

Parentis aut in Loco Parentis
The Natural Law Basis of Home Schooling

The development of the public school system over the last century and a half in the United States¹ seems to have caused a shift in the understanding of the parent's role in education. Most people tend to assume the "normal" thing to do is to send their child to a public school or if one has the financial resources one may opt to send one's child to a private school. Catholics, in the United States, prior to the Second Vatican Council were often told that they had to send their child to a Catholic School under pain of mortal sin. No doubt this was done in order to avoid the lapsing into heresy by a child who is educated in a non-Catholic or even anti-Catholic public or private school system. For example, one reads in the *Radio Replies* that Catholic parents who send their child to a public school when a Catholic school is available "are violating a grave law of their religion."²

From time to time, therefore, traditional parents will ask the question whether they have a grave obligation to send their child to a Catholic school. Usually, this is asked in a context in which it is understood that the available Catholic schools are anything but Catholic. In fact, given the general state of Catholic schools in the United States, it seems that the normal course of advice is to indicate that sending a child to a Catholic school might be a grave violating of the laws of their religion. In other words, parents, who have a moral obligation to ensure the proper doctrinal training of their children, have a grave moral obligation *not* to send their child to a Catholic school which is not in accordance with Church teaching. Does this seem to violate the pre-Vatican II teaching that parents are morally obligated to send their child to a Catholic school? Moreover, where does this leave the Catholic who has opted to home school their child? Does this not violate the pre-Vatican rule as well? Moreover, what is the role of the state regarding the education of children? Is it the state's responsibility to see to your child's education? The answer to these questions is a bit complex since it includes a clear delineation of four areas of discussion, viz. 1) the distinction between civil and natural rights; 2) the natural law rights of the parents; 3) moral obligations of parents regarding

¹This article is written primarily to address the current state of affairs in the United States since the author is not familiar with the circumstances in other countries. However, the general principles to be delineated would still apply regardless of country.

²Rumble and Carty, *Radio Replies*, vol. 3, p. 327f., n. 1335 (TAN Books and Publishers, Inc., Rockford, Ill., 1979).

the proper religious instruction of their children, and finally; 4) a sorting out of mentalities that have arisen due to historical circumstances in the United States.

The Distinction between Natural and Civil Rights

A right is defined "as a moral or legal authority to possess, claim and use a thing as one's own"³ or the "inviolable power to do, hold, or claim something as one's own."⁴ In other words, a right is a moral claim of an individual of the authority over some thing. The primary term of importance is *authority*, for *authority* here means that the person has a moral claim to exercise or to act upon the thing over which he has authority by virtue of who or what he is. Consequently, it means that others must respect that authority which the person has over the thing. For example, a man who possesses a car has the right to do with the car as he pleases, for instance he can get it in an go for a drive if he wants, provided it does not infringe upon the rights of another. If he were to decided to drive the car at high speeds in a downtown area, he would be violating the rights of others over the own bodily well being.

Rights are either absolute or non-absolute, i.e. conditional. An absolute right is one which no individual has the authority to violate whatsoever while a conditional right is one which the right may be suspended or denied by a competent authority due to supervening circumstances. For example, a woman has a right over her body, but not an absolute right. For if she was to become pregnant the child has rights over his/her body and, consequently, the woman cannot abort the child. Since she does not have an absolute right over her own body due to the fact that the child now lays moral claim over her body granted to the child by God Who placed the child in her womb.⁵ In a

³*The Catholic Encyclopedia*, vol. XIII, p. 55 (The Gilmary Society, New York, 1913).

⁴Bernard Wuellner, S.J., *A Dictionary of Scholastic Philosophy*, p. 269 (The Bruce Publishing Company, Milwaukee, 1966).

