CIVIL LIABILITY FOR NON-COMPLIANCE WITH PARENTAL DUTIES

A RESPONSABILIDADE CIVIL POR INCUMPRIMENTO DAS RESPONSABILIDADES PARENTAIS

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ABSTRACT

From the Liberal to the Social State, Civil Law evolved from protecting private autonomy and patrimony to prioritizing human dignity and solidarity. Family Law ceased to be an untouchable nucleus and began to admit State intervention, regulating parental responsibilities as a power-duty. Debates persist regarding the limits of such interference and family autonomy, as well as the nature of parental responsibilities. Breach of these duties may give rise to civil liability, applicable to wrongful acts such as failure to provide support, domestic violence, omission of paternity, or transmission of diseases, thereby reinforcing the comprehensive protection of children and adolescents.

Keywords: Liberal State; Social State; Human Dignity; Parental Responsibility; Civil Liability.

RESUMO

Do Estado Liberal ao Social, o Direito Civil evoluiu da proteção da autonomia privada e patrimonial para a valorização da dignidade humana e solidariedade. O Direito de Família deixou de ser núcleo intangível e passou a admitir intervenção estatal, regulando responsabilidades parentais como poder-dever. Persistem debates sobre limites da ingerência e autonomia familiar, bem como sobre a natureza das responsabilidades parentais. O descumprimento desses deveres pode gerar responsabilidade civil, aplicável a ilícitos como falta de sustento, violência doméstica, omissão de paternidade ou transmissão de doenças, reforçando a proteção integral da criança e do adolescente.

Palavras-chaves: Estado Liberal; Estado Social; Dignidade Humana; Responsabilidade Parental; Responsabilidade Civil.

INTRODUCTION

While, in the Liberal State, the early Civil Codes—products of bourgeois thought—concentrated all regulation of the individual's civil life and prioritized non-intervention of the State in private relations and in the control of economic power, aiming to protect contractual freedom, autonomy of will, and property rights; the Social State sought to interfere in private order and in the regulation of economic power,

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pursuing the guarantee of a minimum existential standard for individuals or the means to achieve it.

Post-war social thought ushered in a new era of State intervention in private relations, resulting in significant changes in constitutional orders, which came to prioritize human dignity and the value of the human person.

Within this paradigm shift, the rules governing Family Law also began to reflect the prevailing social, moral, and religious conditions and models of each era, abandoning the notion of the family as an impermeable and untouchable nucleus, immune to corrective and guiding interventions by the State.

Nevertheless, although the idea of State intervention in private agreements and family relations has been consolidated, controversies persist regarding the limits of such interference in contrast with the autonomy of the family entity; as well as the tension between the exercise of parental authority and the recognition of the child's value within the parent-child relationship.

In this context, the need arises to question the breakdown of the traditional conception of parental authority or parental responsibilities. It is essential to analyze whether these consist of a power or an assignment, whether rights and duties within the family nucleus are impermeable or not; and to consider the child's condition as a rights-bearing subject, and thus whether subordination is absent or present in the relationship between parents and children.

Beyond the indispensable understanding of these issues, another crucial inquiry emerges: What is the limit of State interference in family relations as opposed to its immunity?

Given the relevance of parental responsibilities, the purpose of this study is to conduct an explanatory bibliographic analysis of parental responsibility and the potential duty to compensate children for harm caused by the failure to fulfill primary and accessory legal duties arising from parental authority.

Thus, in addressing civil liability for breach of legal duties inherent to parental authority, the generating fact to be analyzed consists of parental responsibilities, which subsist only during minority, although their consequences may manifest after the attainment of civil majority.

Moreover, it will be necessary to establish the applicability of general civil liability rules within Family Law, based on the breach of a pre-existing legal duty, thereby

granting it a legal foundation and abandoning the outdated conception that the basis for unlawful acts in parent-child relations would be confined to abstract moral values and laden with emotionality.

Accordingly, this study will outline the general framework of the constitutionalization of Civil Law, with the consequent State intervention in family relations, as a reflection of the transition from the Liberal State to the Social State. It will then analyze the legal protection afforded to the family institution within the Luso-Brazilian legal system.

