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UPBRINGING: MODELS AND DILEMMAS

1. **The notion.** The architecture of the notion of upbringing is contradictory. From the point of view of time, the upbringing is a notion that expresses the importance of the moment (Borges claimed in one of his poems that life consists of moments) and the importance of the eschatological (Apostle Paul said that it is not conformed to this world, since the ephemeral/vain cannot be compared to what is Eternal. Father Justin Popović claimed that the victory over the attraction of the sin of the moment is precondition to salvation, since one ought to behave in such a way that the future determines our past and our history). Upbringing is like liturgy (writing in stone), which is read in the past, today and always.

Upbringing, in its broad range of contradiction, represents conservation of the virtue/opinion of ancestors (word of the dead is not a dead word, the poet said) and it does not represent the opinion of the ancestors.¹

Upbringing is not a process with a guaranteed finale, an absolute transition of values and, due to the passivity of the “object”, an easy process of mental and spiritual design of the person being brought up.²

Upbringing is also the honouring by a solemn privilege, but sometimes the task of the educator is also “vitally induced”.³

It is important to state the etymological connection that exists between the notions of education and upbringing in the Serbian

¹The first revolution is the revolution against fathers, psychoanalysis claims. The famous Russian director Nikita Mikhalkov says that his father Sergei's most solemn moment was sitting by the “living portraits” in the Bolshoi Theatre in 1943 and listening to the national anthem which he authored. In the *Barber of Siberia*, Nikita celebrates the Russian Emperor, see *Аргументы и факты*, No 11, 12–18. 3. 2008, 3.

² Nietzsche represents an example of effective opposition to the upbringer. Nietzsche's father was a lutheran vicar, a traditionalist, to the extent that he named his son after the reigning king Friedrich Wilhelm. Still, Nietzsche became a cosmopolitan and a bitter enemy of Prussian nationalism. Nietzsche's father died when he was five and he grew up surrounded by women only: his mother, sister and two aunts. Just like the Lutheran tradition (apart from his father, his grandfathers have also been priests) caused Nietzsche's anti-religious reaction, the female surrounding caused that he became a well-known misogynist, see Niče, *Osvit*, Beograd, 1979, 141.

³Claudius, at the request of Agrippina placed Seneca as the educator of the 11 years old Nero. Until Nero grew up, Seneca governed the world state and this period is considered to be the happiest age of the Roman Empire. Still, just like Socrates was to Alcibiades, and Plato to Dionysius the Younger, so Seneca eventually also grew boring to Nero. Nero punished his tutor by death, and as the gift of grace, he gave Seneca the opportunity – the “freedom” to take his own life. See Seneka, *O gnevju*, Beograd, 1983, 107 and 108.

language. Education (*obrazovanje*) implies the renewal of the image (Serbian: *obraz* – picture, icon, character) of God within man. Upbringing (*vaspitanje*) is the shaping of man according to the Image of the Creator and his nurturing (Serbian: *pitanje* is a word originating from the Old Church Slavonic language that means “to feed”, and therefore, in the Serbian language, the term upbringing means the nurturing of the child with morality and spirituality) with the eternal Divine light, truth, beauty and goodness; in one word, all of God’s perfections, says Metropolitan Amfilohije.⁴

Upbringing is an act and a process. At the beginning of everything, even an analysis, there is the word/meaning provided by God to things so that they could attain the fullness of existence. Family Law of Serbia uses the term upbringing, which points out the obligation of means, the verb of duration, attempt, not of success. The spiritual and legal source (Marital Rules of the Serbian Orthodox Church of 1933) uses the term upbringing as a more effective verb, a word that requires the fulfilment of a goal. Of course, the upbringing of a child does not imply the triumphant cessation of this noble benefit. Rather, it associates and implies that the subject of upbringing shall be obliged to, in accordance with the concrete circumstances, perfect this important process.⁵

In a previous paper we concluded that in the interpretation of the type and elevation of the “architecture of axiology, character and social being”, sometimes, or even more often, self-upbringing is more important than upbringing as such.⁶ In the concrete social, family and

⁴See Metropolitan Amfilohije Radović, *Osnovi pravoslavnog vaspitanja*, Cetinje 2002, 26.

⁵Slobodan I. Panov, *Vaspitanje i Uslužno pravo*, Zbornik radova *Pravo i usluge*, edited by prof. Dr Miodrag Mićović, Kragujevac, 2012. A different contradiction of upbringing, as a moment which lasts is confirmed by the Russian proverb: “When you sow procedure, you reap habit; when you sow habit – you reap character; and when you sow character – you reap destiny”, see K. V. Zorin, „Roditeljski gresi i bolesti dece“, in *Između ljubavi i sebičnosti-kako vaspitavati dete u savremenom svetu*, edited by V. Dimitrijević and J. Srbulj, Beograd, 2005, 81.

