

Published in John Witte, Jr. and Gary S. Hauk, eds., *Christianity and Family Law: An Introduction* (Cambridge: Cambridge University Press, 2017), 195-210

Chapter 12

Martin Luther

Steven Ozment and John Witte Jr.¹

Abstract

Former Augustinian monk Martin Luther (1483-1546) rejected the canon law rules of clerical and monastic celibacy as a dangerous denial of God's soothing gift of marriage to remedy lust. He rejected the church's sacramental theology of marriage as a self-serving biblical fiction, and instead called marriage a social estate of earthy life, open to Christians and non-Christians alike. And he rejected the church's legal control over the family, and instead called for the state to govern family law and the church to offer pastoral care to families and catechesis for children. The new state family laws that emerged in Lutheran lands in response incorporated many traditional canon law and Roman law rules. But they also now called for mandatory parental consent, two witnesses, civil registration, and church consecration for valid marriages; strongly encouraged clerical marriage; greatly reduced the impediments to betrothal and marriage; permitted interreligious marriages; created new structures for the catechesis and education of children; and allowed for divorce in cases of serious fault, and remarriage for the innocent party. Luther's views remained foundational for later Protestants into the twenty-first century and were critical parts of the family law reforms of early modern times.

Keywords: Martin Luther; Protestant Reformation; marriage; family; monasticism; celibacy; marriage; divorce; parentage; children; remarriage; canon law; civil law; three estates theory; church and state; women's rights; procreation; children; education; catechesis

Biographical Introduction

¹ This text is based on a short draft chapter that Steven Ozment prepared before becoming too infirm to continue the work. It draws further on Steven Ozment, *When Fathers Ruled: Family Life in Reformation Europe* (Cambridge, MA: Harvard University Press, 1983) and Steven Ozment, *Ancestors: The Loving Family in Old Europe* (Cambridge, MA: Harvard University Press, 2001) as well as John Witte Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002).

Martin Luther (1483–1546), the fiery German theologian, sparked the Protestant Reformation of church, state, and society that eventually broke into Lutheran, Calvinist, Anabaptist, and Anglican forms. Luther studied law briefly before he entered an Augustinian monastery in 1505. While there, he studied theology and some canon law, first at the University of Erfurt, then at the new University of Wittenberg. After taking his doctorate in 1512 from Wittenberg, Luther stayed on as a theology professor for the rest of his life. From his lectern and accompanying Wittenberg pulpit, he began to attack the medieval Catholic Church and its theological and canon law system. In 1517 he posted his Ninety-Five Theses challenging the church's theology of sin, salvation, and the sacraments, then defended his views in several sensational debates and pamphlets. He burned the medieval canon law books in 1520 and issued a long and bitter broadside on *The Babylonian Captivity of the Church*, under the tyranny of the pope, whom Luther called the Anti-Christ.² For those and other scandalous actions, including the renunciation of his monastic vows, Luther was excommunicated by the pope and nearly executed by the emperor at the Diet of Worms in 1521. He escaped back to Saxony, hiding for two years in the Wartburg Castle before resuming his public professorial and pastoral duties in Wittenberg.

From 1515 to 1545, Luther issued a torrent of writings that fill nearly one hundred thick folio volumes.³ These included a famous German translation of the Bible; sundry biblical commentaries and sermons; church liturgies and songs; church laws, catechisms, and confessional tracts; polemical writings and table talks; formal consilia and private letters; various pamphlets and two dozen substantial tracts on legal, political, economic, and social reforms. Included among the latter were five major tracts on marriage,⁴ two on celibacy and monasticism,⁵ and two more on establishing public schools for children.⁶ Many of Luther's other writings also included marriage and family themes, and he worked closely with scores of other distinguished theologians and jurists to reform German family law.

