

THE STATE AND THE FAMILY IN A SUBSIDIARY SOCIETY GUIDELINES FOR A SUBSIDIARY FAMILY POLICY

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To define the family as a relational entity between different sexes and generations and to further demand that this relational unit be given a fully codified legal status, goes against the grain of a major theme of European thought that harks back to the Enlightenment. This line of thought looks at decisions which lead to matrimony or the founding of a family as strictly private choices made by individual citizens. While such choices are acknowledged to have social relevance that warrant concise legal definition, it is not considered incumbent upon the State to actively promote such endeavors. Although Article 10 of the UN Declaration on Economic, Social and Cultural Rights [19 Dec. 1966] designates the family as ‘a natural core of society’, which all member nations ‘are to afford the greatest possible protection and support, especially with regard to its formation and its responsibility for the care and education of children’, the main tenet of enlightened liberal doctrine does not acknowledge any public interest in the difference of generations or sexes. Every form of long-term relationship – even same-sex unions – are fully accepted as ‘family’. The decision for or against such a form-of-life remains as private an issue as choices in favor or against a social club or a neighborhood gardenparty.

Yet, from its liberal vantage point, the State does take an interest in the family. And it is for this simple reason: prevention will always be more cost-effective than therapy. To prevent social exclusion thus becomes a matter of policy. It is after all quite obvious that social, economic, psychiatric and criminal problems would carry a much higher price tag than a preventive agenda that works against the marginalization of socially fragmented families. Such a perspective also allows the State to take one additional step: To design a system of social policy that guarantees individual citizens the capacity to act in pursuit of their fundamental rights. This has several con-

sequences: It guarantees a dignified life when illness, old age, physical handicap, injury or unemployment take away the capacity to earn a living; it provides continued access to the provision of life sustaining goods and services. Such a performative system can also bring benefits to families – or more precisely: to members of families.

This social-corporate approach to family policy is likely to strike a classic liberal as a roadmap to social democracy. From the vantage point of Christian social doctrine, however, this route remains a distinctly liberal one, since it is centered on securing the freedom of citizens and their fundamental rights. This view has found its clearest expression in the ‘social market economy’ which was enacted in post-war Germany and has achieved some notariety under the label ‘Ordo-Liberalism’. Its protagonists, Walter Eucken, Wilhelm Roepke, Alfred Mueller-Armack, *et al.* wished to assert that classical liberalism’s entrusting of the welfare of society to market forces alone, was a prescription for failure, since social well-being presupposes not merely a well functioning market, but also a system of social performances – and that both of these dimensions were dependent on the ‘ordering’ function of the State. From this view point the State is not merely a menace to freedom but also serves as its guarantor.

These briefly sketched approaches to family policy remain nonetheless flawed. They fall short in that they reduce family policy to the denominator of policy for family members and subsequently to social policy. It is of vital importance that family policy view the family as a relational unit of different sexes and generations. It must not only aim at the participation of family members in the life of society but have its sights set on securing a firm legal codification of the family entity. To employ terms that are being used in German policy debates: family member policy must be augmented by ‘family as institution’ policy. This means the family must be cast as a social subject that is not reduced to its single, constituent members. Such an approach toward a new family policy must then rely on the principle of subsidiarity, which in Donati’s view requires a proactive (‘promotional’) stance and not merely a defensive strategy. Thus, subsidiarity does not only imply protection of the family or its members from State intervention, but likewise the marshalling of the State in order to bring activation about conditions that allow for the active unfolding of families. In my estimation, this represents a warrant to free contemporary family policy from its incarceration by social policy and to establish new guidelines for it.

I. PREREQUISITES OF A SUBSIDIARY FAMILY POLICY

1. *Family citizenship – a codified right*

The proposal to create citizenship status for the family, which would transcend the legal rights of its separate members and at the same time affirm the legal subjectivity of the family as ‘a relational unit of different generations and sexes’, is dependent on an ontological premise. As a rule, such an exploration is not required and yet it looms as a foundational issue for the social sciences and the ever more burning question of policy for families. The ontological premise effects the categories through which we attempt to grasp the independent world of reality and answer the question of its being. Here we can distinguish three aspects that provide us with three corresponding categories: ‘substances’ – e.g. humans; ‘qualities’ or ‘accidentiae’ – e.g. black; ‘relations’, e.g. married. While substances and qualities are quite readily recognized, we do not detect relations at first sight. These relations are nonetheless real.

Every social philosophy is marked by the scope of its categories. A social philosophy that only acknowledges ‘substances’ and ‘qualities’ while relegating ‘relations’ to the realm of fiction, will necessarily define ‘society’ and ‘family’ quite differently from a social philosophy that, in the tradition of Aristotle, places ‘relations’ next to ‘substances’ and ‘accidentiae’. Still different will be a social philosophy that – in following Hegel and Marx – only grasps ‘relations’ as real and defines things as bundles of relations. For this very reason Marx understood human beings as ‘ensembles of social relations’. Marx and his successors thus expected the emergence of a human being that would be free of all alienation due to the revolution of social relationships, or more concretely: the revolution of property structures.

A ‘liberal’ social philosophy – by contrast – holds only substances and qualities as real. Here, society is no more than the sum of persons gathered within a structure. The family, in turn, is nothing else than the sum of its members. A family policy formulated from this vantage point will therefore not move beyond a ‘family member policy’. The social philosophy that derives its understanding from an Aristotelian doctrine of categories will grasp society not just as a sum of individual persons. Here the focus is on the real relations among human beings and on their common purpose. Likewise, the family consists of real relations amongst its members and their common purpose. ‘Family’ is not merely a contract between individual persons but an entity in its own right. While on the one hand, its pur-

pose is the personal development of its members of different generations and sexes – which translates into an agenda for each individual life. On the other hand, the relational entity ‘family’ has its own reality, out of which arises the claim to its own distinct citizenship within state and society.

2. *The principle of subsidiarity*

The principle of subsidiarity has a twofold dimension, ‘not only defensive, but also promotional: it is not limited to defending the family from the interference of communities of higher orders, but actively sustains it in its autonomy (action of empowerment)’ (Donati). This twin dimension of limiting and activating State policy does indeed correspond to the principle of subsidiarity Christian social doctrine as enunciated in the first Social Encyclical of Leo XIII, *Rerum Novarum* (1891) and further defined in *Quadragesimo Anno* (1931) by Pius XI.¹ This Social Encyclical – to which the two Jesuits Oswald von Nell-Breuning and Gustav Gundlach were major contributors – is considered the ‘locus classicus’ of the principle of subsidiarity. There is, however, no Catholic monopoly over this principle. States and societies that are built upon liberty and fundamental human rights manifest the structure of subsidiarity. Inherent is an anthropological premise that has frequently been passed over in the political as well the juridical and social science debates. This shunting aside has wrought flawed interpretations of the principle of subsidiarity, as the treaties of the European Union of Maastricht (1992), Amsterdam (1997), Nice (2000) and Brüssel (2004) exemplify. Although these treaties invoke the principle of subsidiarity as key to the successful furthering of European integration,

