriage: Single Women and the Legal Construction of the family and State,” *The Yale Law Journal* 112 (2003): 1687.

⁵ Francis Fukuyama, *Marea ruptură, Natura umană și refacerea ordinii sociale*, translated by Liana V. Alecu (Bucharest: Humanitas, 2011): “the most dramatic

changes of the social rules which constitute the great disruption regard reproduction, family and the relationship between the sexes”, 48 and the following. To analyze the concept of family in its present sense means, among other things, also to accept the fact that this type of analysis does not have as object a static unity, but a complex process which extends upon the lives of all the members of the family, as well as on their interaction with the sphere of religion, education, politics etc. Tamara K. Hareven, “The History of the Family and the Complexity of the Social Change,” *The American Historical Review* 96 (1991): 96.

⁶ Philip Allott, “Reconstituting Humanity – New International Law,” *European Journal of International Law* 3 (1992): 219, <http://www.ejil.org/pdfs/3/2/2039.pdf>.

⁷ Dumitru Stăniloae, *Teologia Dogmatică Ortodoxă*, vol. I (Buchrest: IBMBOR, 2003), 11.

⁸ Alexandre Kojève (1902-1968) French philosopher of Russian origin, who promoted Hegel’s discourse in the French thinking. He is best known for his theory about the end of history and the last man, theory which was later on developed by Francis Fukuyama in *The End of History and the Last Man*, (Harmondsworth: Penguin, 1992), according to *Internet Encyclopedia of Philosophy – A Peer-Reviewed Academic Resource*, <http://www.iep.utm.edu/jojeve/>.

⁹ Stăniloae, vol. III, 187.

¹⁰ PG 62, col. 135.

¹¹ Luigi Pareyson, *Ontologia libertății* (Constanța: Pontica, 2005), 148.

¹² To explain this relationship is even harder nowadays when a *divorce between marriage and procreation* is discussed, an idea generated by the way in which family is understood, seen as a manner of legalizing an extremely important social relationship, and not as an environment that generates life, Jamal Greene, “Divorcing Marriage from Procreation,” *The Yale Law Journal*, 114 (2005): 1996.

¹³ Cynthia R. Mabry, “Joint and Shared Parenting: Valuing All Families and All Children in the Adoption Process with an Expanded Notion of Family,” *Journal of Gender, Social Policy & The Law* 17 (2009): 660-73.

¹⁴ Alison Harvison Young, “Reconceiving the Family: Challenging the Paradigm of the Exclusive Family,” *Journal of Gender & The Law* 6 (1998): 539.

¹⁵ Harvison, “Reconceiving the Family”: 540-5.

¹⁶ Harvison, “Reconceiving the Family”: 545-54.

¹⁷ Kerry Abrams, “Family History: Inside and Out,” *Michigan Law Review* 111 (2012): 1001. In this “new era”, the family law does not connect automatically the concept of family and that of marriage as an element of stability and legal social status etc, as it happened in the beginning of the 20th century. The main principle of the family law now is the relationship parent-child, with an emphasis on responsibility as opposed to the authority used in the past, Rebecca Probert, “The History of the 20th Century Family Law,” *Oxford Journal of Legal Studies* 25 (2005): 169. Neither the values characteristic for the family of the Victorian epoch are no longer actual: authority, status and social roles or the idea of self-sacrifice, John Eekelaar, “Family Law: The Communitarian Message,” *Oxford Journal of Legal Studies* 21 (2001): 184.

¹⁸ “The procreative interest consists in bearing and rearing one’s genetic progeny with the mate of one’s choice”, Joshua Kleinfeld, “Tort Law and In Vitro Fertilization: The Need for Legal Recognition of “Procreative Injury,” *The Yale Law Journal* 115 (2005): 243.

¹⁹ Krisen E. Kyam et al., *Eve & Adam: Jewish Christian and Muslim Readings on genesis and Gender* (Bloomington: Indiana University Press, 1999).

²⁰ Fritjof Capra, *Momentul adevărului*, translated by Niculiță Damaschin (Bucharest: Tehnică, 2004), 341.