Luther's early preoccupation with marital reform was driven in part by his theology. Many of the core theological issues of the Protestant Reformation were implicated by the prevailing Catholic theology and canon law of sex, marriage, and family life. The Catholic Church's jurisdiction over marriage, for example, was for Luther

² In *Luther's Works*, Jaroslav Pelikan and Helmut T. Lehmann, eds., 55 vols. (St. Louis, MO: Concordia, 1955–1968), 31:394. [hereafter LW].

³ *D. Martin Luthers Werke: Kritische Gesamtausgabe*, repr. ed., 78 vols. (Weimar: H. Böhlau, 1883–1987) [hereafter WA]; *D. Martin Luthers Werke: Tischreden*, 6 vols. (Weimar: H. Böhlau, 1912–21) [hereafter WA TR]; *D. Martin Luthers Werke: Briefwechsel*, 18 vols. (Weimar: H. Böhlau Nachfolger, 1930–72).

⁴ *A Sermon on the Estate of Marriage* (1519), in LW 44:3–14; *The Estate of Marriage* (1522), in LW 45:11–49; *On Marriage Matters* (1530), in LW 46:259–320. See also *The Persons Related by Consanguinity and Affinity Who Are Forbidden to Marry According to the Scriptures, Leviticus 18* (1522), in LW 45:3–9; and *That Parents Should Neither Compel nor Hinder the Marriage of Their Children and That Children Should Not Become Engaged Without Their Parents' Consent* (1524), LW 45:379–93.

⁵ *The Judgment of Martin Luther on Monastic Vows* (1521), LW 44:243–400; *An Answer to Several Questions on Monastic Vows* (1526), LW 46:139–54.

⁶ *To the Councilmen of All Cities in Germany That They Establish and Maintain Christian Schools* (1524), LW 45:339–78; *A Sermon on Keeping Children in School* (1530), LW 46:207–58.

a particularly flagrant example of the church's usurpation of the magistrate's authority. The Catholic sacramental concept of marriage, on which the church predicated its jurisdiction, raised deep questions of sacramental theology and biblical interpretation. The canonical prohibition on marriage of clergy and monastics stood sharply juxtaposed to Lutheran doctrines of the priesthood and Christian vocation. The thick tangle of impediments to marriage, the church's prohibitions against complete divorce and remarriage, and its close regulations of sexuality all stood in considerable tension with Luther's views of civil and religious freedom. That a child could enter marriage without parental permission or church consecration betrayed, in his view, the basic responsibilities of family, church, and state to minor children.

This early preoccupation with family reform was also driven, in part, by Luther's social theory. Luther saw an ascending divine order of creation, running from the family (*paterfamilias*), to the state (*paterpoliticus*), to the church (*patertheologicus*).⁷ These three orders and offices (*drei Stände*) were created by God and stood equal before God and before each other. Each was called to discharge essential tasks in the earthly kingdom without interference from the others. The reform of the family, therefore, was as important as the reform of the church and the state. Indeed, marital reform was even more urgent, said Luther, for the marital household was the "oldest," "most primal," and "most essential" of the three social estates, even though it was the most deprecated and subordinated of the three in his day. The marital family is the "mother of all earthly laws," Luther wrote, the first school of justice and mercy, the incubator of religion and morality, and the first site of education, charity, and social welfare. Indeed, "marriage pervades the whole of nature," Luther wrote.⁸ A total reformation of church, state, and society must thus begin with the family.

Finally, the Lutheran reformers' preoccupation with family law reform was driven by the Catholic Church courts. A number of early leaders of the Reformation faced aggressive prosecution for grave violations of the canon law of marriage and celibacy. Among the earliest Protestant leaders were ex-priests and ex-monastics who had forsaken their orders and vows and often married shortly thereafter. Indeed, one of the acts of solidarity with the new Protestant cause was to marry or divorce in open violation of the canon law and in defiance of a bishop's instructions. This was not just an instance of crime and disobedience. Catholic authorities regarded this as outright blasphemy, particularly when an ex-monk such as Brother Martin Luther married an ex-nun such as Sister Katherine von Bora in 1525, a *prima facie* case of double spiritual incest. As Catholic Church courts began to prosecute these canon law offenses, Protestant theologians and jurists rose to the defense of their coreligionists.