⁶There is an interesting relationship between upbringing and self-upbringing. From the point of view of law – there is only the notion of upbringing, since self-upbringing is not a topic of law, unless the consequences of upbringing are wrong and require penalties. From the point of view of life, self-upbringing is a more effective process, since the consequences of upbringing are more “stable” both essentially and from the point of view of time. From the aspect of analysis based on the point of view of time, it is interesting to mention that, legally speaking, upbringing is precluded by coming of age or emancipation. Self-upbringing does not start with the coming of age, but it does become more transparent starting from this period, and the duration of self-upbringing is defined by one’s will and not by legal norms. The upbringing of a child starts nine months before the child is born at the earliest, see *Između ljubavi i sebičnosti - kako vaspitati dete u savremenom svetu*, Beograd 2005, 39. In self-upbringing, the method of Christ is contained: through revolution toward revolution. Firstly the revolution against evil within oneself, and then the revolution against evil around oneself, see V. Jerotić, *Čovek i njegov identitet*, Beograd 2003, 47. And, a contrario: No man can humiliate us; only self-humiliation exists, see Patrijarh

individual circumstances, only self-upbringing can be used to explain the evident differences/contradictions in the final architecture of two characters/two individuals/two persons (Pirandello) that grew up in the same socio-political constellation and have been identically educated with words and deeds. This historically important detail in the Serbian social and personal folklore of different (value and political) inclinations of the closest ones (siblings), can be explained more easily with the shaping through the process of self-upbringing than as a consequence of upbringing.

2. Spirit of the time. For the essence of upbringing, as a conservation of virtue in the historical wilderness, time is irrelevant. Still, for the dynamic models of upbringing, the spirit of the time (spoken of in Jaspers' terms) can be relevant. What kind of time do we live in? In the civilization of guaranteed involution (today is already better than tomorrow). In the civilization of the hyperbole of anomie, the injustice and conflicts are as surprising as if Casanova would be elected as the headmaster of a girls' school (academic M. Ekmečić). We are in a civilization of the already tired advertised model,⁷ relativisation of family values⁸ and time of lack of belief⁹ in the word.¹⁰

Pavle, *Budimo ljudi – pouke i poruke II*, edited by Jovan Janjić, Beograd, 2010, 155-157.

⁷The western historians considered for a long time that the source of "cultural and economic domination of the West" is the free choice of marriage partners, stable family structure... However, the East developed their own economics, by keeping their traditional family values. See Martin Segelan, *Sociologija porodice*, Beograd 2009, 485-486.

⁸According to the Universal Declaration of Human Rights, family is the „natural and fundamental group unit of society“. As arguments which favour „family life“, the following are stated: emotional security, framework for the development of the identity of individuals and the society. The arguments against the family are domestic violence, incitement of selfishness, indifference to public good, see Jonathan Herring, *Family Law*, Exeter College Oxford University, 2004, 8-9.

⁹Human rights are the the rights of the liberty of resistance (libertés - résistances): from the rights of limits (libertés - limites) to the rights of opposition (libertés - opposition). The state is totalitarian if it aims to intervene in all fields, if it does not recognize the difference between public and private life, see Ratko Marković, *Ustavno pravo*, Beograd 2009, 453-456. The difference between theoretical definitions and life is illustrated by the example which demonstrates that control is more important than human rights, see, www.deutschewelle.com, 10.1.2012. On the relation between women's profit and educational success, see B. Hale, D. Pearl, E. Cooke, D. Monk, *The Family Law&Society*, Oxford University Press, 2009, 118. On the best and cheapest way of providing for children, see Stephen Gretney, *Family Law in the Twentieth Century - A History*, Oxford University Press, 2003, 639.

¹⁰There is a rule (almost with no exeptions) that the declarative, initial theoretical concept or the catalogue of values in practice, very soon suffers a "successful inversion/cancellation": from the promise on employment which increases unemployment; from humane interventions which increase suffering and injustice (*U-238's* decay process lasts for 4.5 billion years) to the so-called liberalism which annuls freedom. Jordan Maxwell notes that man is mutating from an intellectual/spiritual being to a corporate, regulated system of thinking, in which no critical thinking exists. The citizens will have

For the modern world, the appropriate metaphor seems to be that this is a *Piombi* world,¹¹ a world of simulated ideals,¹² auto destructive selfishness¹³ and seduction, and the apotheosis of superficiality.¹⁴

3. The spiritual-legal model of upbringing. The understanding of this model of child upbringing requires analysis of an extensive amount of canon law literature, both up to date and in praeteritum. The defined quantum of this body of work limits a fruitful analysis of this topic. Accordingly, we will define, apart from the religious and pedagogical documents, the two most important legal enactments that represent the spiritual-legal model of upbringing: Marital Rules of the Serbian Orthodox Church of 1933 and the Serbian Civil Code of 1844.