⁵The cogency of this argument is based on the fact that since the woman does not have the right over the life of the child since she is not its author (i.e. she is not God) she cannot take the life of the child. Moreover, since she does not have the right of the child's life but is now the mother, the natural law obligations of motherhood come into force, viz. she now has an obligation to care for the child. Conversely, since she has an obligation to take care of the child, the child has the right to be taken care of. Since God designed the gestational processes to take place in the womb of the mother according to the natural law, it means the child now lays claim over the woman's body for next nine months since the woman has a natural law obligation to fulfill her motherhood as designed by the Providence of God. A simplistic way of looking at it is that since God created the person and placed it in the womb of the mother, that indicates that He

word, men and women do not have an absolute right over the bodies, only God does.

The distinction between a natural and civil right is based upon the source of the authority. A natural right is “a right coming to man from the author of nature and directly from the natural law for the fulfillment of duties of this law.”⁶ Whereas a civil right is an acquired right, i.e. “a natural or positive right obtained from a source other than the simple fact of possessing human nature,”⁷ in which the right is “recognized by human positive law.”⁸ To clarify, a natural right, also known as human right, is the right or authority one has been granted by God Himself by virtue of the fact that He made that individual according to human nature. In other words, when God made human beings, He had certain intentions in the way that He made him, consequently, the person has rights based upon God's making him the way He has, which expresses His intention and which means that God has given him authority over those things which pertain properly to his nature. The person, then, can exercise his rights because they have been granted to him by God by virtue of the fact that God gave Him that nature by which His intentions express what ought to be done. We see, therefore, that God gave each one of us a body and that our wills exercise a motive function over our bodies and as a result, we have a conditional right over our bodies. The right is conditional since by our bodies we can violate the rights of others and as a result usurp authority over others that does not properly belong to us by nature.

A civil right is one which is granted by positive human law, i.e. it is a right given to the individual by the state. This right, to truly be a right, must not violate any natural right. For since all authority is derived from God,⁹ the state can only exercise that authority over those things which

intended for the child to be there. This means the child has a right to be there because God placed him there. If the child has a right to be there, then the child has rights over the woman's body since that is the place where God has put him. The right of the child over the woman's body is, however, a conditional right. Just as the woman does not have a right over the child's life so the child does not have rights over the life of the mother. Consequently, if an ectopic pregnancy occurs, the child can be removed to save the mother's life provided that the action is not directly carried out on the child. Rather, the section of the fallopian tube must be removed since the woman has a conditional right over that part of her body and consequently she can remove it for the sake of her life even though the child will die as a consequence. But she cannot directly take the life of the child because she does not have rights over the body/life of the child.

⁶Ibid., p. 270.

⁷Ibid., p. 269.

⁸Ibid.

⁹See Prov. 8, 15 and Rom. 13, 1. See also ST I-II, q. 93, a. 3.

God has given them moral claim, i.e. principally and primarily the common good.¹⁰ Consequently, the rights granted by God to the state cannot contradict the rights granted to the individual, for that would imply contradiction in God's causality which is impossible. Therefore, the state cannot grant a right which is contrary to the natural law, without violating the Will of God. Nevertheless, a civil right is a right granted in addition to the natural rights of the person and the authority to grant those rights comes, again, from God who has entrusted the care of the common good to the civil authorities.

The Natural Rights of Parents

What, then, are the natural rights of the parents? The natural rights of parents flow from the nature of the conjugal act as regards to its remote end. According to St. Thomas, "the good of each thing is that it comes upon its end: moreover, its evil is that it turns aside from its due end."¹¹ The end of the conjugal act is two-fold, viz, the begetting of children and their proper education.¹² For we see that in animals that when, for the proper up bringing of the progeny, two parents are not necessary, the male does not remain with the female once the offspring are begotten. But with man, both the male and female are necessary for the sake of the material sustenance of the child as well as the proper education due to man which requires both the female and the male.¹³ One may say therefore that the proximate end of the act of coition, viz. the begetting of children would be impeded if the remote end is not served. That is to say that if the mother and the father do not both tend to the bringing of up the child, the child will suffer in some way.¹⁴

¹⁰Among others see ST I-II, q. 96, a. 1.