Marriage versus Celibacy

Luther trained some of his initial reformist attack on the mandatory celibacy of monastics and clerics. Drawing on his own and his wife, Katherine's, bitter experiences

⁷ See a variation on this theory by later German theologian Emil Brunner, in chapter 23 herein.

⁸ WA TR Nos. 7, 3528; WA 30/1:152 WA 49:297ff.; WA 2:734; LW 44:81ff.

with monastic life, Luther rejected the medieval church's subordination of marriage to celibacy and its elevation of spiritual contemplation over corporal action. We are all sinful creatures, he argued. Lust has pervaded the conscience of everyone. Marriage is not just an option, it is a necessity for sinful humanity. For without it, a person's distorted sexuality becomes a force capable of overthrowing the most devout conscience. A person is enticed by nature to concubinage, prostitution, masturbation, voyeurism, and other sinful acts. "You cannot be without a [spouse] and remain without sin," Luther thundered from his Wittenberg pulpit. You will test your neighbor's bed unless your own marital bed is happily occupied and well used.⁹

"To spurn marriage is to act against God's calling . . . and against nature's urging," Luther continued. The calling of marriage should be declined only by those who have received God's special gift of continence. "Such persons are rare, not one in a thousand [later he said one hundred thousand] for they are a special miracle of God."¹⁰ The Apostle Paul has identified this group as the permanently impotent and eunuchs; very few others can claim such a unique gift. To require celibacy of clerics, monks, and nuns was thus beyond the authority of the church and ultimately a source of great sin. Celibacy was a gift for God to give, not a duty for the church to impose. It was for each individual, not for the church, to decide whether he or she had received this gift. By demanding monastic vows of chastity and clerical vows of celibacy, the church was seen to be intruding on Christian freedom and contradicting scripture, nature, and common sense. By institutionalizing and encouraging celibacy, the church was seen to prey on the immature and the uncertain. By holding out food, shelter, security, and economic opportunity, the monasteries enticed poor and needy parents to oblate their minor children to a life of celibacy, regardless of whether it suited their natures. Mandatory celibacy, Luther taught, was hardly a prerequisite to true clerical service of God. Instead, it led to "great whoredom and all manner of fleshly impurity and . . . hearts filled with thoughts of women day and night."¹¹

The same was true for cloistered women, Luther continued. "[A] woman is not created to be a virgin" but to marry, "to conceive, and to bear children." When "young, foolish, and inexperienced girls" are obliterated in nunneries, they grow up to find themselves without help in the most difficult struggle of their lives, namely, the suppression of their sexual nature, something even women armed with God's true Word and special grace seldom conquer. Luther believed that only "unmerciful" parents and friends and "blind and mad" bishops and abbots would permit young women to suffer and waste away in chaste cloisters. Luther thus encouraged and praised the "rescue" of nuns, by family and friends who would raid the cloisters and release the "imprisoned" nuns. In a pamphlet titled *Why Nuns May Leave Cloisters with God's Blessing* (1523), Luther compared these rescues to Moses's deliverance of the children of Israel from

⁹ LW 54:31.

¹⁰ LW 28:912, 27–31; LW 45:18–22.

¹¹ LW 12:98.

Egyptian bondage.¹² Several times, he helped publish (and sometimes prefaced) the letters and testimonies of former nuns, monks, and priests who had forsaken their vows and escaped their cloistered lives.¹³ Unlike some other Protestant reformers, however, Luther did not countenance violence against nuns and monks who wished to stay, and he urged the authorities to keep the monasteries open until their last survivors had passed away.¹⁴

While he thought chaste monasticism should be allowed to die a natural death, Luther also thought that the celibate clergy should be replaced with married priests and bishops. Luther concurred with the Apostle Paul that a celibate person “may better be able to preach and care for God’s word.” But, he immediately added, “It is God’s word and the preaching which makes celibacy—such as that of Christ and of Paul—better than the estate of marriage. In itself, however, the celibate life is far inferior.”¹⁵