The Marital Rules (MR) of the Serbian Orthodox Church (SOC) stress the procreation and educational element of marriage, i.e. its crown purpose: childbearing and upbringing.¹⁵ Concretely

to accept the truth which is being imposed, see B. Đorović, „Ko poseduje vašu vladu, poseduje i vas“, *Pečat*, 202/2012, 68. Prince Miloš Obrenović during his lifetime respected the principle which is still present, and is described by an American philosopher: the principle of Miloš's power was simple: *If one wants to do something, they will do it; and if one does not want to do something, they will still do it*. The shadows of the “freedom of creation” are also explored in modern historiography written according to the principle *Ad usum delphini* – as politically and financially conditioned/interdependent works, see M. Ekmečić *Dugo kretanje između klanja i oranja*, Beograd, 2011, 216, 255, 212.

¹¹*Piombo* signifies lead (lead times) and refers to the lead roof of the Doge's palace (cinically speaking – completely harmonized with nature), beneath which people were imprisoned in unberarable heat during summer time, and in unbearable cold during winter time. Incidentally: it was easy to get into prison, but there was no way out. Only Giacomo Casanova was an exception, see S. Batos, „Kazanova između mita i stvarnosti“, *Pečat*, 203/2012, 62.

¹²Geoff Eley, professor of comparative history at Michigan University writes about “the left in culture”. The joyful construction of Alexander Blok (a boring life should become joyful and beautiful), the clever utopism of Lunacharsky (man should enjoy the benefits of contemplation and sensitivity), the realism of Trotsky (politics is flexible, and life is slow and stubborn... It is easier to free a state than to free life from the rule of old rituals) see Džef Ili, *Kovanje demokratije - istorija Levice u Evropi, 1850-2000*, Beograd 2007, 283-288.

¹³The lack of spiritual health caused by selfishness and covetousness is also expressed by a thought in *The Dybbuk*, a play by the Jewish writer S. Ansky: when one looks through a window, one sees people; and if silver is added to the window, a mirror is created, and when one looks into the mirror, one sees only oneself. Isak Asijel, the Chief Rabbi in Serbia says that I/selfishness stands between God and us, see Isak Asijel, *Zavera ćutanja*, edited by Slobodan Panov, Marina Janjić Komar, Milan Škulić, Zbornik radova sa naučnog skupa „Nasilje u porodici“, Beograd, 2012, 23.

¹⁴See Željko Simić, *Uliks i post-postmoderna-filozofija egzistencije nestajućeg subjekta*, Beograd, 2012, 256 et pass.

¹⁵The connection between marriage and upbringing: the sacrament of marriage is mirrored in the secret of love. Unless two become one, they cannot grow: partners in marriage can only increase if they decrease. Love is a joyful and spiritual decrease for the sake of true increase, and spiritual growth and the birth of a new being. Love is the process of becoming richer

speaking, Article 1 of the MR of the SOC says that the Orthodox marriage is the sacrament according to which two persons of opposite sex, in the manner proscribed by the Church, are to be connected in a lifelong spiritual and physical bond, in order to have a complete life community together with childbirth and upbringing.

A short analysis shows that this definition contains a supreme religious element/essence (marriage is one of the seven sacraments), a more concrete definition of time and the spheres of Godlike synergy between partners in marriage (lifelong spiritual and physical bond) and a purpose of marriage: theosis through marital communion and childbirth and upbringing. Childbirth is not sufficient. Material, mathematical success is not enough. There is no obsession over numbers (Amfilohije Radović said in the church of Alexander Nevsky that God is not with the influential and with the many, but with the just). Rather, it is necessary to attain the spiritual horizon, the achievement of likeness to God – it is necessary to educate and to achieve the spiritual, most basic and most elevated principle of person, to achieve not the material decay, but the liturgical duration.¹⁶ The aim is not to fill the Earth with people, individuals, but with men; men as associates of virtue. Incidentally, here we shall repeat our thought that truth is not democratic, but rather aristocratic in origin.¹⁷ The writer of Marital Rules of the SOC chose to use the term upbringing of children as a strict, demanding and the only meaningful notion, which is inspired by the goal and not by pretence/insincere enthusiasm.

The MR of the SOC say that the family relationship between parents and children is defined, as a rule, according to the regulations of the civil family law, which is also relevant to the Church (Article 74). This provision tells about the symphony between the state and spiritual power in a very important legal and existential field. It is interesting to sketch out the dilemmas on the relation between these two types of power today. The writer of the MR of the SOC knew the

through self-sacrifice. Just like true freedom is the cancellation of autonomy as a weak will, the giving up of heteronomy as demonic will and the embrace of theonomy as God's will. The unity of family, father, mother and children is the reflection of the Holy Trinity Unity of Father, Son and the Holy Ghost, see Muškarac i žena pred tajnom tela, Pravoslavlje i polnost, Beograd, 2006, p. 86,87. John Chrysostom says that there is nothing dearer than children and wife and that childbirth is our greatest consolation when facing death, see Panajotis Nelas, *O tajni braka*, 125, in *Pravoslavni brak i porodica - Sveta tajna bračne ljubavi*, edited by Protojerej Radomir Nikčević, Cetinje 2000.