Finally, the study will address the elements of civil liability for breach of duties arising from parental authority (voluntary act of the agent: action or omission of the parents; unlawfulness; culpability: intent or negligence of the agent causing the harm; damage; and causal nexus).

Equally important, some behaviors that may be considered civil wrongs and give rise to the duty to compensate—frequently encountered in forensic practice—will be examined. These include, among others, the failure to voluntarily acknowledge paternity, default in fulfilling the duty of support, the abusive exercise of parental authority through acts of domestic violence, illnesses contracted and transmitted by parents, and other violations.

1. THE PHENOMENON OF THE CONSTITUTIONALIZATION OF FAMILY LAW: BRIEF NOTES ON STATE INTERVENTION IN FAMILY RELATIONS

As a Portuguese colony, prior to the Civil Code of 1916, the Brazilian legal system was governed by the provisions contained in the *Ordenações Filipinas*. The first Brazilian Civil Code (Law No. 3,071) was published on January 5, 1916, and came into force on January 1, 1917. Inherited from the Napoleonic Code, the dichotomy between public law and private law was evident at the time.

The Federal Constitutions in force during the Liberal State essentially addressed the division and structure of powers and guaranteed only the so-called first-generation rights, according to which individual liberty was to be respected by the State. These were eminently political charters, lacking normative force, since they depended on legislative action to acquire applicability.

Strongly influenced by the nineteenth-century Napoleonic Code, the early Civil Codes—products of bourgeois thought—concentrated all regulation of the individual's

civil life and emphasized non-intervention of the State in private relations and in the control of economic power, aiming to safeguard contractual freedom, autonomy of will, and property rights.

The Brazilian Civil Code inherited from the French Civil Code of 1804 an eminently patrimonial and individualistic character, which extended to Family Law. Emotional aspects of family relations were deemed irrelevant. Family was legitimized only when constituted by marriage; distinctions were drawn between children born outside wedlock; hierarchy and patriarchy governed family life; marriage was indissoluble; and non-marital unions were considered immoral.

The nuclear family was composed of spouses and biological children born within marriage (a triangular relationship). The man exercised the role of head of the conjugal society, holding legal representation of the family, administering common property and, when authorized, the woman's separate property under the matrimonial regime or antenuptial agreement. He also had the right to determine the family domicile and the duty to provide for its maintenance.

The indissolubility of marriage implied that affectivity was disregarded; the individual was bound perpetually to the status of married, by virtue of a legal bond previously established, unless choosing to live on the margins of society. Moreover, the indissoluble, hierarchical, marriage-based family served to ensure that the wealth accumulated by the bourgeoisie, dominant at the time, would not be transferred to individuals of other social classes.

On the other hand, industrialization and capitalism gave rise to evident and tangible disparities among social classes and, consequently, to the conception of the need for State intervention in private relations in order to guarantee social justice—a need that intensified after World War I. Alongside this, scattered legislation emerged, primarily regulating economic matters.

In this context, diverse legal microsystems arose, gradually weakening the centralization of codified civil legislation. Constitutional recognition of so-called second-generation rights—social rights—also emerged. Thus, albeit timidly, the State began to interfere in private order and in the regulation of economic power. The interventionist social ideology gradually took root, aiming to guarantee individuals a minimum existential standard or the means to achieve it.

With the advent of third-generation rights, grounded in solidarity and fraternity, human dignity and the value of the human person attained, in some legislative systems, the status of constitutional principles. This led to greater public intervention in private relations, while also imposing upon the State the duty to observe and comply with the very norms it had established. The aim was to prevent the repetition of atrocities committed during wartime against individuals, under the pretext of legitimate State action based on public interest.

Such State intervention stemmed from the need to confer effectiveness upon fundamental and social constitutional rights, not only in the relationship between individual and State—but also in relations between private parties. Both were deemed essential to the stability of public order, given the recognition that imbalance between parties may also occur in relations of an eminently private nature.