Not only is celibacy no better than marriage for clergy, but clergy are no better than laity. Luther rejected traditional teachings that the clergy were higher beings with readier access to God and God’s mysteries. He rejected the notion that clergy mediated the channel of grace between the laity and God through the sacraments, preaching, and prayer. Sounding his famous doctrine of the priesthood of all believers, Luther argued that clergy and laity were fundamentally equal and that all persons had direct access to God through conscience, prayer, and worship.

Luther’s doctrine at once “laicized” the clergy and “clericized” the laity. He treated the traditional clerical office of priest, deacon, or bishop as just one vocation alongside many others that a conscientious Christian could pursue. He treated all traditional lay offices as forms of divine calling and priestly vocation, each providing unique opportunities for Christian service. Preachers and teachers in the church must carry their share of civic duties just like everyone else. And they should participate in earthly activities such as marriage and family life just like everyone else. Indeed, church ministers were to be exemplars of marriage and family life. The minister’s household was to be a source and model for the right order and government of the local church, state, and broader community.

The Goods and Gifts of Marriage and Family Life

Luther was utterly conventional in teaching that marriage was created by God as a “two-in-one-flesh” union between a man and a woman with the freedom, fitness, and capacity to marry each other. Marriage was designed for the mutual love and support of husband and wife, the mutual protection of both parties from sexual sin, and the mutual

¹² Martin Luther, *Ursach und antwort das iunkfrawen kloster gottlich verlassen mugen* (Wittenberg: n.p., 1523), A3b–A4b.

¹³ See examples in Ozment, *When Fathers Ruled*, 9–25; Witte, *Law and Protestantism*, 59–64.

¹⁴ LW 45:169–72, 341.

¹⁵ LW 45:47.

nurture and care of their children.¹⁶ Virtually all adults, clerical and lay alike, are called to marriage, Luther argued, because this institution offers two of the most sublime gifts that God has accorded to humanity—the gift of marital love and the gift of children.

Luther wrote exuberantly about this first gift. “Over and above all [other loves] is marital love,” he wrote. Marital love drives husband and wife to say to each other, “It is you whom I want, not what is yours. I want neither your silver nor your gold. . . . I want only you. I want you in your entirety, or nor at all.’ All other kinds of love seek something other than the loved one: this kind wants only to have the beloved’s own self completely.”¹⁷ Luther wrote, “There’s more to [marriage] than a union of the flesh. There must [also] be harmony with respect to patterns of life and ways of thinking.”¹⁸

The chief virtue of marriage [is] that spouses can rely upon each other and with confidence entrust everything they have on earth to each other, so that it is as safe with one’s spouse as with oneself.

. . . God’s Word is actually inscribed on one’s spouse. When a man looks at his wife as if she were the only woman on earth, and when a woman looks at her husband [as] if he were the only man on earth; yes, if no king or queen, not even the sun itself sparkles any more brightly and lights up your eyes more than your own husband or wife, then right there you are face to face with God speaking.¹⁹

Luther did not press these warm sentiments to the point of denying the traditional leadership of the paterfamilias within the marital household. Luther had no modern egalitarian theory of marriage. But Luther also did not betray these warm sentiments to the point of becoming the grim prophet of patriarchy, paternalism, and procreation that some modern critics make him out to be. For Luther, love was a necessary and sufficient good of marriage. He supported marriages between loving couples, even those between younger men and older women beyond childbearing years, or between couples who knew that they could have no children.²⁰ He stressed repeatedly that husband and wife were spiritual, intellectual, and emotional partners, each to have regard and respect for the strengths of the other. He called his own wife, Katherine, respectfully “Mr. Kathy,” and said more than once of her, “I am an inferior lord, she the superior; I am Aaron, she is my Moses.” He repeatedly told husbands and wives alike to tend to each other’s spiritual, emotional, and sexual needs and to share in all aspects of child-rearing and household maintenance—from changing their children’s diapers to

¹⁶ See detailed sources in John Witte Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2d ed. (Louisville, KY: Westminster John Knox Press, 2012), 119–35.

