

WHICH FAMILY COULD BE THE BUILDING BLOCK OF SOCIETY?

Toward a definition of family relationship

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1. Family or families?

In all cultures throughout history family relationships have been regulated in a positive or consuetudinary way by systems of kinship.¹ Despite the fact that systems of kinship vary from culture to culture, there is something that all of them have in common: the recognition of the unique nature of family relationships and the importance that those relationships have for society.

Recent reforms to family law have been proposed, arguing that cultural development has caused new family ‘models’ to surface and that such models should be acknowledged by the law. According to the proponents of these reforms, the traditional concept of family is no longer accurate in today’s society, because it does not embrace new familiar forms. These proposals confuse the concept of family with its historical cultural manifestations and forget that in order to speak of different models of family forms, it is necessary to begin with a univocal concept that allows one to apply the qualification of ‘familiar’ to these models. This concept has been the reference that has allowed people in all cultures to distinguish family relationships from other types of interpersonal relationships. Thus, confronting the proposal of the legal recognition of new familiar models, a question arises: which are the criteria that should be fulfilled before denominating an interpersonal relationship as ‘familiar’? In order to identify new familiar forms, it is necessary to have an objective reference

¹ For a deeper understanding of the systems of parenthood see
Héctor FRANCESCHI – Joan CARRERAS: *Antropología jurídica de la sexualidad. Fundamentos para un derecho de familia*. Caracas, SEA, 2000.
Antonio MORENO: *Sangre y libertad. Sistemas de parentesco, diversidad cultural y modos de reconocimiento personal*. Madrid, Rialp, 1994.

which allows for the application of the category of familiar to a given interpersonal relationship. At the same time, if an objective reference is accepted, it will not be necessary to speak of ‘traditional family’ or ‘natural family’; it will be sufficient to identify as family the models that correspond to such a referent and to differentiate it from other similar social forms. Defining this objective referent, the ‘essence’ of the family, must be a priority of an adequate familiar legislation, so that it is capable of recognizing the family in its different cultural, historical and geographical manifestations and of distinguishing this referent from other intersubjective relations.² It is only in this way that it will be possible to guarantee and promote the demands of justice which are proper to these bonds.

2. Family Relationships

The family is „a group consisting of parents and children living together in a household/a group of people related to one another by blood or marriage/the children of a person or a couple”.³ The definition of the New Oxford Dictionary makes reference to persons who are joined by a kind of relationship –commonly called family relationships– determined by ancestry and marriage. Within the present article, we want to propose a definition of the family relationship that helps to distinguish its specifics from other kinds of relationships and to understand the kernel of its social relevance. A family relationship is that relationship that joins two persons in virtue of any of the original and primordial lines of personal identity which, deriving from their respective corporeal condition, are irreducible, exclusive, and without the possibility of confusion.⁴ The nature of such a relationship determines the necessary demands of justice so that a communion of persons may exist among those who are so joined.

This definition makes it possible to distinguish the characteristic elements of the family relationship: it is an *interpersonal* relationship (it joins two persons) and *intrapersonal* (the bond that joins the persons is not external to the persons, but it is part of their very being; in other words it radically determines their personal identity). Such elements are the foundation of the demands of justice of these kinds of relationships.

² „Not only would the existence of an ‘ideal-eternal’ form of the family have to be presupposed, but the presence of this form in all of the historical epiphanies of the familiar condition as well as its reincarnation in all of the more or less predictable forms within the human capacity for relationship would have to be postulated. Moreover, to determine this ‘ideal-eternal’ form it would be absolutely necessary to refer to a principle that conditions history and that is thus found before and outside of history”. Francesco D’AGOSTINO: *Filosofía de la familia*. Milano, Giuffrè, 1999. 21.

³ Family. In: *New Oxford American Dictionary*. Oxford, Oxford University Press, 2010.

⁴ Cf. FRANCESCHI – CARRERAS op. cit. 97.

2.1. Interpersonal dimensions

The family relationships can only be established between persons; in such a way relationships between human beings and animals are excluded, despite the fact that these relationships can be lived with a great intensity of affection. Affection can be present in familiar relationships but it is not their defining characteristic. Affection in itself does not establish an interpersonal relationship in a strict sense, even when certain sentiments are provoked by another person. These sentiments are the interior resonance of human tendencies that follow the perception of a good or an evil; they have a passive character: they are not in themselves deliberate positions even when they look toward and suggest a certain action to be freely realized..