¹ Pius XI, *Quadragesimo Anno* 79: ‘Wie dasjenige, was der Einzelmensch aus eigener Initiative und mit seinen eigenen Kräften leisten kann, ihm nicht entzogen und der Gesellschaftstätigkeit zugewiesen werden darf, so verstößt es gegen die Gerechtigkeit, das, was die kleineren und untergeordneten Gemeinwesen leisten und zum guten Ende führen könne, für die weitere und übergeordnete Gemeinschaft in Anspruch zu nehmen; zugleich ist es überaus nachteilig und verwirrt die ganze Gesellschaftsordnung. Jedwede Gesellschaftstätigkeit ist ja ihrem Wesen und Begriff nach subsidiär; sie soll die Glieder des Sozialkörpers unterstützen, darf sie aber niemals zerschlagen oder aufsaugen’. Vgl. auch M. Spieker, Das Subsidiaritätsprinzip. Anthropologische Voraussetzungen und politische Konsequenzen, in: *Die Neue Ordnung*, 48. Jg. (1994), S. 22-34; spanisch: El principio de subsidiaridad. Presupuestos antropológicos y consecuencias económico-sociales, in: *Tierra Nueva* Nr. 86, 22. Jg. (Juli 1993), S. 5-13 und italienisch: Il principio di sussidiarietà: presupposti antropologici e conseguenze politiche, in: *La Società* 17, 5. Jg. (1995), S. 35-50.

they nonetheless reduce the principle – quite inappropriately – to a mere instrument for the enhancement of effective political action.²

It is vital to recall the anthropological premise on which the principle of subsidiarity rests. The successful outcome of human life depends largely on the readiness and capacity of the individual person to take initiatives, to accept challenges, to entertain risks and to deliver performances. Pope Paul VI formulated as follows in the Encyclical *Populorum Progressio*: ‘Endowed with reason and free will, the human person is as much responsible for his progress as he is for his well being. Supported – yet at times also handicapped by his educators and his environment – everyone is the architect of his own future, the cause of his privation, regardless of other surrounding influences. Every human person may grow through the power of his intellect and his will to attain greater human merit and perfection’.³ Any hermeneutics of the principle of subsidiarity that takes this anthropological premise into full account will therefore strive to give priority to the personal responsibility of the human being. It will likewise conceive of any assistance by the State as a form of help that serves to facilitate self-help, i.e. an ‘action of empowerment’. The emphasis here is not on easing the State’s burden but rather on promoting the thriving of individual life. The presupposition is the autonomous, active citizen – not the passive, looked after subject. And it proceeds forward from the autonomous and dynamic family.

The concept of subsidiarity can be traced to the military terminology used in ancient Rome. To wit: *subsidium ferre* = to provide support or cover; to offer a fall-back position. This means that the supporting State is always standing in the second echelon and furthermore, and that the one to whom help is offered occupies the front line and determines his strategy and tactics. The principle of subsidiarity thus obliges the State to be both active and self-limiting. It commits the State to lend support to subordinate units, extending all the way to families for the sake of individual human beings. Yet it blocks the State from intervening in those tasks and efforts that can be fulfilled or carried out by these very units. When subordinate entities prove unable to live up to their tasks on their own, the principle of subsidiarity further obliges the State to not simply assume these tasks but rather search for ways to increase the self-help capacities of the lesser units. The long-term strengthening of self-help capacities has a clear priority over

² Vertrag über die Verfassung Europas (2004), Artikel I-11.

³ Paul VI, *Populorum Progressio* 15.

any short-term gains in effectiveness. Whenever the State has taken over an entrepreneurial task it is incumbent to yield back such effort 'to available private hands at the earliest possible moment'. Regarding all State intervention in both economy and society, the Encyclical *Mater et Magistra* further specifies that [it] 'must be of such a nature that it does not only avoid any restricting of the sphere of private initiative of the citizen, but must rather provide for its broadening'.⁴ In summary, the principle of subsidiarity has a two-fold operational reach: on the positive side it activates the State ; but it also exerts the power of negation by its defensive posture and thereby protects against overreach by the State.

The anthropological axiom, that the successful outcome of a human life is dependent on the readiness and capacity of a person to take initiatives, and live with challenges, must always remain at the center of any gloss or application of the principle of subsidiarity. This truth is made manifest in the disciplines of psychology and paedagogy and in the world of everyday experience. And the family is its foremost proving ground. The family also constitutes the 'aboriginal sphere' where the groundwork for the enactment of these matters is laid. If the State aims at making a contribution to the outcome of human life, then it must promote the readiness and capacity of human initiative, exertion and performance. All of this translates into one mandate: public support for the autonomy of the family.

II. A SUBSIDIARY FAMILY POLICY: GUIDELINES

A subsidiary family policy needs to walk a tight rope between the ban against intervention and the precept to intervene. Decisions in favor of marriage, family, procreation and education are first of all private choices that precede the State and its policy agenda. No substitutionary role of the State is possible, and it simply must remain in the second echelon. The right to form a family is a 'given' that the State has to respect. And yet, what the participants rightly see as a private choice is of downright social and political interest, since these private decisions do not only influence the prospects of society but plainly determine its future.

After ignoring the demographic trends for more than 30 years, the political leadership of the EU member countries has now turned its atten-

⁴John XXIII, *Mater et Magistra* 55 and 152.

tion to the 'politics' of these problems. There will be many challenges arising not merely with regard to pensions and health care but also in policy areas such as education, innovation and economics, taxation and migration. By 2002 the fertility rate in the European Union had fallen to 1.47 children per woman (in Germany 2007 to 1.4) – well below the replacement level of 2.1 that is required to keep the population steady. The demographic trends in Germany, Italy and Spain are especially dramatic. With regard to rates of childbirth, Germany is among the 'poorest' countries in the world. In the statistical charts it occupies the rank no. 180 out of a total of 191 countries listed. Nowhere in the world is the discrepancy between wealth of capital and poverty of birthrate so pronounced. The German age quotient, i.e. the ratio of those over 65 to those between 15 and 64 will more than double – from 24% to more than 51% – over the next five decades, if this trend is allowed to prevail. And already by 2030 ten employed persons will have to generate the revenue of not merely 5 but 10 actual retirees. The effort to change such demographic development will be extremely arduous and long-term. All signs are pointing toward the making of major generational conflicts.

Not only Germany, but every country must have a vital interest 'to privilege, to protect and to augment those private forms of life which deliver performances necessary not just for the intimately involved parties but also for all other spheres of society. Sociologically speaking they thus have a societal function, and from an economic perspective they produce positive external effects'.⁵ The vital function of matrimony and family which is accorded the special constitutional protection of Art. 6 of the German Grundgesetz (Basic Law) forbids the granting of marriage-like rights to same-sex unions. The same applies to their child adoption rights. It is thus altogether mistaken to consider the exclusion of these unions from the legal order as a case of 'discrimination'.

This demographic trend, however, does not really furnish the grounds for the demand for a new family policy. It is but a foil which makes for a dramatic setting to an urgent request. Policy making is quite dependent on such 'alarms' to carry forward difficult decisions. A new family policy would have been necessary even if the demographic trends were less

⁵ Familien und Familienpolitik im geeinten Deutschland. Zukunft des Humanvermögens, 5 Familienbericht, hrsg. vom Bundesministerium für Familie, Senioren, Frauen und Jugend, *Bundestagsdrucksache* 12/7560, Bonn 1995, S. 24.

extreme. It is the significance of the family for the so-called 'human capital' and 'social competence' that forces open the path to a new family policy. But the immediate task for a subsidiary family policy is to further the inclination to found families. The second task is the formation of 'human capital'. This also translates into help with carrying those burdens that are tied to the founding of a family. Here the term 'equalization of burdens' comes into play. Yet, easing existing burdens is not sufficient. Much depends on showing a frame work in which the performance of the family for the benefit of society – the positive external effects – is highlighted and turned into a concept of citizenship for the family.