²¹ Fukuyama, *Marea ruptură*, 49.

²² Alvin Toffler named the transition of the society, from an economic point of view, to the level of informatized society or post industrial, “the third wave”, starting from the presumption that this transition will prove itself in time to be as important as the transition from the primitive society in the history of humankind – from hunter-gatherer to agricultural societies, and from agricultural to industrial ones, apud Fukuyama, *Marea ruptură*, 11.

²³ Fukuyama, *Marea ruptură*, 50.

²⁴ Fukuyama, *Marea ruptură*, 90.

²⁵ Nietzsche, apud Fukuyama, *Marea ruptură*, 90.

²⁶ Fukuyama, *Marea ruptură*, 91. Fukuyama mentions the Californian movement of self esteem, according to which the education is the one in charge to monitor the raise of the young people’s self esteem. We think that it is more than self esteem; it is self-importance which is induced by the profound individualization generated by the factors that we have already mentioned within the text.

²⁷ Margaret Mead in her work *Coming of Age in Samoa*, presents the example of young women from Samoa who, without being influenced by repressive puritan and Victorian rules as the American girls, started their sexual life during adolescence, which had as a consequence the existence of some minimum signs of guilt, jealousy or competition in the society of Samoa, apud Fukuyama, *Marea ruptură*, 92. For a debate concerning the topic, see also Flaviu Calin Rus, Corina Boie (Rotar), Veronica Ilies, „Reactions of the Romanian Orthodox Church to the proposed legislation to legalize prostitution”, *Journal for the Study of Religions and Ideologies*, vol. 11, issue 32 (2012): 206-226.

²⁸ Here, the State proved its inefficiency in defending the right of property and personal safety, that people appealed to other solutions among which the request of the local mafia’s protection, Fukuyama, *Marea ruptură*, 279.

²⁹ Fukuyama, *Marea ruptură*, 279.

³⁰ The adaptability of the family law to the characteristics of each generation is a must. But, such a legal updated body cannot ignore the fact that society’s health is in direct relationship with the family’s health. Thus, the jurists’ efforts are now directed towards the identification of the ways in which law can protect the future of the family and through this, the future of the community, Leah Ward Sears, “The Marriage Gap: A Case for Strengthening Marriage in the 21st Century,” *New York University Law Review* 82 (2007): 1244. Moreover, the diversity and complexity of the laws regarding the protection of property, understood as a means to protect the family, reflects a special ethos concerning the concept of house, home, tightly linked to the notion of family, Stephanie M. Stern, “Residential Protectionism and the Legal Mythology of Home,” *Michigan Law Review* 107 (2009): 1105.

³¹ Fukuyama, *Marea ruptură*, 53.

³² This decrease is generated mainly by difficulties or even impossibilities of combining the exhausting professional requirements with family responsibilities, P.K. Runkles-Pearson, “The Changing Relations of Family and the Workplace:

Extending Antidiscrimination Laws to parents and NonParents Alike," *New York University Law Review* 11 (2002): 836-7.

³³ Fukuyama, *Marea ruptură*, 54.

³⁴ A reason against the gay culture is that in order to have a balanced development, children need a family with both paternal and maternal models, Kenji Yoshino, "Sex Equality's Inner Frontier: The Case of Same-Sex Marriage," *The Yale Law Journal Online* 122 (2013): 279.

³⁵ Fukuyama, *Marea ruptură*, 57.

³⁶ Richard F. Thomasson, "Modern Sweden: De Declining Importance of Marriages," *Scandinavian Review* (1998): 83-9, apud Fukuyama, *Marea ruptură*, 57.

³⁷ David Popenoe, *Disturbing the Nest: Family Change and Decline in Modern Societies* (Aldine Transactions, 1988), 174, apud Fukuyama, *Marea ruptură*, 58. In contrast with this nowadays situation, in the pre-industrial epoch, family was "the chief unit of reproduction, production, consumption, socialization, education and, in some contexts, religious observance and political action. It was the institution to which the individual normally turned to cope with the problems of age, sickness and incapacity", E. Anthony Wrigley, "Reflections on the History of the Family", *Daedalus* 106 (1977): 72.