By affirming that this relationship is only possible between persons, it is understood that the relationship is not simply founded upon the existence of a bond of parenthood or blood. Despite the fact of generation, animals do not have familiar relationships. Forming an interpersonal relationship implicitly demands that for its complete establishment or realization the positive aspect of the personalistic principle has to be respected among the subjects, that is, that the person should be accepted as another "I". In other words, a personal act of love is necessary: a bilateral act of self-giving and acceptance between these two persons.

It is possible to argue that many family relationships are imposed upon the subject, are *given*, without implicating acceptance by the subject. A person does not decide to be a child or a sibling; rather, it is something that has been imposed by the fact of being generated or by the fact that his or her parents have had another child. Although this is true, the family relationship cannot be reduced to the fact of simply having something in common with another person. Considering family relationships to be imposed reduces them to the affective relationship to which we have just mentioned. It is possible that a man is a father without his son's recognition of this paternity or even if the child is convinced that his father is another person. This causal relationship is not necessarily an interpersonal relationship, even when both ends of the relationship are persons.

With this, we do not wish to diminish the importance of what is *given* in the relationships but to emphasize that because the familiar relationship is interpersonal, there is the mediation of freedom. Thus, it is possible to say that the family relationship has a *communion* character; the inherent *raison d'être*, the inherent meaning of *being given*—that identifies the person in respect to another, relating them in a special way—is that a personal communion develops among the persons related. Moreover, the familiar relationship has a *juridical* character: so the nature of the *given* bond carries the demands of justice which should be recognized and respected as conditions for the existence of a personal communion.

2.1.1. *Communion* Character

For a better understanding of the *communion* character, it is necessary to clarify the distinction between community and communion. The community refers to a multiplicity of related subjects, whose unity is based upon a characteristic that

joins them and defines them. The familiar community would be the gathering of persons joined by family bonds.. The subjects of the community are capable either of recognizing this common characteristic and reaffirming their belonging to this community with the use of the pronoun “we”, or of rejecting it.. The community in itself does not represent a communion of persons; two fans who support the same soccer team may share a common passion, but this alone does not establish any personal relationship. What is more, not all communities have personal communion as a specific goal; as an example, one may consider an association of consumers.

Communion is the way in which persons assume the bonds that join them to other persons and establish personal relationships.. A personal relationship is freely established by a bilateral act of donation and acceptance based upon that which joins the two persons. Differently from a community, communion is dynamic, it accepts a gradation: it is possible to be a better or worse friend, a good or bad father. A community, however, does not accept degrees: it is static: either, one is a father, or one is not, and this does not depend upon the quality of the relationship between a father and a son. The gradation of communion begins with recognition and develops into personal love.. Rejection does not create communion, but does not annul the community. A father can reject his child and even abandon him, but he does not thus cease being a father.

Familiar identities found a specific community in which the identity of the person is bound to the identity of another person.. In order for the community to cease to exist, it is necessary that one of the persons bound by this familiar identity ceases to exist. Communion, as it is freely established, can increase, disappear or become negative. It increases when it is accepted to establish a relationship conformed to that which joins one person to another; it disappears when what is common is rejected; and it becomes negative when there is a desire to destroy that which joins both. For this reason, familiar relationships are the cause of the greatest love and the greatest hatred, because whatever binds the person is identified with the person himself. Communion is free, but its order and measure is fixed by the community. Human freedom is not absolute, because it supposes a foundation⁵: a person cannot “make” himself the child of any other person; he may see another as a father, but the filial love towards this person does not make that beloved person a father.. The content of the relation determines the nature of the communion. Therefore, the acceptance and donation which are necessary in order to establish communion ought to be based upon the *raison d’être* of the bond which unites them; two people cannot love

⁵ „The person, due to his or her specific transcendental constitution, has the capacity of self-transcendence, the capacity to freely build upon his or her *raison d’être*, either positively by affirming in his or her being person, or negatively, annulling or annihilating this being person”.

Cf. Jesús ARELLANO: La familia, sociedad perfecta, In: Juan Cruz CRUZ (ed.): *Metafísica de la familia*. Pamplona, EUNSA, 1995. 41.