¹⁷ WA 2:167; see also WA 13:11; WA 17/2:350ff.

¹⁸ WA TR No. 5524; LW 54:444.

¹⁹ Quoted by Scott Hendrix, “Luther on Marriage,” *Lutheran Quarterly* 14/3 (2000): 335–50. See also LW 31:351ff.

²⁰ See, e.g., WA TR Nos. 4, 5212; LW 2:301ff.

helping their children establish their own new homes when they had grown up.²¹ And he encouraged wives to pursue their own careers within and beyond the home with the support of their husbands. Luther's wife, Katherine, succeeded at several careers of her own alongside raising their six children. She expanded their home, a former cloister, into a boarding house, profitably expanded its vegetable gardens, and repaired and operated the cloister brewery, producing beer good enough to be served at the Saxon elector's court.

In addition to the divine gift of love, marriage also sometimes bestowed the divine gift of children. Luther thought of procreation as an act of cocreation and coredemption with God. He wished for all marital couples the joy of having children, not only for their own sakes but for the sake of God as well. Child-rearing, he wrote, "is the noblest and most precious work, because to God there can be nothing dearer than the salvation of souls. . . . Most certainly, father and mother are apostles, bishops, [and] priests to their children, for it is they who make them acquainted with the Gospel."²²

This last image—of parents serving as priests to their children—was a new and further application of the Protestant doctrine of the priesthood of all believers. It further softened the hard medieval distinction between a superior clergy and a lower laity. The care and education of children fell not only to the natural parents, however. Luther and his fellow reformers called on priests (as *patertheologica*) in local churches to catechize children as they prepared for a full life of communion, and the reformers produced a welter of catechisms and confessional books to facilitate this instruction. They also called on magistrates (as *paterpolitica*) to create state-run schools for the religious and civic education of all children, boys and girls alike. For the reformers, each child was called to a unique Christian vocation, and it was the responsibility of the parent, priest, and prince alike to ensure that each child was given the chance to discern his or her special gifts and prepare for the particular vocation that best suited those gifts. This teaching drove the creation of public schools in Protestant lands, now under the authority of the state rather than the church. Luther's close Wittenberg colleague, Philip Melancthon, the so-called teacher of Germany, developed educational materials and laws and called the public school a "civic seminary" that allowed families, churches, and states to cooperate in imbuing civic learning and spiritual piety in children.²³

While Luther instructed children to love, honor, and obey their parents, as the Bible required, he railed against parents (and guardians) who abused their children or neglected parental duties. He devoted a special tract to counseling parents and grown-up children who were ready for marriage. Luther insisted that valid marriages required parents to consent to their children's budding unions. But he condemned the outrageous injustice of parents arbitrarily withholding their consent or bullying their children into unwanted marriage. Children should appeal to secular authority for justice

²¹ WA TR Nos. 4910, 5041, 5189.

²² LW 45:46.

²³ See Witte, *Law and Protestantism*, 257–92.

if their parents thwarted their heart's desire. Here Luther stood on traditional ground, since throughout the Middle Ages boys and girls of canonical age (fourteen and twelve) had the right, however infrequently exercised, to dissent formally from unwanted arranged marriages. If a formal appeal to secular authority did not bring a positive result, then Luther advised unhappy children to do as Christians in the past had done when tyrannized—pack up, flee to another land, and there marry at will. Luther believed that parents had a basic duty to provide good marriages for all their children; each father was “duty bound to get his child a good mate who will be just right for him, or who seems to be just right for him.” If parents ignored this responsibility, or forced on their children unwanted spouses, then children could, in good conscience, take matters into their own hands. In matters of marriage, as in matters of faith, Luther opposed bullying the heart and conscience.²⁴