³⁸ Studies were performed in the United States, see Larry L. Bumpass and James A. Sweet, "National Estimates of Cohabitation," *Demography* 26 (1989): 615-25, apud Fukuyama, *Marea ruptură*, 40.

³⁹ Jan E. Stets, "Cohabiting and Marital Aggression: The Role of Social Isolation," *Journal of Marriage and the Family* 53 (1991): 669-80, apud Fukuyama, *Marea ruptură*, 58.

⁴⁰ Procreation is more than a function, among others, of the family: it is the imperative which defines and gives meaning to the family. Courtney Megan Cahill, "Same-Sex Marriage, Slippery Slope Rhetoric, and the Politics of Disgust: A Critical Perspective on Contemporary Family Discourse and the Incest Taboo," *Northwestern University Law Review*, 99 (2005): 1061.

⁴¹ William J. Goode, *World Changes in Divorce Patterns* (New Haven: Yale University Press, 1935), 35, apud Fukuyama, *Marea ruptură*, 59.

⁴² Allott, "Reconstituting Humanity": 223.

⁴³ Allott, "Reconstituting Humanity": 223.

⁴⁴ Harvison Young, "Reconceiving the Family": 506.

⁴⁵ Harvison Young, "Reconceiving the Family": 509.

⁴⁶ Carl E. Schneider, "The Channeling Function in Family Law": 20, *Hofstra Law Review* 495, 502 (1992), apud Harvison Young, "Reconceiving the Family": 510.

⁴⁷ Harvison Young, "Reconceiving the Family": 511.

⁴⁸ Harvison Young, "Reconceiving the Family": 513.

⁴⁹ Harvison Young, "Reconceiving the Family": 513.

⁵⁰ Harvison Young, "Reconceiving the Family": 515-6.

⁵¹ Harvison Young, "Reconceiving the Family": 544.

⁵² Mark Kirby et al., *Sociology in Perspective*, AQA Edition, Heinemann, 2000.

⁵³ Harvison Young, "Reconceiving the Family": 517.

⁵⁴ Nowadays anonymity of the donors does not have an absolute character, children born as a result of NRTs having the right to obtain information about the donor, once they are 18 years old, Catherine Donovan, "Genetics, Fathers and Families: Exploring the Implications of Changing the Law in Favour of Identifying Sperm Donors," *Social & Legal Studies* 15 (2006): 495. On the other hand, in the past

ignoring the genetic identity of the adopted children was encouraged with the belief that belonging to a traditional family is of great importance, but nowadays this is perceived as a violation of the rights and a trespassing of the personal liberty, Mark Henaghan, "The Normal Order of Family Law," *Oxford Journal of Legal Studies* 28 (2008): 177.

⁵⁵ Harvison Young, "Reconceiving the Family", 545-6.

⁵⁶ Thomas Hixson, "Public and Private Recognition of the Families of Lesbians and Gay Men," *Journal of Gender & The Law* 5 (1997): 502.

⁵⁷ Peter Dolan, "An Uneasy Union: Same-Sex Marriage and Religious Exemption in Washington State," *Washington Law Review* 88 (2013): 1120.

⁵⁸ Without claiming the status of family, the legal forms of friendship accepted by the state in Canada and France imply responsibilities and privileges, financial interdependency and cohabitation, without the understanding of a conjugal relationship. These are accepted to the extent in which they fulfill the functions which are characteristic for a family, except for the conjugal relationship, and thus one may observe the fact that the new forms accepted by the law have also as a reference point the traditional family and they are accepted to the extent in which they correspond, at least partially, to its functions, Laura A. Rosenbury, "Friends with Benefits?," *Michigan Law Review* 106 (2007): 222.

⁵⁹ Ioan Chirilă, "Fecunditatea Tainei căsătoriei în Biserica" (Cluj-Napoca, 2011); "Modele familiale vechitestate ale creșterii în har prin summa virtuților" (Sibiu, 2012); "Sfântul Ioan Gură de Aur – teologia alterității și eclezia mică" (Pavleia, 2008).