It should be noted that this does not mean to create the meaning of his or her being, but to build upon this meaning, which has already been *given*. If the person in his freedom is able to determine the inherent meaning of his or her being, it would not be possible to speak of either a positive use of freedom or a negative use of freedom.

one another as spouses if they are siblings. The acceptance of a person carries the acceptance of one's own self-identity. The child accepts the one who has given him life as a father. If he treats his father as a simple friend, a familiar relationship will not be established, because that which defines this person in relationship to him has not been accepted. In order to form a communion of persons the demands of justice proper to the familiar identity inhering within these personal relationships must be recognized and accepted.

2.1.2. *Juridical Character*

Interpersonal relationships are founded upon objective bonds with an inherent order; this objective order is what allows the determination of the demands of justice between the persons who form the community. A human community demands from each person respect for the lives of others, and among other things, respect for their freedom. A two way trade relationship requires duties and rights that are different from those in the relationship between members of a sports association.

As we previously said, it is not love which creates the community of persons, "It is not love which makes one a natural father or mother of their child, but the fact of generation. In the same way, it is not love which gives origin to the duty of raising and educating children or to the duty of respect and obedience owed to parents by their children. The real foundation of all this is generation." The community establishes an objective dimension, and thus an objective ordering of a reciprocal behaviour. This order is the fundamental and first rule of the reciprocal relationship. If this order is not respected, it is not possible to establish an authentic communion of persons. Acceptance and donation demand in the first place the respect of the person and the fullness of his rights. What is more, true love understands that these demands derive from the dignity of the person; it is with the recognition of this dignity that such demands are assumed and perfected. Those, who in the name of love believe that it is possible to neglect their duties toward the beloved person, err; love goes beyond the law, not disobeying such laws, but fulfilling them superabundantly.

The family law of the different juridical ordinances aims at formalizing the demands of the proper objective order of the family bonds or relationships. Because of the nature of these bonds, the duties and rights between spouses, between parents and children and, among many others, between siblings, are distinguished. The very same person has certain rights and duties towards the spouse which are different from those towards his children, towards his siblings and towards his relatives. In order to establish the proper demands of the familiar relationships, it is necessary to know what is specific to these relationships. An example of this is adoption. The different juridical ordinances intend that the relationship between the adopted person and the adopter be conformed in the most possible way to the filial relationship; it is for this reason that a minimum and maximum age difference is required.

As can be noted in the study of interpersonal relationships, it is important to identify whatever is proper to the familiar relationship –what is *given*: the familiar identity– in order to distinguish this from other interpersonal relationships and to be able to establish the bonds of justice inherent to such a relationship.

2.2. Intrapersonal Dimension

The definition that was just given has emphasised that what is specific to the familiar relationship is that it joins two persons in *virtue* of any of the original and primordial lines of personal identity which, deriving from the respective corporeal condition, are irreducible, exclusive, and without the possibility of confusion. The familiar relationship is differentiated from other interpersonal relationships, such as friendships and professional relationships among others, because the union that derives is in virtue of one of the original and primordial lines of personal identity and not something that is external to the person, such as a common interest or professional field. We have said that it has an interpersonal dimension, because it affects “the most intimate level of the personal being, to the point of becoming a dimension of one’s own “I”, an essential element of the familiar and social subject.”. Familiar relationships are a source of identity for the subject, because the persons involved in this relationship receive a common name precisely therein.. This common name defines the person inside a system of relationships and assigns to this person a proper function, according to the identity of this person inside the parental system. In this way, the person who is created receives the name of child, and this identity defines the specific relationship which one is supposed to have with one’s parents and with the other persons who make up the family.

Now then, this fact which we will call biological is not a familiar relationship in itself, but its foundation. It is for this reason that the definition emphasises the fact that the lines of identity derive from the respective corporeal condition, in other words with attention to the substantial unity of human beings. The body is not just biological; it is also personal. The body is the principle of singularity; through it the person is able to know himself and to recognize an original and primordial identity: to be either a man or a woman, within the sexual duality essential to human nature..

The complementarity of man and woman is not the conjugal relationship, but rather such complementarity is its foundation. The human being discovers in his or her sexual condition a relation which is constitutive of his or her being a person and which makes reference to the person of the other sex.. This relation in function of what is *common* –the fact of being a person– and of what is *different* –the sexual condition– permits the person to obtain a better knowledge of *being oneself* and of the meaning of what is proper to him or her in relationship with others.. Because of this constitutive relationship, the person discovers the possibility of establishing a communion founded upon sexuality and ordered to the formation of a family.. The person does not give meaning to the relationship, but with his freedom integrates this significance in his person in either a positive or negative manner.