¹⁶Liturgy is writing in stone, a non-ephemeral mark; a permanent value. Apostle Paul claims that upbringing should contain science and fear of God (Ephesians, 6, 4), see Nikola Ružičić, *Nomokanon o braku*, Beograd 1880, 227.

¹⁷These sentences demonstrate the means for curing the tragic/sad demographic factography in Serbia and in the so-called region (data from the census in Croatia). We consider the dilemma whether comfort increases or decreases demographic potential and the result (for the sake of analogy: the number of children in our ancestors' families and the degree of comfort at that time, and the number of children in today's families). Serbia shall be a country of spring and not of mournful autumn, a country where life dominates death, a country of biophilia – the joy of life, only when the education regarding birth is affirmed and when the all encompassing lyrical integration becomes a part of life.

content of the civil family law norm contained in the Serbian Civil Code (SCC). It is interesting to test hypothetically, even though the answer seems to be almost apodictic, whether the writer of the MR of the SOC would also find it suitable today to use the same subsidiary legal technique? Would the MR of the SOC today consider that the referring to the secular legal enactment on upbringing is symphonic?¹⁸ This aspect of the application of the MR of the SOC is also interesting today. At the time of its reaching, in 1933, the writer of the MR of the SOC referred to the regulations on upbringing that were familiar to him. On the contrary, the subsidiary application of the MR of the SOC today seems suspicious with good reason, not only because of the lack of symphony of the axiology of upbringing in the secular and spiritual legal systems, but also because the norm of the MR of the SOC on the referring to the secular/civil law would relate to a completely unknown legal enactment (maybe also a legal enactment of unexpected content) and the legislation of meaningful (or meaningless) dynamics of change.

Upbringing was also modelled by the value architecture of marriage in Article 69 of the MR of the SOC. We would like to stress two legal aspects: 1) Love between partners in marriage, faithfulness and help, mutual forgiveness and mutual enduring of “marital difficulties” not only stabilises the marital dyadic relationship, but it also guides well and ennobles the triadic relationship between parents and children;¹⁹ 2) Honouring the wife-mother with the status ensuring that it is her specially defined sphere by the law to be dedicated to birth, nurturing and upbringing of children. The legally delegated sphere of “privileged equality” for the husband is the sphere of support – the sphere of material existence, whereas the legally delegated sphere of “privileged equality” of the wife-mother is the sphere of spiritual existence – upbringing of children.

We shall also refer to the highly reduced version of Article 74 of the MR of the SOC, which foresees the obligation that the parents should “christen their children in Orthodox faith,” to protect²⁰ the child from all bad influences and always set a good example for their children (by the fullness of their God-pleasing existence, and not by a

¹⁸See Sima Avramović, *Serbian Law on Religion Five Years Later - Old Dilemma and New Challenges*, in *Zbornik Pravo, vera kultura*, editors A. Raković, V. Đurić, Beograd, 2012, 10 et pass; Troicki, Sergije Viktorovič, *Crkveno pravo*, Beograd, 2011, 193-195. On religion and family in the Western civilization, see Дејан Мицковиќ, *Семејството во Европа XVI - XXI век*, Скопје, 2008, 11-26.

¹⁹ Love in marriage and family is necessary/preconditioned synergy. The best a man can do for his children is to love their mother, see Bondarenko M, *O pravima deteta*, in the book *Između ljubavi i sebičnosti – kako vaspitavati dete u savremenom svetu*, Beograd, 2005, 258. On the changes in marriage and family in the 20th century, see Љ. Спировиќ Трпеновска, Д. Мицковиќ, А. Ристов, *Наследувањето во Европа*, Скопје, 2011, 53 et pass.

²⁰Verb with the obligation of goal which requires additional effort, and does not look kindly upon the modern excuse manirism regarding failure inspite of “trying”.

declarative, rhetorical, insincere, acted out one...) of a pious and honest Christian life.²¹

By setting up the “principles which bear consequences”, as the French legal literature says, the MR of the SOC refer to the then known subsidiary legal source: the Serbian Civil Code.

The SCC has numerous relevant norms regarding upbringing. First, we would like to mention Article 115 of the SCC: “Parents, by which the father and mother are meant, are obliged to be nurturers. They should care about their life and their health, feed and clothe them, strengthen and raise their body, provide their upbringing and develop their spiritual abilities, train them in the Law of God, ennoble their heart and soul, support them in their beneficial efforts, and thus prepare them for a happier life, and lay the foundations for their well-being.”

The analysis of the norms of the SCC provides the basis for the following conclusion: in today’s *non-avant-garde* lexis, the SCC uses the notions of father and mother for parents, and not, in order to *diminish/cancel* the feeling of discrimination of certain subjects, the notions of genitor A or genitor B. The primary and elevated function of parents is to be the nurturers. The term nurturer has legal and metaphorical content, since it demonstrates the task of parents to nurture,²² i.e. preserve children’s likeness to God and innocence.