¹¹SCG III, c. 122. All translations are the author's unless otherwise stated. All translations of St. Thomas are based on the Leonine edition (*Thomae Aquinatis Opera Omnia*, Iussu Impensaue Leonis XIII, edita., Roma: ex Typographia Polyglotta et al., 1882).

¹²Ibid.

¹³Ibid.

¹⁴The fact that recent studies seem to indicate that homosexuals fail to establish a proper father-son relationship seems to bolster the notion that kids need both parents. Moreover, because of natural tendencies, mothers usually end up with the children in broken marital relations, consequently, it places a tremendous burden on the mother who normally should be devoting her psychological and emotional energies toward nurturing her children. The effect on the children is becoming more and more apparent on society as more and more and more mothers are forced to abandon their children

The actual begetting of the child only begins a process which is fundamentally ordered toward the completion of the individual person. So when the husband and wife beget the child, that begetting sets in motion a process through which the child passes until it reaches the age of majority and therefore can act on its own. This means that the end, perfection or completion of the person which is reached at majority is that toward which conjugal relations, i.e. the begetting of children is ordered. This we see is based upon the natural law which is part of Divine Providence¹⁵ which ordered the conjugal act itself to proper education of children.¹⁶ Therefore, one who has engaged in the conjugal act has a responsibility to see to completion the end for which his act is fundamentally ordered, i.e. parents, by virtue of their being parents, have the responsibility to educate their children which are the proper effect of their conjugal actions.

Therefore, since parents have a responsibility to educate their children by virtue of being parents, it means that they also have a right to do so. For if one has no moral claim or control of educating one's children, one could not have any responsibility in the matter. Yet, because parents have this responsibility, it means that others must respect that responsibility. On account of the fact that God has ordered the education of children to be the remote end of conjugal relations, it therefore means that those to whom He gives children, have been granted by Him the responsibility to take care of those children which means they must have some moral authority over them.¹⁷ By virtue of the fact that they have authority over their children, they thereby have rights over them; we conclude therefore that parents have fundamental rights over the education of their children which is based on the nature of the conjugal act, i.e. the natural law as determined by God.

Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary

for long periods throughout the day so that they can provide materially for them. Consequently, the moral and psychological health of the children, which requires a great deal of time and energy, suffers.

¹⁵Ibid.

¹⁶In light of what St. Thomas notes about the end of the conjugal act being the begetting of children and their education, it seems that fornication implies an inherent contradiction. It begets children in a way which is precisely the way you do not want children to be educated. In other words, children must be taught that fornication is disordered and yet they may have been brought about by that very disordered act.

¹⁷This right is not absolute and so for a sufficient reason can be contravened by those in charge of the common good of society.

and principal educators.¹⁸

Religious Instruction

The Second Vatican Council, along with many popes, affirms that since parents are the primary educators of their children they are also the primary catechists.¹⁹ Parents are:

First catechists because it is their duty to instill into their children, as it were with their first nourishment itself, the doctrine which they themselves have received from the Church. And *principle catechists*, because it pertains to parents to make sure that the principle matters of faith are learned from memory inside the family.²⁰

This means that the primary responsibility of ensuring the integrity and completeness of a child's religious formation falls first and foremost on the parents. This provides the principle by which we can determine whether the teaching that parents have a grave obligation to send their child to a Catholic school is correct or not.

First, let it be stated that there are various means by which parents can see to the proper religious formation of their child. Historically, it has taken three forms, viz. at home, at a Catholic school during a religion class and finally at a CCD (Confraternity of Catholic Doctrine) class provided by a parish for those students who did not attend the Catholic school for some reason. Given the Church's statements on the matter,²¹ it would appear that the best way to fulfill this is from within the home where the child would take his full religious instruction in the home. This would preserve a unity between the religious instruction and the proper living of it. When a child must take

¹⁸Vatican II, *Declaration on Christian Education*, no. 3 (Pauline Books and Media, 1994). The citations from the Church in this regard are numerous, e.g. among others see: Pius XI's encyclical letter *Divini Illius Magistri*, 1, p. 59ff., encyclical letter *Mit Brennender Sorge*, March 14, 1937: A.A.S. 29; Pius XII's allocution to the first national congress of the Italian Catholic Teachers' Association, Sept. 8, 1946: *Discourses and Radio Messages*, vol. 8, p. 218.