In regard to the first human couple, the narration of Genesis emphasises: “complete freedom from any coercion of the body or of sex”: Human beings are not determined by the body, but they are free either to form or not form the conjugal communion. The conjugal relationship is not necessary but free: it is not constituted by the fact of sexual differentiation, but by the fact that it requires the free acceptance of the man

and woman who form it.⁶ Based upon the meaning of complementarity, the man, with the use of his freedom, can establish communion with the woman. This is because the community that he forms with the woman requires the giving of that which is his own (masculinity) and the acceptance of what is proper to the woman (femininity). It is by their consent that the spouses configure their original and primordial identity: his being man and her being woman. Masculinity is defined by the fact of being the husband of this woman, and at the same time, the femininity of the spouse is configured by the fact of being the wife of this man.

Sexual differentiation is not merely reduced to the definition of masculinity and femininity, as at the same time it opens onto the perspective of a common action that is only possible in the union of the man and of the woman: generation and mutual help of the spouses.⁷ The mutual donation of being man and being woman includes the integral, complete giving and acceptance of the masculinity or femininity of the other as constitutive of their being.⁸ A communion that has been freely formed between a man and a woman, but that excludes any of these aspects cannot be called matrimonial since the community will not be based on the identity of the person, in his masculinity or her femininity, but upon other aspects, such as, a mutual will to common help, affection and economic solidarity, and co-habitation. These possible interpersonal relationships are not familiar, because they do not bind in virtue of the primordial and original lines of personal identity, deriving from the respective corporeal-sexual condition, but in virtue of the good that both persons seek through this relationship.

The human body is not only sexual but is also generative. The human act of creation establishes a radical relationship in the human person: filiation, which constitutes a primordial and original identity of the person. The origin of each individual evokes in its source two persons (a man and a woman); it establishes a community that is founded in corporeity. The mere fact of creation does not immediately establish a familiar relationship. Since this relationship is personal, it has to be free. Parents can accept or reject paternity in the same way that the child is free to embrace or reject his *being from their union*. In summary, the familiar

⁶ When man is able to recognize woman as flesh of his own flesh, he discovers a language in his corporeity that calls him to communion without yet having created the communion. The sacred texts continue with a sequence of actions that requires personal freedom. This suggests that only after a voluntary act does man begin to be a husband: „It is for this reason that a man will leave his father and his mother and will cling to his wife and the two shall become one flesh” Genesis 2:24. On this topic, see HERVADA op. cit. 95–115.

⁷ Generation and mutual help are two aspects of the unique end of marriage: since love is generative, it brings another personal being to life and while being the greatest act a person can realize, another is always required. The adequate help that is referred to in Genesis is this action. When man sees the woman, he understands that there is a profound meaning in the sexual difference. The life-giving act can only be performed with the woman, and this has great significance and demands the community of persons. Cf. Thomas AQUINAS: *Suma Theologiae* I, q. 98, a. 2, in c.

⁸ On this topic cf. Pedro Juan VILADRICH: *El pacto conyugal*. Madrid, Rialp, 1992. IDEM: *El ser conyugal*. Madrid, Rialp, 2001.

relationship is founded in the corporeal condition of the person, but because it is personal, it is not determined and requires that freedom assumes the proper meaning of such relationships.⁹ Freedom is the defining characteristic –although it is not the only one– of the familiar relationship. It is through a free action that the person articulates, or better yet, integrates corporeality and its personal meaning. In the same way that the composition of body and soul is necessary for a full understanding of human nature, the interplay of nature and freedom is important for the correct conception of the *natural* modalities of coexistence proper to the family. It will be the task of juridical science to express, in the most convenient way, those essential aspects necessary to build a familiar relationship with the right respect for the dignity of the person.

The free act to which we are referring is the act of personal love, a bilateral act of giving-acceptance of the person, proper to interpersonal relationships. In this bilateral act, one recognizes in the other person something which identifies the other with respect to *one's own self*, and one accepts the person in as much as he or she exists in relation to him. The son, when he accepts the person of his father, accepts that defining element of his father which exists in relation to himself (the son). The child who does not know his or her real father may have a relationship of friendship with the father, because establishing an interpersonal relationship means accepting this man like another 'I', equal to him or herself, and does not necessarily entail accepting his identity as 'my father'.