⁶⁰ Ioan Albu, *Dreptul familiei* (Bucharest: Didactică și Pedagogică, 1975), apud Adrian Alexandru Banciu, Maria Banciu, *Dreptul familiei conform noului Cod civil* (Bucharest: Hamangiu, 2012), 1.

⁶¹ Albu, *Dreptul familiei*, 2.

⁶² Dicționarul UNESCO, apud Banciu & Banciu, *Dreptul familiei*, 1.

⁶³ Banciu & Banciu, *Dreptul familiei*, 2-4.

⁶⁴ Alice Ristroph, Melissa Murray, "Disestablishing the Family," *The Yale Law Journal* 119 (2010): 1238.

⁶⁵ The terms used do designate family are "baith" and "mishpaha", J.R. Kohlenberger, J.A. Swanson, *The Hebrew English Concordance to the Old Testament* (Grand Rapids, Michigan: Zondervan Publishing House, 1998).

⁶⁶ H. Wheeler Robinson, *Corporate Personality in Ancient Israel* (Continuum International Publishing Group Limited, 1981).

⁶⁷ Dumitru Stăniloae, *Teologia dogmatică ortodoxă*, vol. 3, (Bucharest, 1978), 180.

⁶⁸ Ioan Chirilă, "Căsătoria și elementele de drept succesoral în legislația bisericească," *Studia Universitatis Babeș-Bolyai – Series Iurisprudentia* 2/2012.

⁶⁹ *Trebile căsătoriilor*, art. 1, in *Legislația ecleziastică și laică privind familia românească din Transilvania în a doua jumătate a secolului al XIX-lea*. Text edition, introductory study and notes by I. Bolovan, D. Covaci, D. Deteșan, M. Eppel and C.E. Holom (Cluj-Napoca: Academia Română, Centrul de Studii Transilvane, 2009), 357.

⁷⁰ *Codex Juris Canonici*, Given at Rome, in the Vatican, on the 25th day of January 1983, in the fifth year of our Pontificate. John Paul II.

⁷¹ Alice Ristroph, Melissa Murray, "Disestablishing the Family," *The Yale Law Journal* 119 (2010): 1239.

⁷² David Bradley, "Comparative Law, Family Law and Common Law," *Oxford Journal of Legal Studies* 23 (2003): 129.

⁷³ Mark Kirby et al., *Sociology in Perspective* (AQA Edition, Heinemann, 2000).

⁷⁴ In the United States there are a lot of discussions nowadays regarding equal rights to marriage, based on the argument that, from a legal point of view, marriage is a way to access the government's recognition and help, a perspective from which gay couples should also be allowed to get married, which eliminates procreation from the characteristic functions of the family, Nelson Tebbe & Deborah A. Widiss, "Equal Access and the Right to Marry," *University of Pennsylvania Law Review* 158 (2010): 1377. The very function of procreation, impossible to fulfill within a gay couple, creates difficulties when it comes to accepting the status of family of this type of couple, Tebbe & Widiss, "Equal Access": 1397. Although in the United States (except for 7 states which legalized gay marriages), the opposition is yet strong enough, the idea that equal rights regarding marriage will gain ground in the near future is also circulated, William N. Eskridge Jr., "The Ninth Circuit's Perry Decision and the Constitutional Politics of Marriage Equality," *Stanford Law Review Online* 64 (2012): 97-8.

⁷⁵ Joe Rollins, "Same-Sex Unions and the Spectacles of Recognition", *Law & Society Review* 39 (2005): 457.

⁷⁶ Rollins, "Same-Sex Unions", 458.

⁷⁷ From this perspective, marriage seems to have also a curative dimension: it provides both the legality and the morality of a sexual relationship, Ariela R. Dubler, "Immoral Purposes: Marriage and the Genus of Illicit Sex," *The Yale Law Journal* 115 (2006): 776.

⁷⁸ George Peter Murdock, *Social Structure* (New York: Macmillan, 1949) apud Kirby et al., *Sociology in Perspective*, 47.