2. WITHIN THE SCOPE OF FAMILY LAW

Starting from the premise that the family is the first social environment in which the individual establishes social bonds—whose consequences will have both immediate and long-term effects on society—and further, that human beings are more likely to achieve personal fulfillment within the family when affective ties are strong, ties which are not necessarily derived from biological connections, society gradually abandoned the notion of family as merely a unit for the constitution and transmission of patrimony.

2.1. The Family and Its Legal Protection in the Luso-Brazilian Legal System

The Federal Constitutions of Brazil of 1934, 1937, 1946, and 1967, under the strong influence of Canon Law, although not defining the concept of family, recognized it only as that constituted through marriage, which was considered indissoluble (art. 144, art. 124, art. 163, and art. 167, §1, respectively).

It was during the transition from the Liberal State to the Social State, with the Federal Constitution of 1934, that the family first received legal protection under the supreme law. However, it was the Federal Constitution of 1988 that most clearly embodied an interventionist, protective, and regulatory function in Family Law, serving as a true foundation of validity and guidance in the interpretation of family law norms.

Although containing rights considered to be of the third generation, the 1988 Constitution does not define the family; nevertheless, it recognizes it as constituted by

marriage (art. 226, §1), by stable union (art. 226, §3), and by the community formed by either parent and their descendants (art. 226, §4). Thus, the State's protection extended not only to families formed by blood relations but, above all, to those expressed through a spiritual and life communion.

Without delving deeply into constitutional matters, it is clear that the 1988 Constitution does not restrict the concept of family to those formed by marriage, stable unions, or single-parent families; it merely lists them as forms of constitution. Accordingly, the types of family entities mentioned in the constitutional text are illustrative, allowing for other forms of family constitution to arise through infraconstitutional norms. Similarly, the Brazilian Civil Code of 1916 also presented only forms of legitimate family constitution, established through marriage and, additionally, through biological and legal ties (adoption).

The Statute of the Child and Adolescent (Law No. 8,069/90) defines the natural family as the community formed by the parents—or either of them—and their descendants; and the extended or enlarged family as that which extends beyond the parents-and-children unit or the couple's unit, formed by close relatives with whom the child or adolescent lives and maintains ties of affinity and affection (art. 25).

More recently, the Federal Supreme Court, through landmark rulings in ADI No. 4,277/DF and ADPF No. 132/RJ, recognized the existence of stable unions between same-sex individuals, termed homoaffective unions, granting them the status of family entities. This conferred a new legal dimension to Article 1,723 of the Brazilian Civil Code.

Given the absence of infraconstitutional legislation on the matter, the National Council of Justice, on May 14, 2013, issued Resolution No. 175, which administratively regulated the licensing and celebration of civil marriage, or the conversion of stable unions into marriage, between same-sex individuals.

3. THE EFFECTS OF FILIATION

The natural parent-child relationship arises, in the legal sphere, from a juridical fact *strictu sensu* which, in this case, occurs through a biological event. Biological filiation is constituted with the birth of a child alive. However, the effects of filiation or kinship are only legally recognized once filiation is formally established through the registration of birth, which has merely declaratory effect. Accordingly, the effects of filiation retroact to the date of the individual's birth.

Once filiation is constituted and registered, legal effects emerge concerning both the child and the parents. As a primary effect, there is the personal, inalienable, and imprescriptible right to filiation itself, which consists in the recognition by the legal order of belonging to a family unit, with the consequent identification not only of the parents but of the entire ancestry. This is the right to seek one's lineage.

The right to know one's biological origin constitutes a general personality right and derives from the principles of human dignity and the free development of personality. The right to personal identity encompasses the set of characteristics by which the individual defines their personality and distinguishes themselves from others. Deprivation of knowledge of one's origin prevents the full development of personality.

To guarantee the right to knowledge of biological origin, Article 48 of the Statute of the Child and Adolescent (ECA) grants adoptees the right to access the data contained in their adoption proceedings upon reaching 18 years of age; or, if younger, with legal and psychological assistance. It is important to note that the exercise of this right does not dissolve the kinship established by adoption, which remains inviolable and irrevocable (art. 39, §1 of the ECA).