With respect to the interpersonal dimension of the familiar relationship, it is possible to highlight the following characteristics:

2.2.1. Irreducible Character

Because of the intrapersonal dimension of the familiar relationship, each person identifies in the other something that configures his own identity. Such a relationship is only possible among two concrete persons. These relationships constitute a crucial point for the construction of personal identity, and they guarantee the subject the possibility of assuming specific functions in which the execution of these functions cannot be substituted by anyone else.¹⁰ The child is a child of the father: he is not a

⁹ It has been said before that freedom is that capacity of the person's self-transcendence founded in the meaning of his or her being, because the significance of being is received and cannot be modified. Through his or her corporeity (the being of himself), man recognizes the being in common (in the case of the child, with his progenitors and siblings, and in the case of the spouse with the other spouse). In Their freedom, human beings can build upon the meaning of their bonds rooted in corporeity, either positively by reaffirming the personal relationship or negatively, by denying this relationship.

¹⁰ In this respect, the following fictitious note eloquently makes the point: „Mr. Judge: I had the bad luck of marrying a widow who had a daughter; if I had known this, I never would have married her. My father, to make matters worse, was a widower; he fell in love and married the daughter of my wife. In this way, my wife was the mother-in-law of my father, my step-daughter became my mother, and my father at the same time was my son-in-law. A little later my mother-in-law brought forth a son who was my brother but at the same time the grandson of my wife; in this sense I was the grandfather

child in general, and there is no other person who can substitute the father in this situation; at the same time, the child cannot be the father of his father. One can say the same thing about the rest of familiar relationships: fraternal, conjugal, etc. This characteristic of the familiar relationship is what we call the *irreducible* character.

The fact that the familiar roles are unmistakable and exclusive seems to be the primary element of the constitution of human subjectivity; this is also the foundation of the possibility of building a juridical theory in regard to familiar relationships.¹¹ It is due to these characteristics of familiar relationships that incestuous relationships have been forbidden in all societies and cultures. The fact that in every single culture, it is juridically impossible for parents to marry their children, or for brothers to marry their sisters, is an unmistakable recognition of the nuclear relationships within the family.

The irreducible character is specific to the familiar relationships with respect to other interpersonal relationships. A work relationship is not irreducible. Bob can be Jim's boss one day and the next day cease to have that relationship, because it is founded in something that is external to the person: services rendered. On the other hand, familiar relationships do not admit ex-relatives. Since the basis of the familiar relationship is something that is constitutive of the identity of the person, to stop being a relative, the person would have to stop being who he or she is.

2.2.2. Systemic Character

Relationships are called familiar „for the precise fact that they are only completely understood inside a concrete system of kinship”,¹² that is to say, familiar relationships are not reduced to the bond that exists between two persons but also refer to other relationships which complement this bond, forming a system. This characteristic of familiar relationships has been expressed in diverse cultures in the systems of kinship.¹³

of my brother. A little while later, my wife gave birth to a son that as the brother of my mother was the brother-in-law of my father and the uncle of his son. My wife was the mother-in-law of her own daughter. I, on the other hand, was the father of my mother, and my father and his wife are my children. My parents are my siblings, my wife is my grandmother because she is the mother of my father, and I am my own grandfather. As you can see Mr. Judge, I say farewell to this world because I do not know who I am.”

¹¹ Cf. D'AGOSTINO op. cit. 71. Familiar relationships, which exist at the most intimate level of a person's being and constitute a dimension of his 'I', are unmistakable, because the 'identity' received (and accepted) refers exclusively to the person with whom one has that family bond (conjugal, Fraternal, etc.), as well as exclusive, because one who is your father cannot be your brother, and a husband cannot be the son of his wife.

¹² FRANCESCHI – CARRERAS op. cit. 112.

¹³ It is important to clarify that it is not the culture which creates the system of kinship, but the culture expresses the personal development of a fact that has its foundation in human nature. For this reason, the study of the systems of kinship in different cultures is important for a better understanding of family relationships. However, no culture exhausts all of the richness of human nature, and many even contradict the dignity of the person in some aspects. The cultural manifestation of family

For a better understanding of this characteristic, it is necessary to refer to two defining factors of the systemic character. The first one is the complementarity of the familiar relationships, that each familiar relationship is only understood with respect to other familiar relationships. To be able to speak of fraternity, it is necessary to understand filiation. It is only possible to say that two persons are siblings if both are the children of the same parents. In the same way, filiation is complementary to the conjugal relationship. This latter can only be such when it is open to parenthood. In other words, a man and a woman who want to live together while excluding procreation in their union are not forming the conjugal community. They only appear to form a conjugal community.