1. *Readiness to found a family*

A subsidiary family policy that aims at promoting the readiness to found families must remove – or at least reduce – the obstacles that stand in the way of founding a family. Such obstacles are initially external and of a social and political nature. It is often believed that the most serious burdens are of a monetary sort, with negative consequences for the parental level of consumption as well as burdensome effects on their professional and residential options. Yet this is not quite the case, since there is much compensatory gain in the togetherness, the *joie de vivre*, the emotional benefits and satisfactions – provided that a certain level of income is maintained. The most serious obstacles that stand in the way of starting families are to be found in the disregard for the educative and socializing performance of the family in the public sphere; more specifically in the prevalent patterns of employment, the tax laws and the laws of social security. A subsidiary family policy may not ignore the financial burdens that are assumed with the founding of families, but must promote above all a concept of greater generational justice in the matter of pensions and retirement. This holds especially true in countries where the claims to retirement pay rest on a contract between the generations. Here – as in the case of Germany – the generation of the employed is directly financing, through their 'social security withholdings', the retirement pay of the generation that has left the workforce. Generational justice thus amounts to a relationship 'in which each generation is presenting as many opportunities and options to the next generation as it has found in place itself'.⁶

⁶ Max Wingen, *Bevölkerungsbewußte Familienpolitik*, in: *FAZ* vom 1.4.2004.

The guidelines for a subsidiary family policy cannot help but take into account the distinct situation of a specific society and its legal system. When a system of retirement insurance rests on a generational contract, while the claims for retirement pay are solely based on employment in the workplace to the detriment of educative, nurturing activities, this amounts to an actual bonus for childlessness and also to a structural 'handicapping' of families with children. Childless members of the workforce accrue retirement claims that must be honored by the children of the next generation, while their parents come away more or less empty handed. This pertains especially to mothers, who due to their educative function or their efforts on behalf of care-dependent family members did not enter the workforce and thus did not earn any claims toward retirement. In the codification of family law the State recognizes the duty of parents to pay maintenance for children. By its social security law, however, the State obliges the generation of the children to pay for the needs of the employed but not for the needs of those who actually raised and educated them. This then constitutes the 'scandal' of the contemporary social welfare State, as it exists in Germany:⁷ It organizes universal social security but compels the children to financially 'disregard' the very persons who secured their upbringing, namely their parents. In its review of the now famous decision of the German Supreme Constitutional Court of July 7, 1992, the 5th Family Report of the German Federal Government draws the following conclusion: 'Persons who are occupied with raising children and caring for ill or handicapped family members (and are thereby foregoing chances of employment in the workplace) are actually making major contributions to the solidarity of generations and sexes within families. Thus far such efforts have not found appropriate social recognition and material remuneration in the event of old age or invalid status'.⁸

It will be the foremost obligation of a subsidiary family policy to eliminate this scandal and to press for a family-friendly design of the entitlements for retirement and care-giving. This would mean putting the caregiver on equal footing with the job occupant in the workforce. Several paths are available: Consideration of the educative performance may occur when the schedule of dues for eventual retirement is established, or when the

⁷ Paul Kirchhof, *Ehe und Familie als Voraussetzungen für die Überlebensfähigkeit unserer Gesellschaft*, hrsg. vom Presseamt des Erzbistums Köln, Köln 2003, S. 15f.

⁸ *Familien und Familienpolitik im geeinten Deutschland*, a. a. O., S. 28.

claim for the start of retirement pay is actually submitted. The first option may conform more fully to the aims of a subsidiary family policy, since its relief giving effect would take hold during the start of a family and not toward its end. Since retirement systems that rely on an apportioned fee structure exert a significantly negative influence on family starts and birthrates,⁹ it is of key importance to eliminate the structural discrimination that resides in the laws and statutes which regulate social security. In a system which is financed by levies, the child-rearing work of families must never be categorised as 'outside the scope of insurance'.

2. *Building human resources*

Over and above mere reproduction, the necessary benefits provided by families to society as a whole include their contribution to securing human resources. Human resources comprise the totality of living and social skills which are required for the performance of professional skills and services, and are of inestimable importance for the development of society, the economy and culture. As long as having families and keeping them together were considered universal values, the benefits of families to human resources were both self-evident and private. With family life endangered since the beginning of the 1970s and the exponential increase in divorce rates, extra-marital partnerships and children born outside wedlock, the contribution of families to the formation of human resources now faces considerable threats. The weakening of these contributions has a prejudicial effect not only on the welfare state and benefits system, but also on the future viability of society. Here again, prevention is better than cure.

It is in the family that the course is set for the moral and emotional orientation of each child, for their readiness to learn and to perform, for their communication and relational skills, their reliability and motivation, their approach to conflict and compromise, and their readiness to start their own families, to pass on life experience and assume responsibility for others. It is in the family that decisions are discussed and made regarding success in schools and colleges, the labour market and life itself. Not only the economy and society benefit from the contributions of families, but also the democratic state,

⁹ Hans-Werner Sinn, Das demographische Defizit. Die Fakten, die Folgen, die Ursachen und die Politikimplikationen, in: Christian Leipert, Hrsg., *Demographie und Wohlstand. Neuer Stellenwert für Familie in Wirtschaft und Gesellschaft*, Opladen 2003, S. 77.

which is dependent on interested, motivated citizens who are ready to participate and show solidarity, and even churches and religious communities, which require the collaboration of parents if they are to pass on their faith.

In this hour of need, politics increasingly recognises the value of these family-sourced benefits. This is the case with education – a sector which cannot but realize that the formation of human resources in the family is an important factor in the success or otherwise of its own policies. Also affected are labour policy, where complaints are frequently heard regarding the unsuitability or trainig of many young school-leavers; technology and innovation policy, where the lack of readiness to achieve and to take risks is keenly felt; right through to social policy, where costs surge when the trend moves from active citizens who need help to themselves, towards passive welfare recipients who expect their every need to be met.

So, what measures can politicians take in order to help families build these human resources? Once they have recognised that the child-rearing factor is irreplaceable in building such resources, they must begin by strengthening the work of families in this area. Child-rearing allowances, parental leave and credit for child-rearing periods in the calculation of old-age pensions are necessary measures. Child-rearing allowances must not, however, be merely symbolic. They must do justice to the work involved, and be index-linked to general wage conditions. They must be sufficiently high to endow families with the freedom to choose between managing the household (generally the mother) and working outside the home. It contradicts subsidiary family policy, which must continue to aim to support smaller units, i.e. families, in the realisation of their specific tasks.¹⁰ It runs against the objective of achieving civil rights for the family unit, which should lead to the institution of the family, and not just individual family members, becoming the focus of state support.