Filiation also gives rise to the right to a name and to descent—understood broadly, not restricted to parents alone—which form part of the right to personal identity.

Parental responsibilities and parent-child duties likewise arise as effects of filiation. Once paternity and/or maternity are established, parents are legally bound to strictly comply with their duties toward their children while the latter remain civilly incapable. These duties persist even after the attainment of civil capacity, through majority or emancipation, and are grounded in the constitutional principle of solidarity, encompassing respect, support, and assistance.

Under the patriarchal conception of family, the repealed Civil Code provided that during marriage, although parental authority belonged to both parents, it was exercised by the husband with the collaboration of the wife; in case of disagreement, the father's decision prevailed, with the mother retaining the right to appeal to the courts (art. 380 of the 1916 Civil Code). This revealed a clear subordination of all family members to paternal will.

With the advent of the new legal order imposed by the 1988 Federal Constitution, which established equality between men and women in acquiring rights and obligations (art. 5, I), the current Civil Code and the Statute of the Child and

Adolescent abandoned the expression *pátrio poder* (“paternal power”) and adopted *poder familiar* (“parental authority”), discarding the notion of male predominance over women, even within the family (art. 1,631 of the Civil Code and art. 26 of Law No. 8,069/90).

Analyzing the legal provisions concerning the exercise of parental authority, it is clear that the duties imposed are intended to benefit the vulnerable person, ensuring their physical, mental, moral, spiritual, and social development under conditions of freedom and dignity (art. 227 of the Constitution and art. 3 of the ECA), as well as the administration of their property.

Thus, parental authority essentially consists of representing the incapable child and administering their assets. It unfolds in two dimensions: a) the personal aspect, encompassing custody, education, and discipline; b) the patrimonial aspect, concerning the administration and usufruct of the child’s property.

It must be emphasized that, regarding patrimonial matters, parents, as administrators of their minor children’s property, have the right to use and enjoy such assets; otherwise, they would be equated with ordinary employees. This assertion is clearly reflected in the Portuguese Civil Code, which distinguishes parental responsibility in relation to the personal sphere (arts. 1,885 to 1,887-A) and the patrimonial sphere, which includes the duty-power of administration and representation.

The term currently adopted in the Brazilian system (*poder familiar*) proves inadequate, since the duties arising from filiation imposed on parents do not constitute a “power,” which misleadingly suggests discretion, subordination, and self-interest. Rather, the expression *parental responsibility* is more appropriate, as it conveys the imposition of a duty exercised in the interest of another.

4. PARENTAL RESPONSIBILITY AS A POWER-DUTY: THE EXERCISE OF A DUTY ORIENTED TOWARD THE INTEREST OF ANOTHER

With the emergence of the new postmodern legal reality—marked by the *depatrimonialization* and *publicization* of civil law, in which pluralism of subjects is recognized and the individual is prioritized over their property—legal instruments began to acknowledge the equality of rights and obligations between men and women. This eliminated the notion of paternal authority prevailing over maternal authority, while the expression *pátrio poder* (“paternal power”) was replaced by *poder familiar*

("parental authority") in the 2002 Civil Code. In the Portuguese legal system, *paternal power* was likewise replaced by *parental responsibilities* (Law No. 61/2008).

It is observed, therefore, that the duty of one party and the right of another merge into a single legal provision, within a homogeneous context, whereby the parent's duty to fulfill obligations corresponds to the child's right to receive them, granting the child the right of action in case of parental omission.

In this regard, José Casalta Nabais (2017, p. 295) points out that the fundamental duties of parents—maintenance and education of their children—constitute a complex configuration, as they simultaneously represent a right-duty of parental freedom correlated with the rights of the child. He further notes that such duties have positive content, encompassing both obligations to act (*facere*) and obligations to provide (*dare*).

Thus, the conception of the family as an institution gives way to the perception of the family as an instrument for realizing individual dignity. Accordingly, all members of the family entity are granted rights and duties—often fused into a single legal provision—making them subjects of the relationship and holders of subjective rights. In this sense, the child, as an incapable subject of rights and no longer the object of the parental relationship, becomes the focus of parental responsibilities, which are exercised in pursuit of the child's best interests, the predominant element in this legal relationship of filiation.