The second characteristic is interdependence. The beginning of a new familiar relationship affects every member of the family unit, generating new identities in all of these members. In this way, the birth of a second child creates a fraternal identity in both children; with the passage of time, the marriage of one of them will generate new familiar relationships with the new spouse and the parents and siblings (father-in-law, brother-in-law). When the first child of the newlyweds is born, they become parents, the parents of the spouse become grandparents, the brothers become uncles and so on.

The systemic character emphasises the unique nature of the familiar relationships with respect to other interpersonal relationships. Friendship is not systemic. The friendship of the child does not generate new identities inside the family or with other friends. It is possible to say that a work relationship has a systemic character, because when one begins to work in a company that person becomes a colleague of the others. Being a colleague means being in relationship with the hierarchy of the company; but the manager is not a colleague of the doorman. However, the systemic character of these relationships is based upon the work and not in the persons, that is to say, the identity of the person is not grounded in this relationship. If the doorman is promoted to manager, he can become a colleague of the other managers, and he can even become a major stockholder or be part of the executive committee without creating a change in his former colleagues or generating new relationships between them.

3. Family as the building block of society

Once the familiar relationship has been defined and its dimensions and characteristics explained, it is possible to define the family as the community of persons, joined by bonds of kinship, founded in marriage between a man and a woman. In regard to the dictionary's definition, we have modified two aspects. The first one is the absence of a reference to their living together; since the familiar relationship is intrapersonal, it is not reduced to the fact of co-habitation. Emancipated children continue being

relationships can always be lived in ways that more completely correspond to human nature. At the same time, the diversity of cultures manifests the richness of human nature.

children of their parents, and they maintain duties and rights towards them. The second is the emphasis upon the fact that the foundation of family is marriage. The conjugal relationship is the origin of the other familiar relationships. Generation and bonds of blood always refer to two persons, one man and one woman. The family has to be understood as a system that articulates relationships of conjugality and filiation.

Once the family has been defined, it is still necessary to examine the social interest that pushes towards making a law concerning families. In a variety of forums, interest groups call for the juridical recognition of family relationships, emphasising the importance of the family for society. Still, many of these positions fail to explain *why* the family is important for society. There is a danger of defining and giving a value to family in accordance with the functions that they perform and that are assigned by society.¹⁴ In the past families used to guarantee the public order and they were the source of economic resources and of work. Today many of the public functions previously performed by the family are taken care of by the State. It is for this reason that there is a tendency to relegate the family to the private sphere; it has been forgotten that the diverse functions that the family has performed or performs now „are only consequences of its essence and the effects should not be confused with the causes.”¹⁵ The family is greatly versatile, capable of adapting and changing, because its goal is not the development of a concrete function, but the integral development of the persons who compose it.

Family is the fundamental building block of society not only because of its social functions, but principally because of the proper nature of its bonds. The family is the first place of humanisation, the environment where a person learns to coexist. It is truly the first human society, not only chronologically but also ontologically. Familiar coexistence allows the person to discover bonds of union with other persons who are different and to recognise them as a distinct ‘I’ but not as an ‘I’ that is completely diverse, opposed to one’s own ‘I’. Rather, this other ‘I’ in a certain sense belongs to one’s own identity. D’Agostino says that the family is the constitutive cell of civil society „in a pedagogical, existential sense, thanks to which the consciousness of this bond inside the family grows and matures for every single individual, into a consciousness of a more universal familiar relationship (in synthesis a relationship of fraternity) that joins one to any other human being.”¹⁶ This consciousness of connection with others –he concludes–is not the fruit of political agreements or of

¹⁴ The current tendency is to consider the familiar reality ‘from outside’, from the point of view of the realill requiredogniz of the realization of its social functions, such as can be seen in the documents of international organizations. They summarize these functions as: production, reproduction and socialization. See, for example: U.N. GENERAL ASSEMBLY (2002). Preparations for the tenth anniversary of the International Year of the Family in 2004. Report of the Secretary-General (17th July, 2002), Resolution A/57/139, n. 13.