As instruments of a family-member-oriented social policy, state welfare establishments can help families to stay afloat in cases where child-rearing allowances are insufficient. However, they are not a tool of an institution-oriented family policy, since they recognise neither the relational character of families nor the significance of a family upbringing. In relation to pro-

¹⁰ Cf. also Hermann von Laer, Familienpolitik braucht mehr Subsidiarität [*Family Policy Needs More Subsidiarity*], Die Tagespost, 22.11.2003; and the paper of the Commission of the Bishops' Conferences of the European Community, *A Family Strategy for the EU*, Brussels 2004.

viding for elderly citizens who need care and attention, subsidiary family policy demands that priority be given to measures which strengthen the readiness and capacity of families to undertake such care, rather than developing state-run nursing homes. In addition to material support for the costs of care, such measures might include credits for the caring period in the old-age pension, and in the German context, devoting those involved in alternative civilian service as helpers for family-based care.

Nonetheless, the strengthening of the family's capacity to build human resources requires a rethink not only of family policy, but also from society as a whole, and even more specifically, from the economy. If state family policy is to move from balancing family burdens to balancing family benefits, then the commercial perspective must change so that family-friendly measures are no longer seen as cost factors, but as a competitive advantage. Companies can support the readiness of parents – generally mothers in the first two years – to devote themselves fully to their children's upbringing at the most important stage, by helping them to re-enter the workplace, maintaining some contact even during the child-rearing period – e.g. by allowing the parent to fill in for others during holiday periods, or to take part in training events – or by taking the child-rearing period into account, either partially or wholly, when calculating employee pensions. They can also provide supports to help working mothers combine their family and business responsibilities when faced with unexpected emergencies, e.g. by granting special leave, facilitating flexi-time work arrangements, or providing emergency childcare facilities. Obviously, this last example is only possible for large companies.

Fathers will also need to rethink their values if the contribution of families to building human resources is to be strengthened. Attempts throughout Europe to improve the compatibility of family and career have increased the number of mothers in employment, but have had little effect on fathers. Fathers continue to define their own identities mainly through their careers. Yet the building of human resources in the family depends partly on the participation of the father in family life and in the child-rearing process. A subsidiary family policy could clearly promote such participation, e.g. by granting fathers special paid leave for two weeks immediately after the birth of a child, or by tying a proportion of regular parental leave to fathers.¹¹ Releasing the father for family life in the first two weeks

¹¹ Cf. the summary of the national reports for the Conference of Family Ministers of the Council of Europe, 20-22.6.2001 in Portoroz, on the subject 'Conciliation de la vie familiale et professionnelle'.

after a birth is not intended to ease the mother's burden, but to enable him to participate in family life and thereby in building human resources, for his own benefit and for that of the child. Involving the father in family life in this way also helps to strengthen the civil status of the family as a relational unit of different generations and sexes.

III. CIVIL STATUS FOR FAMILIES DEMANDS FAMILY SUFFRAGE

All those who support civil rights for families must consider the question of family suffrage. The right to determine one's government at regular intervals, choosing between different candidates, is the privilege of the citizen. This right must also be granted to the family. Which of the different models of family suffrage is adopted – reduction of the voting age, multiple voting model, or representative model¹² – is a merely pragmatic consideration, in my opinion. Even if the right to vote is conceived as a basic right which corresponds only to individuals, family suffrage is still possible, in that the right then corresponds to each child and not the family as subject, but is exercised in trust by the parents until the child reaches voting age. Legal and technical solutions can be found for issues arising in connection with this fiduciary exercise of the right to vote by parents.¹³

This kind of family suffrage would be in keeping with parents' responsibility for their children, would enhance the status of the family in ageing western societies, and would improve the future viability of society. Even if the right to vote were maintained as an individual right of the different family members, it would strengthen the civil rights status of the family. The numbers advocating family suffrage have increased considerably in recent years. Various German bishops have introduced family suffrage in their dioceses for the election of pastoral councils in parishes. Family suffrage will lend important support to a new family policy based on the family as a relational unit of different generations and sexes.

¹² Cf. Ursula Nothelle-Wildfeuer, *Das Kind als Staatsbürger. Wahlrecht gegen die strukturelle Benachteiligung von Familien? [Children as Citizens. Right to Vote versus Structural Discrimination against Families?]*, in *Herder-Korrespondenz*, Vol. 58 (2004), p. 198ff.

¹³ Which parent should exercise the right to vote? What procedure would apply in the case of divorce or if the parents have different voting preferences?

APPENDIX

A CRITICAL CONSIDERATION TO THE
GENDER-ORIENTED DAY-NURSERY POLICY IN GERMANY

I. THE POLICY OF DAY-NURSERY

In July 2006 the German Government declared the installation of a quality-orientated education and care offer for children under three which fulfils the requirements to be one of the 'most urgent...future projects in Germany'.¹⁴ The first step to extend the public care offer for children under three was the TAG (Law for the extension of day-care), which came into force on 1 January 2005. Its objective was to increase day-care places by 230,000 until the year 2010. At the moment of passing the law, there were 236,000 day-care places, among them nearly 108,000 in the new and 128,000 in the old Lands. So, the supply rate respectively the relation place/child was 6.9% in West and 37% in East Germany. The TAG strove for a doubling of the day-care places. About 70% of the new places were planned to be installed in day-nurseries and 30% in day-care. Especially in the old Lands, they wanted to improve the supply rate. Until autumn of 2006, it rose to 9.4% in West and 41.1% in East Germany. But since Spring 2007, the TAG seems to be waste paper, for the federal family minister suddenly topped its objectives with a new day-nursery project, which no longer strove to achieve 466,000 but 750,000 care places. So, they do not have to install 250,000 but 500,000 new day-care places, although within a longer period, until 2013. By that new project, the supply rate for Germany shall be tripled, from 11.1% to about 33%.

What remains mysterious is the calculation the federal family minister applied to that day-nursery project. It doesn't go well with the logic of the new child benefit law (BEEG) (Law of paid care) from 5 December 2006. That law was the first great project of family policy under the grand

¹⁴ Bundesministerium für Familie, Senioren, Frauen und Jugend, Hrsg., Kindertagesbetreuung für Kinder unter drei Jahren. Bericht der Bundesregierung über den Stand des Ausbaus für ein bedarfsgerechtes Angebot an Kindertagesbetreuung für Kinder unter drei Jahren, Berlin 2006, S. 3.

coalition and Chancellor Angela Merkel. The purpose of the BEEG was to give mothers time to care and educate their child in the first 12 months. Thus children are ruled out for the first year of their life or – if the other parent attends another two months to the care of the child – for the first 14 months of their lives as candidates for child care outside the home. So the children in the second and third year remain as clients for day-care, whether in day-care institutions, whether at day minders. The complete number of children at that age in Germany at the moment is about 1.35 millions (in 2005, about 686,000 children were born, in 2006, about 672,000). This downhill trend is not going to change within a foreseeable term, even if today's birth rate 1.34 remains stable, because the number of women capable of child-bearing is considerably diminishing. So, even in 2013, Germany is not going to have more than these 1.35 million children in the second and third year of their life. A supply rate of 33% would result in about 450,000 day-care places – like advised in the TAG. The 750,000 day-nursery respectively care places for which Ursula von der Leyen steers, means a supply rate of about 65%. The calculation of the minister only works out if she also includes the children in their first year of life, in contrast to the official intention of the BEEG. That fact forces to ask the following questions: What are the objectives the family policy of the grand coalition is pursuing? Which conditions do they take as a basis? Which taboos are they keeping?