Parental care relates to the material/bodily corps of the child (care of life, health, food, clothes, strengthening of the body) and the spiritual/moral corps of the child (educational development and the development of spiritual capacities). In this passage from the SCC we can also stress the method for such caring: ennobling the heart and soul with the law and science of God.²³ The aforementioned stylization testifies also about the definition of the aim: to be prepared for a happier life (interestingly, the definition does not contain the phrase *happy life*, which expresses the achievement of happiness²⁴) and the foundation of well-being (here we also notice the reduction of ambition/enthusiasm, since “only” the *foundation* of well-being is mentioned).

Law is not the initial or the supreme expression of spirituality/virtue. Law is the (intellectual-) technical expression of axiology. Law is not self-sufficient. Love is self-sufficient. *Why do you need law, if you love*, says St. Augustine. In accordance with the aforementioned, we feel it useful to refer also to the thoughts from the spiritual/religious literature that relate to upbringing. This is done for a twofold benefit: to refer to the place/spirit from which the legal norm is born (retrospective dimension) and to signal the proper interpretation and the application of norms/values (prospective

²¹Vuk Karadžić claims that eyes see more than the ears hear, see *Agape* I, 2009, 169.

²²In Russian: *хранить*: обеспечивать неприкосновенность, держать под защитой или поддерживать в неизменном виде.

²³On the cooperation between science and religion see the biographies of Newton, Hegel...

²⁴The explanation lies in *epictasis* – progress toward virtue, toward the fullness of God’s grace.

dimension). This is one more example illustrating the truth that the past and present are the same.

Out of the catalogue of spiritual values, we shall take only two elements: forgiveness and personality.

Significance of forgiveness: The negative in the pagan is vengefulness. Christianity asks for permanent forgiveness. How many times should one forgive? Seven times? Academic Jerotić says: seven times seventy.²⁵ Love implies a consistent, unburdened forgiveness. John Climacus in "The Ladder of Divine Ascent" (Step 5) says that repentance is the renewal of baptism, a contract with God for a second life, a buyer of humility, daughter of hope and the renunciation of despair, self-purification and self-punishment.²⁶ "God's good grace turns the wolf into sheep", claims John Chrysostom. No sin can surpass the love of God.²⁷

Significance of personality: only the personality can be a member of the church, says the Orthodox theologian, Meyendorff. By upbringing or self-upbringing, the individual becomes a personality. Academic Jerotić uses the capital letter for Church when it implies the eschatological unity in history and with a lowercase letter when the church implies the institution.²⁸ The glory of the spiritual and not of the rational is imminent to the notion of personality. The essence of the sacramental and ascetic is the liberation from the tyranny of reason, from the sick and explosive/destructive, nullifying pretence of reason, from the slavery of the material and corporeal. Mind should not be directed toward the external and sensual; rather, the structure of mind should be spiral: turned to oneself and ascent to God. The negligence toward the secular and the care for the acquiring of eternal goods. The effort for meaning, not hedonism as the ontological joy. Harmony on the inside seems harmonious with regard to the neighbours as well. The precondition for family and social harmony is the personal harmony, the introvert harmony of personality.

Basil of Caesarea says that the man who owns harmony poses questions without a desire to argue, and responds without a desire to stand out; he does not interrupt the fellow speaker when they are saying something useful, his tone is graceful when he gives speeches, and it is agreeable in communication... Lack of modesty does not lead to harmony. For his intellectual pride, Tolstoy was excommunicated from the Russian Orthodox Church. A resistance to egocentrism is necessary, rising above troubles: St. Mark the Ascetic says that a hedonist grieves when he is being slandered and when he is suffering, and a God-abiding man when he is being praised and acquires much material wealth.²⁹ Testifying on the modern media folklore and the

²⁵See *Agape I*, Beograd, 2009, 138.

²⁶See V. Jerotić, *Samo dela ljubavi ostaju*, Beograd, 2006, 70.

²⁷Forgiveness and amnesty are old institutions of wise rulers and in certain situations more efficient than strict punishment. Forgiveness controls the vengeful impulse more easily. Therefore, the legal regulations in the USA and Europe are obsolete and opposed to the biophysiological reality, says Andrzej M. Lobaczewski, see *Politička ponerologija – naučna studija o prirodi zla prilagođenog za političke svrhe*, Beograd 2011, 272, 275.

²⁸See *Agape I*, Beograd, 2009, 142.