In the current context, parental authority or responsibility does not constitute merely a power, since its exercise does not involve only rights or faculties of action. Nor does it consist solely of a duty, as it is not limited to the imposition of legal obligations. Rather, it is a *power-duty*, a duty exercised in the interest of another, combining authority with responsibility.

5. CHARACTERISTICS OF PARENTAL RESPONSIBILITY

The power-duty of parents is aimed at protecting civilly incapable individuals and promoting their dignity, ensuring their physical, intellectual, and moral development. From this perspective, the specific values of parental authority—paternal authority and filial obedience—do not carry a material character but rather serve as instruments to safeguard and protect the personality rights of minors.

The exercise of parental authority is strictly personal to the parents, as it is their exclusive responsibility (art. 1,634 of the Brazilian Civil Code and art. 1,878(1) of the

Portuguese Civil Code). This characteristic functions as a guarantee for both children and parents, insofar as it secures their right to exercise this duty.

Since parental authority derives from filiation, it is an irrenounceable duty (art. 1,882 of the Portuguese Civil Code), as there is no option not to exercise it. It is also intransmissible, given that those invested with parental authority cannot deliberately transfer such responsibility to another.

Furthermore, because the norms governing parental authority are imperative and of public order, parents are not permitted to negotiate or alter the content of the duties and responsibilities imposed. These rights and duties are neither acquired nor lost through prescription.

The functional nature of parental authority highlights its connection to the purpose it serves, though not to the specific means employed, which are generally chosen by the parents. In other words, within the legal relationship between parents and children, parents are granted discretion in how they educate and raise their children, but this freedom is limited by the overriding interest of the vulnerable child. Additionally, parental authority based on minority is characterized by transience, beginning at birth and ending upon the attainment of civil majority.

As Jorge Duarte Pinheiro (2011) explains, filiation—a form of kinship—gives rise to both parent-child duties and parental responsibilities, except in cases where such responsibilities are legally or judicially conferred upon third parties.

While parent-child duties endure throughout the existence of the filial relationship, parental responsibilities are temporary, persisting only during minority and ceasing when the child reaches civil majority (art. 5 of the Brazilian Civil Code and art. 130 of the Portuguese Civil Code). Thus, parent-child duties and parental responsibilities coexist during minority, with the latter extinguished upon majority or emancipation.

In Brazil, parent-child duties are enshrined in art. 229 of the 1988 Federal Constitution. They consist of obligations to assist, raise, and educate children, reinforced by parental responsibilities listed in art. 1,634 of the Civil Code and art. 22 of Law No. 8,069/90. In Portugal, parent-child duties—which persist even after majority or emancipation—are set forth in art. 1,874(1) of the Civil Code, establishing that parents and children owe each other mutual respect, support, and assistance.

Support encompasses the principle of family solidarity (not limited to material aid but including moral support), while assistance refers to financial maintenance.

The duty of upbringing consists of parents providing their children with the necessary means to ensure their physical, intellectual, and moral development. This includes daily care, safety, and health protection. From this duty arise other legal rights-duties essential to its fulfillment, such as custody, education, and companionship, without which the healthy development of the child cannot be achieved.

In the realm of education, parents hold both the right and duty to educate their children (art. 227 of the Brazilian Constitution and art. 36(5) of the Portuguese Constitution). This encompasses defining and implementing intellectual, spiritual, moral, and professional training, ensuring access to education.

Education, as a process of socialization and acculturation, also entails the parents' right to exercise reasonable and moderate correction, pedagogical in nature rather than punitive. In turn, children owe obedience and respect, consisting of compliance with lawful orders issued by their parents in the exercise of their authority.

Another attribute of parental authority is the duty of companionship and custody (art. 1,634(II) of the Brazilian Civil Code), which reflects the fundamental right to family life (art. 227 of the Brazilian Constitution) and the Portuguese constitutional principle of inseparability of parents and children (art. 36(4) of the CRP).