II. CONDITIONS

At the beginning of the debate in family policy in winter 2005/06, there was the shock of demographic development in Germany. 'Demographic epoch change', 'Cancelled generation', 'Methusalem plot', 'Diminishing society', or 'Demographic trap', these are the titles of the relevant alarm cries.¹⁵ Since 1972, Germany has had a permanent birth deficit. With a

¹⁵ Vgl. Herwig Birg, *Die demographische Zeitenwende. Der Bevölkerungsrückgang in Deutschland und Europa*, München 2001; ders., *Die ausgefallene Generation. Was die Demographie über unsere Zukunft sagt*, München 2005; Stephan Baier, *Kinderlos. Europa in der demographischen Falle*, Aachen 2004; Franz-Xaver Kaufmann, *Schrumpfende Gesellschaft. Vom Bevölkerungsrückgang und seinen Folgen*, Frankfurt 2005; Frank Schirrmacher, *Das Methusalem-Komplott*, München 2004; ders., *Minimum*, München 2006.

birth rate of 1.34 it does not only miss the reproduction level of society which is 2.1, but the country also is subject to a dramatic process of ageing. A conflict of generations seems to be determined. If the rate of aged people, that means the proportion of people over 65 in the working population between 15 and 65 years, increases from 24% at the end of the last century up to 51% in 2050, if ten working persons do not have to finance the pension of five but the pension of ten pensioners, then the justice between generations is shattered, if you take the following definition of justice between generations: a generation leaves the next generation the same chances of life and development it has found itself.

From the view of national economy and business management, demographic development has another aspect. It will lead to a considerable lack of quality employees, not in 2050 but much earlier. So the fact that many well-educated women leave the working life because of the birth of a child – for a while or completely – seems to be a horrific vision for many entrepreneurs. ‘In the face of a diminishing population getting older and older, our economy is not able to do without the high performance and creativity potential of especially these women’, this is what Liz Mohn, leader of the Bertelsmann Foundation says, a foundation that is leading in the scope of compatibility between profession and family and that also has great influence in the federal family ministry.¹⁶ The Government admits in its statement to the Seventh Family Report of 2006 that they have introduced a ‘change of paradigms’ in family policy which is oriented towards the ‘professional integration of women’ and the intensified extension of an ‘infrastructure for education and care’.¹⁷

In Germany, as an answer to the question concerning the reasons of the demographic development, one possibility seems possible: The insufficient compatibility between family and profession, or, according to Liz Mohn, between profession and family. And there also seems to be only one answer to the question concerning the problems of making family and profession compatible: The missing child-care institutions. So, the projects to extend

¹⁶ Liz Mohn, Suche nach der Balance. Vereinbarkeit von Beruf und Familie schafft ein stabiles Zukunftsmodell, in: *FAZ* vom 12.4.2006, *Verlagsbeilage Familie und Beruf*, S. B2.

¹⁷ Stellungnahme der Bundesregierung zum 7. Familienbericht, in: *Bundesministerium für Familie, Senioren, Frauen und Jugend*, Hrsg., *Familie zwischen Flexibilität und Verlässlichkeit. Perspektiven für eine lebenslaufbezogene Familienpolitik*. 7. Familienbericht, Berlin 2006, S. XXIV.

the day-nurseries, the all day kindergartens and the full-time day schools are a logical consequence which proves an old perception of social science: The choice of a concrete strategy to solve a problem is always part of the construction process of the problem itself. The problem of lack of workers has secretly suppressed the problem of too few births. So the question concerning the objectives of the day-nursery policy has to be asked.

III. OBJECTIVES

When the government of Chancellor Merkel started, the family policy explained all requirements to extend the child-care institutions to keep kindergartens free of charge and to install a tax deductibility of private child care cost with the birth rate. They said that a turning-point in the birth rate was necessary and was not only compatible with a higher gainful employment rate of women – the view to Scandinavia or France proved that – but even depended on that. In Norway the birth rate was 1.8 and the working participation of women 86%, in Denmark, the birth rate was 1.7 and the working participation of women 88%. But already the view into the often cited country of France shows that it is not necessary that high birth rates and high gain employment participation of women must be connected. It is true that France with 1.9 has a significantly higher birth rate than Germany, but for years, the working participation of women was always two percent below the German rate – at the moment 57% in contrast to 59% in Germany. And the comparison with East Germany shows again that there is no connection between the gainful employment rate of women and the birth rate. East Germany has with 75% a high working participation of women, but with 1.0 one of the lowest birth rates all over the world. It is also very evident that the very high supply rate with day-nursery places (about 40%) does not have any influence in the birth rate lying significantly under the West German birth rate of about 1.4, although the supply rate in West Germany of all day-care places only is about 10%. So, requiring an extension of day-nurseries covering the whole country must have different objectives than increasing the birth rate.

Rarely in the political debate but in unconcealed form in the relevant studies of the Bertelsmann Foundation and various institutions was the requirement to improve the compatibility between family and profession, which was explained with the mobilization of the female manpower potential. For the potential of gainful employed persons diminished in Germany

until 2050 by a third, women must work in a considerably higher extent than hitherto. Meanwhile, the policy also hesitates less and less to place the 'professional integration of women' into the foreground and to restrict the intended improvement of the compatibility between family and profession to a simultaneous compatibility, but at the same time to ignore the consecutive or the sequential compatibility between family and profession.

Traditional family policy in the last fifty years has been criticized to be too burdened by transfer payments and even to be counterproductive. Child benefits, family allowance, tax allowance and the common taxation for man and wife, and claims to get part-time jobs had facilitated the partial or complete retirement of mothers from the working life and had resulted in a 'waste of human capital, inefficient allocation in the production of household services and in risks for the social security systems'.¹⁸ The longer interruption or even complete retirement from the gainful employment of women because of a child-birth was 'from the view of national economy a waste of human capital' with a 'negative effect on the economic growth'. In a serious manner they discuss whether paid leave given to parents is 'protection or trap'.¹⁹ They promote the abolition of the common taxation of man and wife, the restriction of paid leave given to parents, mother protection and claim to part-time employment and to divert the transfer payments into the extension of public child-care institutions. The fact that there is a vehement debate at the moment concerning paid child-care at home and the increase of family allowance is not surprising. Against the background of the propagated change of paradigms, family allowance and paid child care at home are considered to be old-fashioned instruments of family policy.

The current measures of family policy of the grand coalition consequently adapt to that change of paradigms: Decrease of the transfer payments, extension of day-care institutions and increase of incentives for gainful employment. The BEEG has collected the education benefit, has made the new child benefit dependent on the criteria of gainful employ-

¹⁸ So Werner Eichhorst und Eric Thode in der von der Bertelsmann-Stiftung herausgegebenen Studie 'Vereinbarkeit von Beruf und Familie. Benchmarking Deutschland aktuell', Gütersloh 2002, S. 9. Ähnlich das vom Institut der Deutschen Wirtschaft herausgegebene *IW-Dossier 25 Beruf und Familie*, Köln 2004, S. 9.