²⁹*Ibid.*, 287-290, 324.

manner of implementation of so-called dialogues – we can easily but sadly state the anomic absence of these values. Or, put in different terms – a different kind of “good manners”, or more clearly – a modern rudeness of *conversation, monologue in two, or monologue among several subjects*.³⁰

4. Secular-legal model of upbringing.³¹ According to Article 70 of the Serbian Family Law (FL), upbringing is the relationship between parents³² and the child, based on love,³³ trust and mutual respect,³⁴ with the guidance of the child to adopt and respect³⁵ the emotional, ethical and national³⁶ values and the identity of their

³⁰There are differences in the pneumatology of Constantinople and Rome: the western notion of the individual completely differs from the Eastern notion of the person, built upon the understanding of the personality of the Cappadocian Father of Basil of Caesarea, Gregory of Nazianzus. The Western, Augustan thought is based on the method of induction, from the antropological models according to the understanding of God, whereas the Eastern one follows the initial and final Godly method: from God to man made by God in his own image. The individual limits oneself, opposes itself to others, whereas the personality gladly runs towards others, to the meeting with people and God. This difference is also present in the philosophy of family life. See Protoiereus Mihail Dronov, *Pravoslavna asketika i psihoanaliza*, in the book of Metropolitan Jerotej Vlahos, *Pravoslavna psihoterapija*, Beograd, 2010, 523-525.

³¹On legal dilemmas in the field of upbringing, see Miloš Stanković, *Pravna priroda i ostvarivanje prava i dužnosti roditelja na vaspitanje i obrazovanje deteta u Srbiji*, *Anali Pravnog fakulteta u Beogradu*, 2/2011, 235 et pass.

³²On the evolution of parental rights, see B. Hale, D. Pearl, E. Cooke, D. Monk, *The Family Law & Society*, Oxford University Press, 2009, 345, 346.

³³On the elimination of love and fidelity from the legal marital vocabulary, see S. I. Panov, *Vernost versus preljuba*, *Pravni život*, 10/2010. In the Serbian FL, marriage is no longer based on love. We are only raising the issue of the ontologically important synchronisation of love between marital partners and the love of parents toward their children. Bad family behaviour usually comes from the lack of harmony which exists between marital partners or their separation, see Vladeta Jerotić, *Duhovni razgovori*, Beograd, 2004, 42.

³⁴Upbringing is mutual respect. The 16th canon of the Synod of Gangra anathemises children who do not honour their pious parents, when there is no Eucharist (gratitude) from the child, see Nikodim Milaš, *Pravoslavno crkveno pravo*, Mostar, 1902, 668.

³⁵Upbringing is understood, according to this norm, as a direction to adopt and respect the aforementioned values. Here the legislator also makes a mistake: firstly, certain values should be respected, and then, according to automatism, or in the process of natural cooperation, they should be also adopted. In a different order of things, the impression and the assessment of the issuing by decree is unavoidable and correct.

³⁶The following fact is interesting: in the Serbian medieval law there was a so-called “symphony” – total consent between the church and the state. The source of virtue is God, and the attainment of virtue is achieved by one’s own effort, claims Stefan Nemanja in the Charter of Hilandar. One of the virtues is the protection of those who have nothing. The social policy and hospitals were in the monastery. There was also a procedure of “widow justification” (the protection of widows in court by the concern of the ruler can also be found in Dušan’s Code). The moral corps at the time also recognizes the respect of the father (Saint Sava and Stefan the First-Crowned express great love toward their father, thus creating poetry out of history and poetizing

family and society. This formulation is a stylised synthesis of values expressed in the Convention on the Rights of the Child. Emotional and ethical values from the FL of Serbia are symphonic with the values of the Convention on the Rights of the Child. (These are the respect for human rights and fundamental freedoms enshrined in the Charter of the UN; preparation for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; respect for the natural environment.) At the same time, the respect for the national identity of their family and society from the FL of Serbia is synchronised with the values of the Convention on the Rights of the Child. (It includes respect for the child's parents, his or her own cultural identity, language and values for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own.)

This legal norm dictates several questions. What is the emotional identity of the family and what is the emotional identity of the society? What are its concrete constituents? Is there a necessary harmony between these two identities? Is the emotional identity of the family in *rerum natura* monolithic, and the identity of the society monolithic? Which identity, in the event of disharmony, prevails, and according to which criteria?... The same set of questions goes also in the event of lack of synchronicity between the ethical and ethnical identity of the family and society.

On this occasion, we will only analyse two elements in the regulation of the dimension of upbringing in the FL of Serbia. First is the always-interesting relation between the so-called universal and national values. (This relation does not always have to be tense and competitive, but it can also be synchronised: e.g. the national value of the love for freedom should be universal even though it is not a value of the current Globalism³⁷ or, *mutatis mutandis*, if the relation is analysed between value/interest of family and person.) Second is the forced pedocentrism in the design of the child's legal capacity.

4.1. Universalism, globalism, the national³⁸ personality.

This polymorphic differentiation was described in our textbook.³⁹ According to the Proposal for the Family Law of Serbia of 2004, the

religion by giving it fathers as saints. The Bible says that people are happy if the son continues the works of the father, see M. Petrović, *Srpske srednjovekovne teme: Vrline srpskih srednjovekovnih vladara: zemaljski anđeo, nebeski čovek – razgovor sa Radmilom Marinković, Letopis Matice srpske*, januar–februar 2010, 214–228.