⁷⁹ John Muncie et al., *Understanding the Family* (SAGE, 1999), apud Kirby et al., *Sociology in Perspective*, 47.

⁸⁰ Helen O'Connell, *Women and the Family* (Zed Books, 1994), apud Kirby et al., *Sociology in Perspective*, 47.

⁸¹ Family implies the idea of protection not only between generations but, in the case of the liberal state, it is from a legal point of view a means of protecting the woman by providing her with access to her husband's financial resources, Kristin A. Collins, "Administering Marriage: Marriage-Based Entitlements, Bureaucracy, and the Legal Construction of the Family," *Vanderbilt Law Review* 62 (2009): 1088.

⁸² Allott, "Reconstituting Humanity", 226.

⁸³ Allott, "Reconstituting Humanity", 226.

⁸⁴ Allott, "Reconstituting Humanity", 226.

⁸⁵ Allott, "Reconstituting Humanity", 226.

⁸⁶ Allott, "Reconstituting Humanity", 227.

References:

Abrams, Kerry. "Family History: Inside and Out." *Michigan Law Review* 111 (2012): 1001-20.

Allott, Philip. "Reconstituting Humanity – New International Law." *European Journal of International Law* 3 (1992): 219-52, <http://www.ejil.org/pdfs/3/2/2039.pdf>.

Banciu, Adrian Alexandru and Maria Banciu. *Dreptul familiei conform noului Cod civil*. Bucharest: Hamangiu, 2012.

Bradley, David. "Comparative Law, Family Law and Common Law." *Oxford Journal of Legal Studies* 23 (2003): 127-46.

Burke, Alafair S. "When Family Matters." *The Yale Law Journal* 119 (2010): 1210-34.

Cahill, Courtney Megan. "Same-Sex Marriage, Slippery Slope Rhetoric, and the Politics of Disgust: A Critical Perspective on Contemporary Family Discourse and the Incest Taboo." *Northwestern University Law Review* 99 (2005): 1543-611.

Capra, Fritjof. *Momentul adevărului*. translated by Niculiță Damaschin. Bucharest: Tehnică, 2004.

Chirilă, Ioan. "Căsătoria și elementele de drept succesoral în legislația bisericească." *Studia Universitatis Babeș-Bolyai – Series Iurisprudentia* 2/2012.

Codex Juris Canonici, Given at Rome, in the Vatican, on the 25th day of January 1983, in the fifth year of our Pontificate. John Paul II.

Collins, Kristin A. "Administering Marriage: Marriage-Based Entitlements, Bureaucracy, and the Legal Construction of the Family." *Vanderbilt Law Review* 62 (2009): 1085-1167.

Dolan, Peter. "An Uneasy Union: Same-Sex Marriage and Religious Exemption in Washington State." *Washington Law Review* 88 (2013): 1119-1152.

Donovan, Catherine. "Genetics, Fathers and Families: Exploring the Implications of Changing the Law in Favour of Identifying Sperm Donors." *Social & Legal Studies* 15 (2006): 494-510.

Dubler, Ariela R. "Immoral Purposes: Marriage and the Genus of Illicit Sex." *The Yale Law Journal* 115 (2006): 756-812.

Dubler, Ariela R. "In the Shadow of Marriage: Single Women and the Legal Construction of the family and State." *The Yale Law Journal* 112 (2003): 1641-715.

Eekelaar, John. "Family Law: The Communitarian Message." *Oxford Journal of Legal Studies* 21 (2001): 181-92.

Eskridge Jr., William N. "The Ninth Circuit's Perry Decision and the Constitutional Politics of Marriage Equality." *Stanford Law Review Online* 64 (2012): 93-8.

Fukuyama, Francis. *Marea ruptură, Natura umană și refacerea ordinii sociale*. Bucharest: Humanitas, 2011.

Fukuyama, Francis. *Sfârșitul istoriei și ultimul om*. Bucharest: Paideia, 1992.

Greene, Jamal. "Divorcing Marriage from Procreation." *The Yale Law Journal*, 114 (2005): 1989-1996.

Hareven, Tamara K. "The History of the Family and the Complexity of the Social Change." *The American Historical Review* 96 (1991): 95-124.