¹⁹ Ursula Rust, Schutz oder Falle? Elternzeit, Mutterschutz, Teilzeit, in: J. Lange, Hrsg., *Kinder und Karriere. Sozial- und steuerpolitische Wege zur Vereinbarkeit von Beruf und Familie*, Rehbürg-Loccum 2003, S. 171ff.

ment which from the view of the families and children is completely irrelevant, and it has reduced the claim period from 24 to 12 respectively 14 months. Even more, in § 15 par. 4 it says that the persons who receive that new child benefit 'are not allowed to work more than 30 hours per week in gainful employment'. What sounds like a ban in reality is permission. Receiving the new child benefit is compatible with a gainful employment of up to 30 hours per week, meaning a four-day-week. The mother or respectively the father shall, after the birth of a child, not only return as soon as possible into her/his job but if possible shall not retire completely from it. And the national economic profit of professional integration of women is still increased, so the Bertelsmann Foundation states in numerous publications, because the extension of care institutions creates new working places for women, for in those institutions – although gender politicians are worried about that – normally the staff is female. So, the gross domestic product is also increased and a new source of dues is opened for the social security.

Beyond the national economic profit, the new family policy also hopes, from the extension of child-care institutions, for a pedagogic profit. Child-care institutions are considered to be the professional form of early education for children less than three years, as first level in the education system from 0 up to 10 years.²⁰ In these institutions, as it is cited in the National Action Plan of the Federal Government for a child-orientated Germany for the years 2005 until 2010, the 'foundation stone for a successful education biography' is laid. But the conscience concerning the importance of that life phase in Germany still is underdeveloped and 'the most important deficit of early child education and care is the lack of care places'.²¹ The study of the Bertelsmann Foundation concerning compatibility between profession and family supposes that the child-care institutions more than the families succeed in 'realizing pedagogic standards' and 'to pass on socialization experience to the children they often cannot get as only child'. But long-time studies about the consequences of day-nursery care for the school career of the children show at best ambivalent results. So, the US American Study of the National Institute of Child Care and Human Development

²⁰ Bertelsmann-Stiftung, Hrsg., *Von der Kita in die Schule. Handlungsempfehlungen an Politik, Träger und Einrichtungen*, Gütersloh 2007, S. 4.

²¹ Bundesministerium für Familie, Senioren, Frauen und Jugend, Hrsg., *Nationaler Aktionsplan für ein kindergerechtes Deutschland 2005-2010*, Berlin 2005, S. 15.

(NICHD) 'Are There Long-Term Effects of Early Child Care?', published in 2007, notices that the children kept in day-care institutions at the age of four and a half years before the enrolment at school, in fact have cognitive and language advantages and a greater vocabulary, but at the same time show more behavioural problems.²² Also in the later school development it is revealed that, 'more time periods of center care continued to relate to children's development in both positive and negative ways, being associated with better memories, but also with more conflicted relationships with teachers and mothers'. Nevertheless, studies concerning the development of nursery-children mostly are presented with titles like 'The mother-child-bond doesn't suffer', 'Day-nurseries do not cause harm to a child', 'Nursery children without disadvantage in development' or 'Non-family care for little children doesn't show any risks for development'. But here, a nursery care with a small risk presupposes numerous conditions which are given nowhere, a care relation in the nurseries of one caring person to three children, an equated relation between family and non-family care, a phase of settling in together with the mother which must be the longer the younger the child is, and above all an especially well-rested and pedagogically and psychologically trained mother, for a family care of high quality after the daily care in the nursery.

The care and education of the children 'is the natural right of the parents and the duty which at first is incumbent to them', as the Grundgesetz (The German Constitution) states in Art. 6, II, and 'the interests of the child normally are taken best by the parents', as the Federal Constitutional Court stated in its judgement concerning the taxation of marriage and family on 10 November 1998,²³ a fact because of which the Grundgesetz assures to the families 'the priority over collective forms of education', as the Court already emphasized 30 years ago²⁴ and what Peter Tettinger during the 35. Essener Gesprächen (35th Discussions of Essen) recalled: All these statements of the Grundgesetz and the Constitutional Court seem to be illusions from sunken times.

Apart from the increase in the birth rate, the exploitation of the female working manpower potential and the professional handling of ear-

²² Jay Belsky u. a., Are There Long-Term Effects of Early Child Care?, in: *Child Development*, vol. 78 (März/April 2007), p. 683.

²³ BVerfGE 99, 216ff. (232).

²⁴ BVerfGE 24, 111ff. (149).

ly child education, the nursery policy of the grand coalition pursues a fourth objective which is difficult to describe by only one term. To describe that objective there is a very moral sounding term of 'gender equity' or 'gender equality'. Much more appropriate in my opinion is the term 'deconstruction of the family'. The objective described in that way becomes clear quickly by the Seventh Family Report of the Federal Government, elaborated by a commission installed by the social-democratic family minister Renate Schmidt on 20 February 2003, and uncritically borrowed by the family minister Ursula von der Leyen who published it at the end of April 2006. This Family Report has written off marriage and family as 'anachronisms'. In the future, the report claims, the majority of people, 'independent from the fact if there was a marriage or not, experience in the course of their life multiple relations with different partners of life'. So, the 'model of a lifelong marriage' is replaced by a 'model of serial monogamy'.²⁵ As femininity and masculinity are 'social constructions', the family also is 'a social construction'.²⁶ That means that the family is no relation unit given by the personal nature of man between different sexes and generations, as it is defined in the perspective of Christian Social Theory and the Christian image of man, neither an institution as defined in the perspective of the German Constitution, but a socially and culturally caused artefact, a 'social construction', as the gender ideology pretends. But a construction can always be deconstructed and constructed in a new way and form.

For that deconstruction and new construction, the Seventh Family Report gives a considerable contribution which in my opinion has not been noticed in an adequate manner, neither from the side of policy or science, nor from the churches or the media. Only in the WSI messages, a paper that is near to the trade unions, there are praises of the emancipated family policy of that report. To modernize family life means in the gender perspective of the Family Report to overcome the sex roles, a permanent re-organization of family life. The terms 'negotiation' and 'networking' are the central themes of the whole report. Family is described as a permanent 'process of negotiating'. So, modern family policy must be 'referred to the life story'. Family is a permanent transition. Divorces are also transitions in the course of life. They have to be 'de-drama-

²⁵ 7. Familienbericht , a. a. O., S. 126.

²⁶ A. a. O., S. 11f.

tized'.²⁷ In the worst case, they are a temporary crisis. So, modern family life with children is 'work to create a network of the many places of child education'.²⁸ Here, the day-nurseries receive their importance. It is evident that these institutions form the knots in the net of manifold early child care places. Family only is considered to be one place among others: in the post-modern society it has a 'special responsibility for the family as a lived daily life'. That means in clear formulation: for the care of the children. In that perspective, the extensive installation of day-nurseries does not mean not first and foremost the optimization of early child education, but is a logic consequence of the permanent search for the maximization of individual luck and the resulting deconstruction of the family. So, all day care institutions and all day schools are the conditions to liberate the woman from tutelage and dependence and from the 'master-slave relation' of a marriage.²⁹

IV. TABOOS

The question concerning the welfare of the child is the great taboo in the current family policy. If they paid greater attention to that question it would be clear which importance marriage and family have for the development of the child, for the human capital (abilities) of future generations and also for the public weal. The human capital is the sum of the existence and social competences of man which precede the professional expert competences. They are acquired in early childhood – not only in the first 12 or 14 months – in the family. Here, the courses are set for the moral and emotional orientations of the adolescents, for their readiness to learn and to perform, their communication and bond ability, their reliability and moti-

²⁷ A. a. O., S. 116 und 156. Das Plädoyer für eine Entdramatisierung der Scheidung will dem Familienbericht nicht so recht gelingen, da er sich nicht scheut, zahlreiche negative Folgen einer Scheidung aufzulisten. Im Vergleich zu verheirateten Personen hätten Geschiedene ein niedrigeres Niveau psychischen Wohlbefindens, vermindertes Glücksgefühl, mehr gesundheitliche Probleme, eine höhere Rate an Alkohol- und Drogenabhängigkeit, eine höhere Selbstmordrate und vermehrte soziale Isolation (S. 118).