³⁷On the dethroning of the Universal, and the ever present violent promotion of globalism, on the desubjectivised anonymity, see Ž. Simić, *Manifest Žižek - manifest post-postmoderne*, Beograd, 2012. J. Stiglitz says that the globalisation process is devastating, for more detail, see Uroš Šuvaković, *Metodološke studije*, Kosovska Mitrovica 2011, 48-53.

³⁸On the absence of these dilemmas in the legislation of some nations, see A. M. Нечаева, *Семейное право*, Москва, 2010, 95 and Екатерина Матеева, *Семейно право*, София, 2010, 441. On upbringing towards universal values (Article 71 of the Family Law of Montenegro), see R. Korać, *Porodično pravo*, Podgorica, 2011, 318.

³⁹See Slobodan I. Panov, *Porodično pravo*, Beograd, 2012, 199 et pass.

child is guided toward the adoption and respect for the values that are universal in character.⁴⁰ Still, a different legal formulation of the aim of upbringing was adopted: *acquisition of the values of emotional, ethical and national⁴¹ identity of one's family and society.*⁴² In the literature pertaining to family law⁴³ exists the attitude that this formulation has an ideological connotation and less precise notions than the aforementioned Convention.⁴⁴ Regarding the ideological colouration of the legal formulation, it is possible to state two different elements. Firstly, the simulation/feigning that the pejorative attribute is reserved only for a different opinion is not successful. Secondly, both ideas, in the original sense, the universal and the national one, are naturally non-ideological, stated and not constructed or “copied” from the human nature. Human nature is ambivalent: it is abstract, universal and concrete, and national. All people, and every man (a phrase that Berdyaev loves) have universal characteristics in Aristotle's trinity of spirit, soul and body, i.e. emotionality, spirituality, morality, need... and other expressions/epiphanies of the essence of man. The individualist and national values express the concrete man as a specificum: emotional, ethical and national identity of a human being, and his/her family and society. The fact that this is not just a theoretical and speculative issue is supported by the following practical dimension: the Russian president Putin at a press conference on December 20, 2012 expressed the attitude that he supported the *Dima Yakovlev Law* that prohibits US citizens to adopt children of Russian origin. The law was motivated by an event in which little Dima died because his humane adopter left him in the car during an extremely hot day and the US court freed this fine parent of all responsibility.⁴⁵

The universal is also the initial, the implied and the insufficient. Man belongs to mankind. However, this is only the precondition and the beginning of freedom. The dictate of the universal, especially in the non-humane interpretation of the profit-loving globalism has only the ambition to explain the world with one idea, to paint the world with one colour, to express sentiments and thoughts with one music... The defining of

⁴⁰We would like to remind the reader on the notion of the academic Jerotić on the pseudohumanist cosmopolitanism, see Vladeta Jerotić, *Preporuke i prikazi – filozofija, religija, književnost*, Beograd, 2006, 50.

⁴¹On family law as the national specificity and legal particularism, see Д. Мицковиќ, ‘Кодификација на семејното законодавство во европските земји’, Зборник од научната расправа *Кодификација на македонското граѓанско и трговско право, книга 3*, Скопје, 2008, 246.

⁴²On the right and obligation of parents to take care of the psycho-physical, spiritual and moral development of the child, and on the prohibition of the ignorant, rough and humiliating behaviour, see A. B. Власенко, *Семейное право России*, Ростов на Дону, 2011, 235, 252. According to Article 93, paragraph 1 of the Family Law of Croatia, the child is to be educated in the spirit of “love for country”, equality of sexes, humanity, see M. Alinčić, D. Hrabar, D. Jakovac-Lozić, A. Korać, *Obiteljsko pravo*, Zagreb, 2006, 248.

⁴³See G. Kovaček-Stanić, *Porodično pravo*, Novi Sad, 2005, 284.

⁴⁴On the fact that this Convention was not ratified by the USA, see A. M. Нечаева, *Семейное право*, Москва, 2010, 149.

⁴⁵See press conference of Vladimir Putin, 20. 12. 2012. www.Kremlin.ru.

Dostoyevsky or Goethe with the criterion of universalism is impossible, since they are without meaning or significance, without the wealth of the individual and national context, corresponding to the “world compassion and reflectiveness”.

The harmony of the universal and personal forms the core of the term ‘personalised sociality’ (N. Berdyaev). Objectivisation is against the personality. The universal lie in the personality and universal is not general; rather, it is concrete: *personality is universal*. Today, the liberal society produces a type of person that has the consumerist somnambulism and a banal uniformity. It creates nominalism in philosophy, a desire to relieve the person of any collective quality, in order to be prepared for a uniform and global market; the desacralisation of what has preserved the archetype of humanity, but sacralised the lobbies, media, markets, by simulating the consumers’ needs. The enemy of liberalism is the one who preserved the dimension of humanity.⁴⁶ According to Hegel, the road to the truth is also truth. Accordingly, the universal, national and local is an authentic and spontaneous feeling and a state of mind, whereas globalism has been imposed and controlled by the trained media (Chomsky) and this was a preferred template/scheme. The once modern model of multiculturalism has failed (e.g. the derelict of Ms. Merkel).⁴⁷ The two poles are also illustrated by the attitude of the famous “servant of truth”, professor Mihajlo Đurić, who claims that without patriotism there is no altruism, and August Šenoa, who claims that culture is only national when it is European.