Marriage is Not a Sacrament but a Social Estate

While marriage was a creation and gift of God for the couple and their children, it remained a social institution of the earthly kingdom, not a sacrament of the heavenly kingdom. Marriage was, in Luther's words, “a natural order,” “an earthly institution,” “a secular and outward thing.”²⁵ “No one can deny that marriage is an external, worldly matter, like clothing and food, house and property, subject to temporal authority, as the many imperial laws enacted on the subject prove.”²⁶

To be sure, Luther agreed, marriage can symbolize the mysterious union of Christ and the church, as St. Paul wrote in Ephesians 5:32. The sacrifices that husband and wife make for each other and for their children can express the sacrificial love of Christ on the cross. A “blessed marriage and home,” can be “a true church, a chosen cloister, yes, a paradise” on earth. But these analogies and metaphors do not make marriage a sacrament on the order of baptism and the Eucharist. Sacraments are God's gifts and signs of grace ensuring Christians of the promise of redemption, which is available only to those who have faith. Marriage carries no such promise and demands no such faith. “[N]owhere in Scripture,” writes Luther, “do we read that anyone would receive the grace of God by getting married; nor does the rite of matrimony contain any hint that the ceremony is of divine institution.” Scripture teaches that only baptism and the Eucharist (and perhaps penance, the early Luther allowed) confer this promise of grace. All other so-called sacraments are “mere human artifices” that the church has created to augment its legal powers and to fill its coffers with court fees and fines.²⁷

The Catholic Church, Luther continued, has based its entire sacramental theology and canon law of marriage on a misunderstanding of Ephesians 5:32, which

²⁴ LW 45:338–92; WA TR Nos. 185, 5541.

²⁵ LW 21:93.

²⁶ LW 46:265.

²⁷ LW 36:11, 92–98; 44:85.

reads: "This is a great mystery, and I am applying it to Christ and the church." The Greek term *mysterion* in this passage means "mystery," not "sacrament," said Luther. St. Jerome had just gotten it wrong a millennium before, when he translated the Greek word *mysterion* as the Latin word *sacramentum* in the first Latin translation of the Bible, the Vulgate. The Catholic Church has gotten it wrong ever since. In this passage, St. Paul is simply describing the loving and sacrificial union of a Christian husband and wife as a reflection, an echo, a foretaste of the perfect mysterious union of Christ and his church. But that analogy does not make marriage a sacrament that confers sanctifying grace. The Bible is filled with analogies and parables designed to provide striking images to drive home lessons: "Faith is like a mustard seed": it grows even if tiny. "The kingdom of heaven is like yeast": it leavens even if you can't see it. Or "the Son of man will come like a thief in the night": so be ready at all times for his return. The marriage analogy is similar: "Marital love is like the union of Christ and the church": so be faithful and sacrificial to your spouse. Ephesians 5 is not divining a new sacrament, Luther insisted, but driving home a lesson about marital love.²⁸

Moreover, Luther argued, it made no sense for the Catholic Church to call marriage a sacrament without giving the clergy a role in this sacrament or providing a mandatory liturgy of preparation and celebration. Neither the husband nor the wife can be a cleric if they seek marriage in the Catholic Church. Yet, regardless of what they know or intend, canon laws says that these two laypersons perform a sacrament just by making a present promise to marry, or making a future promise to marry and then having sex. And that purported sacramental act binds them for life. This just piles fiction upon self-serving fiction, Luther concluded. The Catholic Church forbids its clergy to marry because marriage is a natural association beneath them in dignity. Yet the church pretends that marriage is a sacrament even if the clergy do not participate in its formation or if the marriage does not take place in the church. "This is an insult to the sacraments," Luther charged. The church's real goal, he said, is jurisdictional not theological in declaring marriage to be a canonical sacrament. There is no valid biblical or theological basis for this claim.²⁹

Denying the sacramental quality of marriage had dramatic implications for how a marriage should be formed, maintained, and dissolved. First, the Lutheran reformers argued, there should be no formal religious or baptismal tests for marriage. Medieval canon law required that marriages be contracted only between baptized Christians in good standing with the church. Luther rejected this. Parties would certainly do well to marry within the faith for the sake of themselves and their children. But this is not an absolute condition. Religious differences should not be viewed as an impediment to a valid marriage or a possible path to annulment, but a challenge to be more faithful within marriage and to induce proper faith in each other.