²⁸ A. a. O., S. 93.

²⁹ Ute Gerhard, Familie aus der Perspektive der Geschlechtergerechtigkeit – Anfrage an das christlich-abendländische Eheverständnis, in: *Zeitschrift für evangelische Ethik*, 51. Jg. (2007), S. 276.

vation to work, their conflict and compromise ability and their readiness to found their own family, to pass on life and to undertake responsibility for other persons. Here also a decision is made concerning the success in school and professional education and formation system, on the labour market and in coping with life. Not only the economy and the society profit from these performances of the family but also the democratic state which depends on interested, motivated citizens who are ready to participate and to show solidarity, and not last the churches who need families to pass on the belief in God.

Behavioural biology, developmental psychology, paediatrics and today also brain science again and again have emphasized the importance of the first life phase for the formation of human capital – in a positive manner with regard to the maturing of personality, and in a negative manner with regard to the failure of such maturing as a consequence of lack of care and bond in the early childhood. In the first life phase, as the behavioural biologist Bernhard Hassenstein says, ‘the slowly developing bond determines in the physical proximity of whom the child feels completely safe. If it was refused to the baby or little child, by several loss of role models or permanent changing care, to build up a stable bond of confidence, a general insecurity and anxiousness is settling down in the child. This anxiousness then dampens or suppresses the complete field of behaviour concerning discovering/ playing/ imitating/creative inventing, which means learning by active experience and the winning of independence and social behaviour without fear. So, also the period of being a little child...also if that phase is understood as a phase of developing independence, lives from preserving the grown bonds; the great start becomes stunted or fails if the little child does not find safety and does not have a secure shelter in those preserved bonds it grew in by destiny...to keep the fundamental bonds... . That is why this is a human task’. From these perceptions, Hassenstein takes the consequence that is vehemently ignored by the current day-nursery policy: That family policy above all must be orientated towards ‘protection, stabilization, promotion and enrichment of the holding together and the life community of the family members’, and that it must not be misused as an instrument of social policy.

What behavioural biology, development psychology and paediatrics found out more than a generation ago, brain science has confirmed during the last years: ‘Early emotional experience is anchored in the brain, safe emotional bond relations are the condition for an optimized brain development. Disturbances are burdens for the children, they are not able to cope with

them the earlier they arise. They lead to a massive and long-term activation of stress intensive control units in the child's brain. So, from these perceptions urgently should result a strengthening of the education competence of parents'. No collective care of little children, and no day-care institution is approximately able to perform that in a similarly intensive manner like the mother or father or – if they are not available, independent from the reasons – a stable role model, a person with whom the child has a stable relation of confidence but who always only remains the second best solution.

So, family policy has to withstand the temptation to compare bad mothers who are overtaxed by the education tasks with good educators (bond persons) among day minders or educators. The Family Report of the German government contradicts these perceptions, too, in a vehement manner. This 'mother-centred' attitude comes from an antiquated sex perspective. It is well-known, 'that children do not need the own mother...to build up reliable bonds'. For this, 'stable role model persons' are sufficient which 'for the sake of the development of emotional autonomy should be very numerous'.³⁰ Evidently, the authors of the reports did not even realize the contradiction of that affirmation. How can the child get a 'stable' bond person if the persons are 'numerous'?

Among the insufficiently reflected problems of a gender-orientated family policy, the question of the meaning of marriage and respectively divorce for the development of the child and for the public weal is also important. The fact that children growing up in intact families, whose parents are married and faithful and live with a low conflict level, normally have significantly better chances to develop than children whose parents are not married or are divorced, has been proved in numerous studies in different countries and cultures. Among children of not married or divorced parents, the rate of poverty and school drop-out, the rate of criminality and suicide, drug addiction and, among girls, early pregnancies are significantly higher than among children living with their own married parents. In 2006, Robert P. George und Jean Bethke Elshtain delivered many social-scientific proofs of this.³¹ The public weal pays a great amount for the decrease of a stable culture of marriage. The Leviathan is standing in the breach. He is growing stronger and stronger the weaker the culture of marriage becomes.

³⁰ 7. Familienbericht, a. a. O., S. 91.

³¹ Robert P. George/Jean Bethke Elshtain, *The Meaning of Marriage. Family, State, Market, & Morals*, Dallas 2006.

If family policy gave up its fixation on gender and took into consideration the social-scientific perceptions about the connection between marriage, family and children's welfare, it would have to set focal points which are completely different to the current focal points. It should again orientate towards Art. 6 GG, grant a 'particular protection' to marriage and family and recognize care and education of the children to be the 'natural right of parents and the duty which at first is incumbent to them'. Then, family policy could also learn from those countries which carried out radical reforms in their family policy during the last ten years. Austria, Norway, Finland and Denmark have slowed down the investments in the extension of state child-care institutions and completed them by direct transfer payments with considerable amounts and terms to those parents who care for their children at home. The objective of these reforms was and is to give families more time for the care of their children and to give the parents a real freedom to choose between care in the family and in institutions. The reforms have led to a decrease in gainful employment participation by mothers of little children and to a shifting of mother gainful employment from full-time to part-time employment.

When observing other countries, the Seventh Family Report ignores Norway, Sweden, Finland and Austria. With their reforms they do not fit into its gender perspective.

V. CENTRAL IDEAS OF A SUBSIDIARY FAMILY POLICY

Family policy in Germany needs considerable corrections. To tackle these corrections means to presuppose a renunciation concerning making day-nursery policy be only an instrument for the development of the population, the labour market, for the Pisa competition or gender policy. Family policy only then is a policy for the family if it accepts that the family as a relation unit of different sexes and generations based on the marriage 'has its legitimation in human nature and not in the acceptance by the state'.³² That is why marriage and family in the German Grundgesetz are mentioned in the part concerning fundamental rights. To found a family is a human right the state not only has to respect but to protect. The family is

³² Pontifical Council for Justice and Peace, ed., *Compendium of the Social Doctrine of the Church*, Rome 2004, 214.

the beginning of relations between persons. Here, the person learns 'what it means to love and to be loved, and what it concretely means to be a person'.³³ So, the duties of the family members are 'not contractually stipulated, but they arise from the character of the family itself, which is based on an irrevocable marriage and structured by relations growing after the procreation or adoption of children'.³⁴ In the family the person perceives that the reciprocal devotion in all dimensions of human existence, that love and fidelity are the last, not analyzable reason for the success of life. Concerning that perception which in fact is not the newest: you cannot perceive anything of it in the Family Report, even more, in many paragraphs, the report gives the impression not only to ignore the differentiation and reciprocal completion of the sexes but even to refuse it. In its gender-orientation, it moves at the border of denying the sexual identity of the human person.