¹⁹See reference in the previous footnote.

²⁰Pope St. Pius X, *An Exhortation on Catechetics to Catholic Parents and Teachers*, no. 3 (as found in *Catechism of Christian Doctrine* ordered by Pope St. Pius X, edited by Eugene Kevane, Center for Family Catechetics, Arlington, VA 1980). Based on this teaching by Pope St. Pius X, diocesan policies which require children to attend CCD classes in order to receive the sacraments without making exceptions to those children who are adequately instructed at home violate the natural law rights of parents.

²¹See text of previous footnote.

his religious instruction outside the home, it tends to divide the religious instruction from the re-enforcement which is essentially found in the family for the proper living of the faith.

However, circumstances may be such that the parents cannot adequately provide for the child's religious instruction and the reason for it may be numerous. Nevertheless, if a child cannot receive the religious instruction fully from the parents, then the parents have an obligation to seek instructors or catechists who will see to the child's instruction. Consequently, if the parents are unable to fulfill the religious instructional requirement on their own, they would then have a grave obligation to place the child in a Catholic school.²²

Parental obligations are primarily with respect to the end and not the means. In other words, the begetting of children is ordered toward the child's perfection and if a particular means will aid more and guarantee the arriving at that perfection more than another, parents ought to employ that means. Moreover, if a means militates against the end of ensuring the child will receive a complete and orthodox education, then parents must avoid that means. Yet, responsibility to the means, while clearly being secondary, can still be grave.

Consequently, it seems that if parents cannot instruct their child fully, then they need to delegate that authority to someone who can. Catholic schools are better than mere CCD courses for two reasons. Given that the school is truly Catholic, it provides two things which simulate the family. The family provides constant instruction since the instructor or catechist is always present, so any questions the child may have can be answered immediately and not suspended until later when the child may lose interest. The second aspect is that the family provides an atmosphere in which the religious instruction can be lived and reinforced. In a truly Catholic school, there is a cultural atmosphere, if you will, which provides a Catholic context to the child's life. Moreover, since the child will go from the family, to the school, back to the family, there will be a somewhat continuous support to the child's religious frame of mind.

However, provided that the parents cannot do the instruction themselves and that no Catholic school is available, parents may then send their child to CCD. This implies that the child is either home schooled in secular or natural matters or is being taught in a public school. The public school

²²Again, modern circumstances have made this, in many places, morally impossible. It must be recalled that the parents primary obligation is to see to the complete and orthodox instruction of their child. This means that if parents know that the school in their parish or those Catholic schools available in their area are teaching things contrary to the faith, the parents have a moral obligation not to send their child to the school.

approach is the least desirous since the child will go for long periods of time away from a specifically Catholic "culture" or atmosphere, running the risk of moral and spiritual bad influences. If the child is sent to CCD, however, and the parents home school the child in natural or secular matters, the continuous Catholic atmosphere can be maintained. Consequently, the grave obligation to send one's children to a Catholic school only occurs when the parents are unable to give the child a complete education and provided that an orthodox Catholic school exists. Likewise, parents would be required to send their child to CCD if neither of the previous options is available.

Modern Mentalities

Cultural habits are a powerful type of intellectual formation. In our society, i.e. in the United States, in the last 150 years, the general tendency was for the state to build a school and parents to send their child there for instruction. Typically, in the past, many parents did not know how to read or if they did read, they lacked the pedagogical skills to teach the basic reading, writing and arithmetic to their children. Consequently, parents, who sought a better education for their children than they had, would happily send their child to a state school for instruction. Over the course of time, this practice grew to the point that it became the normal way of life. Catholics to counteract Protestant affected secular teaching, would often build their own schools, yet in either case, the general practice was to send the child to a school. This practice lead, at least implicitly if not explicitly, to the idea that it was the state's place to educate the child. No doubt. this idea has accelerated in acceptance by the influx of Marxist social teachings²³ in the colleges in the sixties and seventies.