²⁸ LW 36:97ff.

²⁹ Ibid.

[M]arriage is an outward, bodily thing, like any other worldly undertaking. Just as I may eat, drink, sleep, walk, ride with, buy from, speak to, and deal with a heathen, Jew, Turk, or heretic, so I may also marry and continue in wedlock with him. Pay no attention to the precepts of those fools who forbid it. You will find plenty of Christians—and indeed the greater part of them—who are worse in their secret unbelief than any Jew, heathen, Turk, or heretic. A heathen is just as much a person—God’s good creation—as St. Peter, St. Paul, and St. Lucy, not to speak of slack or spurious Christians.³⁰

Second, because marriage was not a sacrament, divorce and remarriage were licit, and sometimes even necessary. To be sure, the reformers, like their Catholic brethren, insisted that marriages should be stable and presumptively indissoluble. But this presumption could be overcome if one of the essential marital goods were chronically betrayed or frustrated. If there were a fundamental breach of marital love by one of the parties—by reason of adultery, desertion, or cruelty—the marriage was broken. The innocent spouse who could not forgive this breach could sue for divorce and remarry. If there were a failure of procreation—by reason of sterility, incapacity, or disease discovered shortly after the wedding—the marriage was also broken. Those spouses who could not reconcile themselves to this condition could end the marriage, and at least the healthy spouse could marry another. And if there were a failure of protection from sin—by reason of frigidity, separation, desertion, cruelty, or crime—the marriage was again broken. If the parties could not be reconciled, they could divorce and seek another marriage.³¹ In each instance, divorce was painful, sinful, and sad, and it was a step to be taken only after ample forethought and counsel. But it was a licit and sometimes an essential step to take. Divorce and remarriage were strictly prohibited in Catholic circles; they became options for broken marriages among Lutherans and other Protestants.

Third, because marriage was not a sacrament, it also did not belong primarily within the jurisdiction of the church. Medieval canon law and church courts governed most aspects of marital formation, maintenance, and dissolution. Luther and his colleagues pushed much of the regulation to the secular law and state courts. Luther underscored this several times in his sermons and instructions to fellow pastors:

First, we [pastors] have enough work to do in our proper office. Second, marriage is outside the church, is a civil matter, and therefore should belong to the government. Third, these cases [of marital dispute] have no limits, extend to the height, the breadth, and the depth, and produce many

³⁰ LW 45:25.

³¹ WA Br 3:288-290; WA 15:558ff.

offences that bring disgrace to the gospel. . . . [W]e prefer to leave this business to civil officials. The responsibility rests on them. Only in cases of conscience should pastors give counsel to godly people. Controversies and court cases [respecting marriage and family life] we leave to the lawyers.³²

This did not mean that marriage was beyond the pale of God's authority and law, nor that it should be beyond the influence and concern of the church. "It is sheer folly," Luther opined, to treat marriage as "nothing more than a purely human and secular state, with which God has nothing to do."³³ Marriage and family remain important public concerns, in which church officials and members must still play a key role. Luther and other reformers took seriously the duty of pastoral counseling in marriage disputes that raised matters of conscience. As pastors themselves, Luther and other reformers issued scores of private letters to parishioners who came to them for counsel. Moreover, as theologians they taught and preached God's law and will for marriage and the family, and pressed for reforms when prevailing family laws violated God's law. Furthermore, to aid church members in their instruction and care, and to give notice to all members of society of a couple's marriage, the local parish church clerk was to develop a publicly available marriage registry which all married couples would be required to sign. The pastors and teachers of the local church were to instruct and discipline the marriages of its members by pronouncing the public bans of betrothal, by blessing and instructing the couple at their public church wedding ceremony, and by punishing sexual turpitude or egregious violations of marriage law with public reprimands, bans, or, in serious cases, excommunication. Finally, it was incumbent upon all members of the church to participate in the spiritual upbringing and counsel of all new children, as their collective baptismal vows required.