Harvison Young, Alison. "Reconceiving the Family: Challenging the Paradigm of the Exclusive Family." *Journal of Gender & The Law* 6 (1998): 505-55.

Henaghan, Mark. "The Normal Order of Family Law." *Oxford Journal of Legal Studies* 28 (2008): 165-182.

Hixson, Thomas. "Public and Private Recognition of the Families of Lesbians and Gay Men." *Journal of Gender & The Law* 5 (1997): 501-23.

Internet Encyclopedia of Philosophy - A Peer-Reviewed Academic Resource, <http://www.iep.utm.edu/jojeve/>.

Kirby, Mark et al. *Sociology in Perspective*. AQA Edition, Heinemann, 2000.

Kleinfeld, Joshua. "Tort Law and In Vitro Fertilization: The Need for Legal Recognition of "Procreative Injury." *The Yale Law Journal* 115 (2005): 237-245.

Kohlenberger, J.R. and J.A. Swanson. *The Hebrew English Concordance to the Old Testament*. Grand Rapids, Michigan: Zondervan Publishing House, 1998.

Kyam, Krisen E. et al. *Eve & Adam: Jewish Christian and Muslim Readings on genesis and Gender*. Bloomington: Indiana University Press, 1999.

Legislația ecleziastică și laică privind familia românească din Transilvania în a doua jumătate a secolului al XIX-lea. Text edition, introductive study and

notes by I. Bolovan, D. Covaci, D. Deteșan, M. Eppel and C.E. Holom. Cluj-Napoca: Academia Română, Centrul de Studii Transilvane, 2009.

Mabry, Cynthia R. "Joint and Shared Parenting: Valuing All Families and All Children in the Adoption Process with an Expanded Notion of Family." *Journal of Gender, Social Policy & The Law* 17 (2009): 659-83.

Nietzsche, Friedrich. *Voința de putere*. Oradea: Aion, 1999.

Pareyson, Luigi. *Ontologia libertății*. Constanța: Pontica, 2005.

Probert, Rebecca. "The History of the 20th Century Family Law." *Oxford Journal of Legal Studies* 25 (2005): 169-81.

Ristroph, Alice and Melissa Murray. "Disestablishing the Family." *The Yale Law Journal* 119 (2010): 1236-79.

Robinson, H. Wheeler. *Corporate Personality in Ancient Israel*. Continuum International Publishing Group Limited, 1981.

Rollins, Joe. "Same-Sex Unions and the Spectacles of Recognition." *Law & Society Review* 39 (2005): 457-483.

Rosenbury, Laura A. "Friends with Benefits?" *Michigan Law Review* 106 (2007): 189-242.

Runkles-Pearson, P.K. "The Changing Relations of Family and the Workplace: Extending Antidiscrimination Laws to parents and NonParents Alike." *New York University Law Review* 11 (2002): 833-66.

Rus, Flaviu Calin, Corina Boie (Rotar), Veronica Ilies. „Reactions of the Romanian Orthodox Church to the proposed legislation to legalize prostitution”. *Journal for the Study of Religions and Ideologies*. vol. 11, issue 32 (2012): 206-226.

Stăniloae, Dumitru. *Teologia Dogmatică Ortodoxă*. vol. I-III. Bucharest: IBMBOR, 2003.

Stern, Stephanie M. "Residential Protectionism and the Legal Mythology of Home." *Michigan Law Review* 107 (2009): 1093-1144.

Tebbe, Nelson and Deborah A. Widiss. "Equal Access and the Right to Marry." *University of Pennsylvania Law Review* 158 (2010): 1375-449.

Ward Sears, Leah. "The Marriage Gap: A Case for Strengthening Marriage in the 21st Century." *New York University Law Review* 82 (2007): 1243-1264.

Wrigley, E. Anthony. "Reflections on the History of the Family." *Daedalus* 106 (1977): 71-85.

Yoshino, Kenji. "Sex Equality's Inner Frontier: Te Case of Same-Sex Marriage." *The Yale Law Journal Online* 122 (2013): 275-281.