¹⁵ Francisco ALTAREJOS: Cambios y expectativas en la familia,. In: AURORA BERNAL (et al.): *Family as Primary Educator. A Sociological Study*. New York, Scepter, 2008. 28.

¹⁶ D’AGOSTINO op. cit. 15–16.

social economic equilibria but the consequence of natural modalities of coexistence, proper to familiar relationships.

In other words, the family elaborates the fundamental elements of the symbolic identity of the individual as a human being.¹⁷ This is what will allow the individual to become an active subject in society.¹⁸ For this reason from a social perspective, the family cannot be substituted by any institution even when it is complemented by these institutions. Other institutions complement the family, offering the necessary resources to supply for the needs of its members. Nevertheless, they cannot substitute it, because they cannot elaborate the lines of identity of the person. In the eyes of the State, all the members are equal and all belong to society, because they are human beings. In the family, all of its members are different; they are recognised as familiar, because they are distinct (in the conjugal relationship by the sexual differentiation and in the parental-filial relationship by the fact of being generated). Herein lies the super-functional character of the family that constitutes it as the vital cell of society.

All other relationships (friendship, work, business, associations, etc.) which citizens can assume in society do not have the intrapersonal character that distinguishes familiar relationships. In these relationships, persons are bound by a good which is external to them. Friendships are determined by preference and fondness and/or life projects in common; work relationships are determined by work, economic relations by the exchanges of goods, and associations by the predetermined common good. When the good that is the basis of these relationships is lacking they lose their reason for existence. In the family, the good that is in the basis of the relationship is the other person, the one who identifies me as father, son, husband, brother etc. These are the only ones capable of creating such a profound bond among persons.

The family is not found in the execution of pre-established functions, but in the natural *modalities* of coexistence that are proper to the family and, because of their *communal* character, that satisfies the concrete necessities of each one of its members. It is for this reason that the family has a super-functional character that can hardly be substituted. Donati expresses this character with the concept of

¹⁷ For example, in the familiar relationship the person learns to integrate natural elements (such as biopsychic determinations which are generally instinctive or reflexive) and cultural elements (which are understood to be imitative, learned, and reflexive). „It is in the family where the child learns adequate cultural expressions for instincts, feelings, and passions. The same can be affirmed of adults in the sense that the adult finds in the familiar relationship that bond-resource that allows him or her to convert the most spontaneous elements into expressive forms regulated by norms and by the model of civilized interaction.” The family also provides for the acquisition of „the criterion that makes it possible to differentiate the private manner of existence from the public manner. This criterion is essential for the formation of personality, for the acquisition of a primary meaning of one’s identity and learning to relate with others.” Parents, teaching the distinction between familiar and non-familiar relationships, implicitly teach the distinction between private and public which is as fundamental for the formation of the child as for the adult. Pierpaolo DONATI: *Manuale di sociologia della famiglia*. Roma-Bari, Laterza, 1998. 39.

¹⁸ The familiar relationship, as a constitutive dimension of the “I”, locates the person in society and makes the person to be someone, in virtue of the received identity. Cf. FRANCESCHI – CARRERAS op. cit. 100–101.

‘morphogenesis’, that is to say that the family, during its life, changes its functions according to the needs of its components. The good of the spouses and the good of the children are realised differently throughout the years. A family of newlyweds is different from one with teenage children or another with adult children, or one with a sick child, etc. The functions that the family will develop cannot be established *a priori*, because the adequate attention to each one of its members will require that they be attended in different ways.¹⁹

Nevertheless, we have to avoid a certain determinism that presupposes that a well-constituted family will necessarily offer benefits for society. As we previously saw, the existence of natural or biological bonds between persons is not enough to allow them to help each other; it is further necessary that the persons live in a positive way the *raison d’être* of those bonds. It is not enough to be a father: it is also necessary to be a good father. Keeping in mind this dual dimension –nature and freedom– of the familiar relationships, we can better understand the trends obtained in different investigations that affirm that well-constituted families have a greater statistical possibility of guaranteeing a good education to their children, providing a source of greater economic growth and promoting a greater social cohesion, etc.²⁰ When these greater possibilities are stated, there is an accompanying recognition or acceptance that there are well-constituted families that are not able to guarantee a good education for their children, that live in poverty, and are socially conflicted (delinquency and drug addiction, among other things) as well as positive cases of unstructured families (although in a smaller number) who procure a good education, generate wealth and are socially responsible.

