Volume 8. Occupation and the Emergence of Two States, 1945-1961
The Chairman of the Conference of Catholic Bishops in Fulda, Cardinal Joseph Frings, on the Reorganization of the Marriage and Family Law (January 30, 1953)

The Protestant and Catholic churches were active participants in the West German debate in the early 1950s over reforming the provisions of the Civil Code that pertained to marriage and family law. The Catholic Church maintained that marriage and family were regulated by the natural order and were open to legal intervention by the state only to a limited degree. While Cardinal Joseph Frings, the bishop of Cologne, acknowledged the change in the status of women within society, he vigorously defended the "natural" pre-eminence of the husband and father in decisions regarding marriage and the family. He saw it as the only way to avoid a stalemate or state intervention from the outside.

[. . .]

We gratefully acknowledge that the basic attitude expressed in the 'Preface' to the official justification seeks to do justice to the Christian point of view. [. . .]

In several places in the government's draft, the proposed bill has been aligned with the aforementioned ideas in the 'Preface' to the official justification, especially when it comes to the provisions on parental authority (Paragraphs 1626ff.), in regard to which the official justification (p. 74) even refers clearly and unambiguously to the "natural and Christian ordering concepts." We fully appreciate – of course, without being able to speak to all the technical-legal details – the weight of this decision by the federal government and the expressed will to follow Christian principles. A similar position is also revealed – though less clearly – by the proposed version of Paragraphs 1354 and 1360, Section 3, of the draft. Moreover, the effort by the federal government in the area of marital property law to eliminate the previous deficiencies to the benefit of the wife is welcome. We also generally agree with the federal government that wherever sociological changes demand a change in the legal status of women that change should be implemented, provided that it does no harm to marriage and the family as communities of natural law.

IV.
However, for all our agreement with some proposals in the draft, we must raise a number of serious objections, since the aforementioned attitude laid down in the 'Preface' to the official justification was unfortunately not taken into consideration throughout the entire draft.

V.
In our view, the most far-reaching decision in the government's draft can be found in the fact that it proposes the incorporation of nearly all the provisions of the current 'marriage law' into the Civil Code. We must warn most seriously against such an approval of nuptial and divorce law regulations that were created by the National Socialists in 1938 and confirmed by the Allied Control Council in 1946. In accord with what was repeatedly explained recently, we are also of the opinion that these two sub-areas of marriage law must be subjected to a fundamental *reform.*

However, once the now valid regulations have been enshrined in the Civil Code, there is very little hope that this fundamental reform will be undertaken any time soon.

Moreover, Christian members of parliament cannot possibly be expected to vote for a regulation – even if it is initially perhaps merely a formally intended regulation – that they reject in their conscience.

We further point out that if all of marriage and divorce law is to be legally regulated, then it is imperative to negotiate with the Holy See, namely on the basis of Article 26 of the Reich Concordat. [. . .]

VIII.
It was already acknowledged that the government draft – in accordance with Christian beliefs – seeks to adhere in the future law to the *formulation of ordering principles* for marriage and the family. The necessity of such an adherence was spelled out in the repeatedly cited petition by the episcopacy of January 12, 1952.

All we can do is to reaffirm this position of ours once again, despite all the attacks that have been made against it in the meantime. We are – as Pope Pius XI declared authoritatively in the Marriage Encyclical (No. 28) – dealing with the "*basic law"* of marriage and the family "as decreed and affirmed by God Himself." The formulation "basic law" already lays bare the wrongful nature of the objections of those who believe that this is merely about an ethical demand and not about legally relevant questions. Like any other community, the marital and familial community demands a *legal authority* without which its existence is threatened – regardless of whether it is a "Christian marriage" or a "natural marriage." Ordering principles that are generally grounded in the nature of human beings and of human communities must be laid down in the law and must not be removed from it. The constitutional statement of Article 3, Section 2, of the Basic Law must also be interpreted in the sense of this given natural order.

In this order, man and woman are completely equal in the right to marital fidelity, marital intercourse, and marital life partnership. They are equal in the demand for the recognition of their dignity as human beings and for the preservation of the exercise of their unique functions in creating the shared life in marriage and family.

However, precisely for the last-named reason – for the sake of the welfare of the marriage and the family – they do not have the same right to make decisions on questions relating to the external arrangements of marriage and family life when these questions remain open in a given situation and when a decision must be made for the sake of the welfare of the marriage and the family; in this case, equal rights would mean the absence of a decision or the need for a decision from the outside. Here, the responsibility for the decision rests with the husband and father, in keeping with the natural order. [. . .]

The wife and mother, however, must be protected – more so than in German law to date – against the abusive exercise of the ordering authority of the husband and father; indeed, it should be expressly recognized that it is the *task* of the wife to assume the leadership of the family in the event that the husband fails. The Marriage Encyclical states: “If the husband does not do his duty, it is in fact the task of the wife to assume his place in the leadership of the family” (No. 28).

In line with this view, we fully approve of the emphasis on marital life partnership in Paragraph 1353 of the draft, just as we welcome that in other ways (Paragraphs 1354, 1626, 1627 E.) the duty of spouses and parents to seek joint decision-making is to be spelled out. We also approve of the fact that in both the spousal and parental arenas, the man still has the *obligation* to make the decision, if necessary, in cases where no agreement is reached, and that the man’s decision shall be valid, provided it is not rendered in an abusive fashion.

We do have concerns, however, that in the concluding sentence of Paragraph 1354 E., the husband’s decision-making authority, which was previously dealt with, is almost entirely abolished again, insofar as the draft grants the wife the possibility of accepting the husband’s decision as non-binding without further ado.

In our opinion, it is also appropriate – especially since the purpose of marriage is to produce a family – to adopt, in the sense of Paragraphs 1626 ff. of the draft and following, for example, Articles 212, 213 of the French Code Civil (in the version of 1942), *shared ordering norms for marriage and family*; whereby, however, in accordance with our belief, as already stated above, the wife and mother’s substitutionary marital and familial authority, which takes effect *by itself* if need arises, has to be expressed even more strongly than it is in Paragraphs 1626 ff. of the draft.

We regard the view held by majority of the *Bundesrat* as untenable and inconsistent; the *Bundesrat* recognizes the duty and obligation of the man to render the final decision in the parental area, but wants to completely eliminate this duty and obligation in spousal arena. One need only mention the important example of determining the place of residence to make clear that it is wrong to leave the husband with the final authority over his and the children’s domicile and abode, but to take from him the final decision about the domicile and abode of the wife and mother. [. . .]

Source: The Chairman of the Conference of Catholic Bishops in Fulda, Cardinal Joseph Frings, on the Reorganization of the Marriage and Family Law (January 30, 1953). Cardinal Frings' Petition to the German Bundestag from January 30, 1953. BA/Bestand Nachlaß Lüders; reprinted in Klaus-Jürgen Ruhl, ed., *Frauen in der Nachkriegszeit* [*Women in the Postwar Era*]. Stuttgart: Deutscher Taschenbuchverlag, 1988, pp. 171-75.

Translation: Thomas Dunlap