The Catholic Church repudiates this orientation with clear words in the *Compendium*. 'Faced with theories that consider gender identity as merely the cultural and social product of the interaction between the community and the individual, independent of personal sexual identity without any reference to the true meaning of sexuality, the Church does not tire of repeating her teaching: "Everyone, man and woman, should acknowledge and accept his sexual identity. Physical, moral and spiritual difference and complementarities are oriented towards the goods of marriage and the flourishing of family life. The harmony of the couple and of society depends in part on the way in which the complementarities, needs and mutual support between the sexes are lived out. According to this perspective, it is obligatory that positive law, according to which sexual identity is indispensable, because it is the objective condition for forming an couple in marriage"'.³⁵

The family is no 'negotiation process' but the first relation unit, which is rooted in the personal nature of man, the 'fundamental and life cell of society'. Its protection and its well-being are the fundament of the public weal. The 'priority over the society and the state' must be given to the family. This has consequences for the education not only but especially in the first phase of life which is so important for the development of the child and the success of his own life. The family 'plays an original and irreplaceable role in raising children'. Right and duty of the parents to educate their

³³ John Paul II, *Centesimus Annus* 39; *Compendium* 212.

³⁴ *Compendium* 212.

³⁵ *Compendium* 224.

child arise from their role in passing on human life. This right and this duty are 'not derived and original and primary, ...irreplaceable and inalienable, and therefore incapable of being entirely delegated to others or usurped by others'. The consequence is that with regard to the duty of educating their child parents are not facing the alternative 'educate on our own' or 'put into a care institution'. With the procreation of a child they also undertake the responsibility for his education. So, on the level of education responsibility there is no liberty to choose. Normally, parents are and remain not only the first persons with the right to educate but also the first persons with the duty to educate their children. In Art. 6 II, the Grundgesetz has taken that into consideration. On the level of the means and instruments, the parents rely on state, church or self-led institutions which help them to undertake their education responsibility. They are not the only educators of their children, but they always remain the first educators.³⁶

A consequence for family policy from that priority of the family is the principle of subsidiarity that forbids to the state to seize tasks the family is able to carry out itself. But the principle of subsidiarity does not only have a negative dimension limiting the state, but also a positive dimension which activates the state. So it would be a misunderstanding to derive from that principle a ban of action for the legislator. But it obliges the state to 'respect' in all measures 'the priority and the originality of the family',³⁷ and to help the family to regain that position where it is endangered, instead of taking its position. If a family cannot fulfil one of its tasks, the state has to help according to the principle of subsidiarity so that the family is again able to undertake that task. With regard to the current discussion concerning child care in the first phase of life, concerning day-nurseries and compatibility between family and profession, from the subsidiarity principle the following central ideas result:

1. Transfer payments are irreplaceable. They are investments into the human capital of society, not a social support or even 'traps' for the equality of the sexes. They are forms of aid which help families to undertake their own tasks. Child benefit, family allowance (old and new form), paid leave of parents, consideration of marriage and family in the tax law and consideration of education periods in the pension law are necessary. They are only going to do justice to the performance of education, if they are not only

³⁶ *Compendium* 240.

³⁷ *Compendium* 252.

symbolic like the care allowance, planned not before 2013 and so vehemently discussed, but if they are even developed to a real education income and if education is recognized as a profession. Only then they give the family the liberty to choose between family management, as a rule by the mother, in the first three years of the child and a gainful employment out of the house. Finally, a reform of retirement security is urgently necessary, which includes the children in the contract of generations and which takes them into consideration concerning the premium as well as concerning the benefit claims, to finish the transfer exploitation of the families. In contrast to that, child allowances in tax law have nothing to do with family policy although the federal family ministry never tires of calculating that in the public. They are a mere consequence of the demand of tax equality demanding to burden the taxpayer according to his performance ability and to diminish the taxable income by the existential needs of the children.

2. Of course, a subsidiary family policy has to take care of the compatibility between family and profession. But it has to break away from the fixation on simultaneous compatibility. Its engagement also, even more, has to consider the sequential or consecutive compatibility. Behind the formula 'compatibility of family and profession' the following threat is no longer allowed to stand: 'Woe betide those who still attend to their children themselves'. Everybody who considers the conditions for the optimized development of the child can only come to the result that the simultaneous compatibility of family and profession is the second best solution. The sequential solution is more child-orientated. But because of various reasons, the simultaneous form can be necessary for young parents. For parents who because of their income are forced to have a double gainful employment, who still have not finished their apprenticeship or studies or who – certainly in rare cases – are permanently overtaxed with the education of their child, a day-care institution is a great help. To extend day-care institutions is not a priori a fall of man. But it is going to be one if the day-nurseries only serve as an instrument of population policy, labour market policy, education policy or gender policy.

The better solution, because it is more child-oriented, would be the sequential compatibility between family and profession. After an interruption of employment because of children, a subsidiary family policy has to help mothers to return into their former or another profession. This would also correspond to the desires of the affected women, only 17% of whom, according to a March 2007 study of the Ipsos Institute, think that children are kept best in a day-nursery, while 81% think education at home by the

parents is the best. But the sequential compatibility between family and profession under observation of the subsidiarity principle is not only the task of the legislator but also of the society, especially of the economy.

And here, the unions and the companies themselves are also required. During an education period, the enterprises could, by regular contacts to their employees – for example by integrating them into the flow of information, by offers for temporary replacement or training – and by complete or partial consideration of the education period in the calculation of the enterprise's pension, facilitate the utilization of an employment interruption for the purpose of education and the reintegration into the profession.

Apart from the organization measures listed here, being a family-friendly company also requires a change of attitude for which the Institute of German Companies gives a nice orientation. In its dossier 'Profession and family' it asks the enterprises to keep in mind that 'mothers often have to offer more than women without children: The competences gained during the family phase like organization talent, capacity to take stress, ability to solve problems and conflicts and negotiation skill qualify them for leading tasks in the company. Various studies prove that employees with children do not only have a higher stress capacity but also are more able to work in a team, have more responsibility and are calmer'.

3. A subsidiary family policy must not only be a policy for family members but also a policy for institutions. It has to observe the family as relation unit, as an 'institute' as Art. 6 GG is demanding. It has to correct the process of de-institutionalization of marriage and family that we have been observing since the seventies of the last century, and it has to strengthen the status of the family as citizens. Among the possible consequences of such an effort for the system of laws only one should be mentioned: the right to vote. Everyone who wants to strengthen the status of the family has to ask the question of family vote.

The right to elect the government in regular periods and for this to have the possibility to choose between several candidates, in the democratic system is the privilege of the citizen. This right must also be given to the family. Which of the different models of family vote – lowering the age of voting, model of several votes or model of representation – is preferred is worth a public debate. The vote model with which you could avoid that exclusion and which also excludes a collision with the law principle of 'one man – one vote', is a children's vote the parents take as fiduciaries until the children achieve the legal voting age, like they also care as fiduciaries about the rights of the child for example to get an educa-

tion. Such a family vote would correspond to the responsibility of the parents for their children and, even if it was an individual right of every family member, would strengthen the family's state as citizens in ageing societies. A subsidiary family policy observing these central ideas should not give up the extension of the day-nursery places. But it must regard and use that extension as a service for the family and especially of the child instead as a service for the labour market, the education and the gender policy. It should finish the tutelage of the family and instead of that strengthen the citizen status of the family in the interest of the public weal and the culture of life. For both, the family is the first actor.