Moreover, this mentality has become transformed into a certain ideology in which there is a seen an antagonism between the state's rights and the parental rights. It is believed that the right to educate children rests on the state and not the parents, and for the state to allow home schooling is merely a toleration. Very often legislation is proposed that would restrict the parent's educating

²³Karl Marx taught that it was the state's place to educate the children in the *Communist Manifesto*, chpt. 2.

their child.²⁴ Moreover, some see home schooling as a form of subsidiarity, viz. that a function which properly belongs to the state is delegated to the parents or the state allows the parents to take care of something which the state ultimately has a right over.

However, it must be remembered that for parents to educate their child is based on the natural law and therefore is a natural right and not a civil right; it is not a case of the state granting a right over and above the natural right. The state has a grave moral obligation to respect the natural rights of the parents regarding their children's upbringing. The parents may delegate the right to the state to educate their child, but like all delegation, it is based upon the will of the person delegating and not upon some right that the state may have. Consequently, the state acts in the place of the parents (*in loco parentis*) which means that the state's action is not of its own accord. Therefore, the parents have every right to retract that delegation at any time.

There is only one instance in which the state has a right to intervene regarding the natural law rights of the parents and that is when the parents are instructing the child to violate the natural law in such a way as to impinge upon the proper competence of the state, viz. the protection of the common good.²⁵ In other words, the state can stop parents if what the parents teach militates against the common good. Since it pertains to the state to protect the common good, if the parents do something which will affect the common good, the state can intervene.

Home schooling, therefore, has as its foundation the natural law itself. For it was the intention of God from the very beginning that parents should be the primary educators of their children. Consequently, parents who home school fulfil the will of their Creator in a most excellent fashion, for they not only provide the end which God intended when gifting them with children viz.

²⁴Very often this legislation is proposed under the guise of ensuring that children get a proper education but the actual intent behind the legislation is to expose the child to things which the legislator knows the parents will find objectionable, such as sex education, sensitive training to produce acceptance of homosexuality, etc.

²⁵Here, it must be stated that by common good, it must be understood as the good of the whole of the society as determined by the natural law, i.e. the Will of God. Governments who wish to force sex education do not have a right to do so since the end they seek is contrary to the common good. i.e. the natural law. It should be remembered that the government must conform itself to the natural law. It is only when it acts in accordance with the natural law that it can intervene in the affairs of the family since it is acting on the authority of God from whom the rights of the family proceed. However, if the state acts contrary to the natural law, it has no right to intervene in the affairs of the family since even the civil authorities, only has cogency insofar as it is derived from God. God has commanded man to act according to the natural law and human authority has authority insofar as it is in congruity with that command of God to act according to the natural law. Therefore, governments who act contrait to the nature law are not acting on the command of God and therefore have no authority with respect to the thing which is affected contrary to the natural law.

the necessary moral and natural education, but they also employ the best means to that end.²⁶ Consequently, home schooling should never see the need to justify its existence since parents who do so are fulfilling the Will of their Creator.

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²⁶It is very often proported that home schooling does not provide for the proper social education and outlet of children. "Studies" have been reported to say that children who attend day cares and go to public school are more socially adjusted. Yet, this is completely contrary, to the experience of the author as well as parents who home school. It must be questioned how home schooling could not be more socially effective. If God intended the parents to be the primary educators, He obviously intended the parents to their primary *social* educators. In fact, given the general state of public education, prescinding from its generally poor track record regarding providing a good education, it tends to be a place of very poor social formation. In fact, if a public school is employing sex education, the parents may be obligated to remove their child from the public school precisely because of the "social" dimension fostered there.