From the duties of companionship and custody arise the determination of domicile and the child's right to remain in the parental home or in the residence designated by the parents. Parents, or in urgent cases those entrusted with the child, may reclaim the child, appealing to the courts or competent authority if necessary, should the child abandon or be removed from the home (art. 1,187 of the Portuguese Civil Code).

The exercise of companionship and custody, and the consequent determination of domicile, depends on the marital situation of the parents. As a general rule, both parents share this responsibility, though specific legal provisions apply in cases of separation, limitation, suspension, or termination of parental authority.

It is important to note that in cases where no marital relationship exists between the parents, custody granted to one does not limit or exclude the parental power-duty of both.

Linked to companionship and custody is the duty of visitation. This consists of periodic meetings, established consensually or judicially, allowing the non-custodial

parent to exercise their responsibilities, except in exceptional circumstances where incompatibility with the child's best interests is proven.

Personal contact between parents and children realizes the constitutional prerogative of family and community life (art. 227 of the Brazilian Constitution). It is fundamental to the formation and development of the child's personality, and therefore must be regarded as a legal duty, not merely a discretionary right.

CIVIL LIABILITY IN THE LEGAL RELATIONSHIP BETWEEN PARENTS AND CHILDREN

Members of the family unit—holders of constitutional guarantees—enjoy both rights and legal duties. Parents are granted the right to have their children in their company, to educate and raise them; while children are guaranteed the right to have a family (biological or substitute), preferably composed of their parents, to receive education and support, and, given their vulnerable condition, to have the exercise of parental responsibilities directed toward their best moral and social interests.

Failure to fulfill parental responsibility by parents—or third parties entrusted with such duties—may result in serious psychological, moral, and social consequences involuntarily borne by the child, constituting a violation of human dignity rights (art. 1(II) of the Brazilian Federal Constitution and art. 1 of the Portuguese Constitution). It is said to be involuntary because the child, as a vulnerable party, is shaped by the education received from family members and lacks the means to resist parental neglect, being left only to absorb and endure it.

The notion of harm immediately invokes the concept of civil liability, which arises from the need to compensate damages. Thus, the duty to repair (art. 927 of the Brazilian Civil Code and art. 483 of the Portuguese Civil Code) falls upon whoever, through an unlawful act (arts. 186 and 187 of the Brazilian Civil Code and art. 483 of the Portuguese Civil Code), causes harm to another.

Each situation must be carefully and individually assessed, since not every breach of parental responsibility constitutes a civil wrong, and not every civil wrong results in compensable damage—especially when questionable acts occur in highly emotional environments, where impersonal relations are not the norm.

The role of those exercising parental authority is so significant that it justifies considerable State intervention, ensuring the acquisition of rights and imposing minimum duties within family relations and between family members and society.

Failure to comply with parental duties may generate moral, emotional, and social consequences for children, who, as victims, lack the means to prevent such neglect of care. For illustration, the National Institute of Science and Technology for Public Policies on Alcohol and Other Drugs (INPAD) published partial results of a study on violence among children and adolescents and drug use. It concluded that exposure to physical and psychological abuse in childhood leads to negative outcomes in adulthood, including increased predisposition to depression and problematic use of psychotropic substances.

In Brazil, civil liability in Family Law faces three main objections. The first is the alleged absence of specific legal provisions authorizing civil liability in unlawful family relations. Yet, despite legislative inertia, it must be acknowledged that the absence of specific rules does not preclude the application of general civil liability principles to family relations.

Moreover, both art. 186 of the Brazilian Civil Code and art. 483 of the Portuguese Civil Code are unrestricted in scope. Thus, the lack of express regulation and absence of limitation lead to the application of a general theory of civil liability.

It would be implausible to exclude compensation for damages in family relations, since before patrimony comes the individual, who must be fully protected, including as a means of upholding human dignity.

Civil sanctions such as suspension or loss of parental authority do not replace or exclude the possibility of compensation, as their primary purpose is to safeguard the child's integrity by ensuring care and education through other means, not to compensate for harm caused by parental neglect.

Family measures aim to prevent the breakdown of institutional balance, seeking to preserve it where possible or provide alternative solutions. Their purpose is remedial, not compensatory or punitive.