4.2. Pedocentrism. The innovative solution of the FL of Serbia is that the child, after it turns 15, acquires absolute, sovereign, in no way relativised and undisputable rights. Concretely speaking, a child of 15 that is able to reason well has the right to decide independently on the selection of the secondary school they would attend. (For example, it may choose the one that is close to its love interest, even if it is obviously not talented for mathematics or music).⁴⁸ It may decide with which parent he/she would like to live. We may use a hyperbole: although one parent is the *epitome of virtue* – honourable and dignified, legitimately bonified and also a Red Star supporter and the other parent is the epitome of sin – member of an organised crime group who enjoys chemistry (but not in the scientific sense) and supports Partizan (like we do) – the child has the sovereign

⁴⁶See dr Željko Simić, *Preobražaji totalitarne svesti, prolegomena za sociologiju saznanja*, Beograd, 2006, 261–265, 456, 466–470.

⁴⁷On the relation between local and foreign cultural/legal models, see Jonathan Herring, *Family Law*, Exeter College Oxford University, Second edition, 2004, 26–28. In Serbia, it is not known whether the Law on the prohibition to wear turkish dresses (*zar*) and veils (*feredza*) of 1950 is still valid (see the B92 website, 4.2.2010). After the decision of the court in Cologne to forbid circumcision, the German Government decided otherwise in a law draft (B92 website, 10.10. 2012). On the traditional, customary practices, moral and cultural relativism, see T. Buck, *International Child Law*, London, New York, 2010, 40–42.

⁴⁸The earlier Law on Marriage and Family Relations of Serbia (Article 117) had a synthetical formulation: the capacities of parents were taken into account, along with the abilities, affinities and desires of children, whereas the FL of Serbia (Article 62, paragraph 2) takes the age of 15 to be the superior legal argument.

and unlimited right to opt for the “more interesting parent”. It may decide on a medical intervention (without hyperbole, it is easy to conclude that parents, since there is no quality TV content and the doctor, in order to increase the variable, do not suggest a medical intervention. In this case also, the accuracy of Fromm’s truth is confirmed, regarding the qualities of modern man and child – that they think about their interest, but that they act against their interest. As a rule, from the psychological point of view, it can be said that children think of their current interest, in this example on the interest to avoid medical intervention, which can in fact be the last and wrongly implemented right of a child). It is slightly strange that the absolute legal sovereignty of the child excludes even the advisory/informative conversation with their parents or their guardians and rests on the wrong *thought* that a child of 15 is the smartest subject in the legal cosmos. On top of this, the concept wrongfully excludes the idea of personal progress, since it implies that we have achieved our spiritual peak at the age of 15. It promotes the conflict of interest between the child and parents and the general and permanent assumption (since there is no legal procedure to deny such an assumption) on the imminent ill-will of parents toward their children. Therefore, the statement from Article 70 of the FL of Serbia regarding the fact that the relationship between children and their parents should be based on love and mutual respect becomes solely declarative/ineffective. If all of the subjects of the parental relationship were to be respected, including the solemn *declaration* of Article 70 of the FL of Serbia, the legal/law deduction would be e.g. that the parents and child can decide on a medical intervention according to their agreement.⁴⁹ In the event of disagreement in this relationship between two/three parties, the guardian body can provide assistance with advice in the end, if they are vastly enthusiastic about children’s rights, that the will of the child is legally perfect and perfected.

This is the time of the civilization’s paroxysm. In the shape of persiflage, as a panacea – a cure for everything, we are being offered the model that made us ill.

Faith is necessary. Simone Veil says: ‘*If man is left to oneself in contact with evil, then the man’s nothingness can be tested empirically.*’⁵⁰

⁴⁹On the degrees and ways of respecting the opinion of children, see Д. Мицковиќ, ‘Новата концепција на родителското право во европските земји’, *Годишник на Правниот факултет „Јустинијан Први“ во Скопје* – во част на Димитар Поп Георгиев, Скопје, 2006, 650 et pass.

⁵⁰See V. Jerotić, *Samo dela ljubavi ostaju*, Beograd 2004, 42.

Summary:

The author analyses the architecture of the notion of upbringing and imminent contradiction (act and process; moment and eternity, tradition and personal freedom, upbringing and self-upbringing). After the conclusion on the elements of the spirit of the time, the author presents the difference between two models of upbringing: spiritual and secular. Two contradictory issues are raised: on the relation of the universal and national and on the measure of child's legal capacity (from meaningful auto determination to pedocentrism).

***Key words:* Upbringing. Self-upbringing. Spiritual model. Secular model.**

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