On one hand, it is necessary to affirm that the simple biological fact of generation and the commitment between a man and a woman to marriage do not guarantee the accomplishment of the goods of marriage and family. It is necessary that the persons involved live according to the proper demands of justice imbedded within relationships. Because of their freedom, they have the possibility of doing so either well or badly; on the other hand, the value that the natural bonds have for the person should not be underestimated. The value of these bonds is the factor that increases the possibilities of a good functioning of the family. The education of children cannot simply be reduced to transmitting knowledge; it also involves the transmission of a

¹⁹ On ‘Morphogenesis’ see DONATI (1998) Part III; IDEM: *La famiglia come relazione sociale*. Milano, Angeli, 1989.

²⁰ For different studies demonstrating how the family founded in a stable matrimony contributes to the common good to society, see WITHERSPOON INSTITUTE: *Marriage and the Public Good: Ten Principles*. New Jersey, Princeton, 2006. 15—27. (contains abundant references to studies); on the good education of children ELIZABETH MARQUARDT: *Family Structure and Children’s Educational Outcomes*. New York, Institute for American Values, 2005. oOn economic growth W. BRADFORD WILCOX – CARLOS CAVALLÉ: *The sustainable demographic dividend. What do Marriage & Fertility have to do with the economy?* International Report from the Social Trends Institute., 2012. (Study conducted in Argentina, Australia, Canada, Chile, China, Colombia, Egypt, France, Germany, India, Indonesia, Italy, Japan, Kenya, Malaysia, Mexico, Nigeria, New Zealand, Peru, Philippines, Poland, South Africa, South Korea, Spain, Switzerland, Taiwan, United Kingdom, United States).

personal way of living which permits the children to establish authentic personal relationships. It is easier for one who has made an effort to live the demands of love and justice proper to the intrapersonal relationship that modifies his identity, creating ties of solidarity, extends this mode of behaviour to the surrounding persons. On the other hand, one who has not received what is proper in his or her most intimate interpersonal relationships or has rejected these natural bonds of coexistence will have a greater difficulty in creating lasting bonds of solidarity with other persons.

In regards to the social value of the family, the common good requires that family law creates the conditions so that the family can live according to the requirements of justice and also grow into a more perfect communion.

4. Conclusion

The lawmaker has to ask himself what is in the interest of society when he is creating a special law for the family.

The way that the natural bonds and their proper demands are understood is important because, despite the fact that there is affectivity involved, these are not merely relationships of affection. It is not enough that two persons like each other for them to form a familiar relationship. Neither is it sufficient to define these relationships as affective with a contractual or an associative nature. Well then, why is it in the interest of society to make a particular kind of law for these kinds of contractual or associative relationships? The justification cannot be affectivity, because this belongs to the private sphere and not the public. It is not the responsibility of the State to discern if two persons who want to live together like each other. Neither can the State determine if there is no longer love and even less can it oblige someone to love.

A social interest for the family is something that cannot be denied, and for this reason an adequate legislation is required. Family law has to keep in mind, on the one hand, the nature of the familiar relationship, to be able to distinguish whatever is proper to this bond and the cause of the distinction between familiar relationships and other interpersonal relationships; in this way, it is able to determine the demands of justice that arise from these relationships. On the other hand, family law has to promote and foster those positive behaviours that help to maintain and to improve communion between related persons; as well as to provide a mechanism discouraging those situations which work against familiar unity: the failure of matrimony, children born out of wedlock, heterologous artificial fertilization, etc. The resolution of such conflicts demands a constant recognition of the systemic character of familiar relationships. Looking for solutions which satisfy the two persons in conflict is not enough; all the other relationships which are involved must also be taken into account. It is also not possible to make conflictive relationships the norm. An increase in the number of children born out of wedlock does not make such behaviour fair nor can it be considered a foundation of society as such. Society has the need to increase the number of individuals, each person growing and developing their social ability in the best possible way. This is only possible in the measure in which each person can live in the most positive way the whole spectrum of familiar relationships that configure his or her identity, which is the root of justice and charity, the pillars of

an even greater social cohesion. We trust that the proposed definition of familiar relationships can be used as support for an adequate family law that knows how to empower the family, as the community of persons joined by bonds of blood and founded in marriage, as the fundamental building block of society.