Civil liability rests on a general clause: it does not necessarily presuppose unlawfulness, but rather the existence of damage, with compensation as its consequence. Criminal liability, in contrast, is based on the principle of typicity: it always presupposes unlawfulness, with punishment as its consequence, shaped by the crime and the offender.

Furthermore, the fact that wrongful conduct occurs within the family, specifically in the parent-child relationship, cannot serve as grounds for civil immunity. Nor can the

argument that compensation would reduce parental patrimony and thereby prejudice other heirs, since civil compensation is not equivalent to succession law's anticipation of inheritance.

Analogical extension of marital immunity to parent-child relations is also unfounded. If marital immunity is relative—allowing compensation for civil wrongs—then even more so should immunity be restricted in filial relations, given the vulnerability of children as rights-holders. Equality of treatment must prevail.

No immunity can legitimize the violation of fundamental constitutional rights. On the contrary, civil wrongs committed within the family must be subject to civil liability rules, and the familial context should aggravate, not mitigate, responsibility.

It is also implausible that legal protection among family members should be inferior to that afforded when the same harm is caused by a third party. Thus, there is no legal prerogative legitimizing unlawful acts or damages inflicted upon family members under the guise of family immunity.

Excluding Family Law from general civil liability rules does not preserve family harmony, since harmony is incompatible with civil wrongs. It is not the duty to compensate that disrupts family peace, but the wrongful act itself, which necessarily entails civil liability.

Another objection concerns the alleged absence of a legal duty to love, and the claim that lack of affection cannot give rise to civil liability. Indeed, affection is not a legal duty, as love is an abstract, subjective element, while law requires a minimum of objectivity to be effective. Civil liability in family relations between parents and children is therefore grounded in the breach of the duty of care, not in the absence of love.

This means that fulfilling one parental duty does not exempt compliance with others. For instance, punctual payment of child support does not absolve the parent from providing psychological assistance or enabling family life. All parental duties are interconnected, and each, considered individually, is indispensable to the proper development of children and adolescents.

FINAL CONSIDERATIONS

Industrialization and the capitalist system brought about the need for greater State intervention in private relations, with the aim of ensuring social justice and reducing inequalities among social classes. Alongside this need, scattered legislation emerged, primarily regulating economic matters, culminating in the proliferation of

diverse legal microsystems, which gradually weakened the centralization of codified civil law.

Within this context of the constitutionalization of Civil Law, the principle of social solidarity was consolidated and, together with the process of *depatrimonialization*, the dignity of the human person came to be prioritized over patrimony.

In this constitutional paradigm shift, Constitutions assumed a unifying role within the legal system, composed of various diversified microsystems, thereby allowing permeability, communication, and integration between public and private norms contained in the different sectoral statutes that form the legal order.

As a consequence of the *depatrimonialization* and *publicization* of civil law, parental responsibilities came to be recognized as mandatory norms of public order, possessing the legal nature of true rights-duties, given the peculiar bilateral and reciprocal character of the relationship they contemplate.

From the parent-child relationship arise effects such as the personal, inalienable, and imprescriptible right to filiation itself, which encompasses the right to seek one's ancestry, as well as the effects of parental responsibilities and parent-child duties.

Parental responsibility is not a dead letter of the law, devoid of practical effect. The perception of normative evolution, together with the understanding of the insertion of certain legal provisions into the broader legal context, and the integrated study of constitutional norms with other scattered legislation, leads to the conclusion that parental responsibility is not a utopia exercised at will, but rather a duty oriented toward the best interests of the vulnerable child.

Since the Brazilian and Portuguese legal systems are not closed systems, the principle of specialty must be rejected. In the absence of specific legal provisions, there is no rule that prevents or limits the application of general civil liability principles to family relations.

Although civil liability is recognized within Family Law, in analyzing the occurrence of an unlawful act, it is necessary to consider the criteria of attribution, while also weighing the circumstances of the case against the standard of the reasonable person. Hypersensitivity must be rejected, excluding conduct that falls within the scope of permissible risk—that is, the general risks of life, understood as the dangers that every human being must endure when living in society.

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