The Lutheran Reformation of Family Law

While the church still had a role to play in the guidance and governance of marriage and family life, chief legal authority now lay with the Christian magistrate, Luther insisted. The civil magistrate holds authority from God. The magistrate is to reflect God's will and God's law, while ruling in ways that respect God's creation ordinances and institutions. The magistrate's civil calling is no less spiritual than that of the church. Marriage is thus still completely subject to godly law, but this law is now to be administered by the state, not the church.

This new Lutheran marital theology logically and inexorably led to the creation of a new state law of the family in Lutheran lands. Just as the act of marriage came to

³² WA TR No. 4716; LW 54:363–64. See also WA TR No. 3267; LW 54:194.

³³ LW 21:95.

signal a person's conversion to Protestantism, so the marriage act promulgated by a local city or territory came to symbolize a community's acceptance of Protestantism. Hundreds of new state marriage acts or ordinances emerged in Lutheran Germany and Scandinavia in the first decades of the Reformation.³⁴ The secular authorities were assisted in this policy by Luther's view that secular princes were "emergency bishops" responsible for religious reform. Luther called upon magistrates to establish civil statutes and civil courts to adjudicate family conflicts. It took more than a century for Lutheran lands in Germany and Scandinavia to transition fully to a state-run family law. But the state and its civil law, not the church and its canon law, were the new legal rulers of marriage and family life.

The new Protestant state laws, however, took over a number of basic principles and rules of marriage and family life inherited from medieval canon law, classical Roman law, and ancient Mosaic law. A typical sixteenth-century state law in a Lutheran city or territory still treated marital formation as a two-step process, first of engagement, then of marriage. A valid engagement and marriage contract required the mutual consent of a man and a woman who had the age, fitness, and capacity to marry each other. Marriage was a presumptively permanent union that triggered mutual obligations of care and support for the spouses, their children, and their dependents. Marriage often involved complex exchanges of betrothal gifts and dowry and triggered presumptive rights of dower and inheritance for widow(er)s and legitimate children. Marriages could be annulled on the discovery of various impediments and upon litigation before a proper tribunal; in the event of dissolution, both parents remained responsible for the maintenance and welfare of their children, and the guilty party bore heavy financial obligations to the innocent spouse and children alike. All these assumptions remained common both to the new Protestant civil laws and to the traditional Catholic canon laws and Roman civil laws of marriage.

But the Lutheran Reformation also made crucial legal changes—beyond the critical shift of marital jurisdiction from the church to the state. Because the reformers rejected the subordination of marriage to celibacy, they rejected laws that forbade clerical and monastic marriage, that denied remarriage to those who had married a cleric or monastic, and that permitted vows of chastity to annul vows of engagement and marriage. Because they rejected the sacramental nature of marriage, the reformers rejected impediments of crime and heresy and prohibitions against divorce in the modern sense. Marriage was for them the community of the couple in the present, not their sacramental union in the life to come. Where that community was broken by one of the parties, the innocent spouse could sue for divorce. Because persons by their lustful natures were in need of God's remedy of marriage, the reformers removed numerous legal, spiritual, and consanguineous impediments to marriage not countenanced by

³⁴ Most of these laws are collected in Emil Sehling, ed., *Die evangelischen Kirchenordnungen des 16. Jahrhunderts* (Leipzig: O.R. Reiland, 1902–13), vols. 1–5, continued under the same title, ed. Anneliese Sprenger-Ruppenthal (Tübingen: Mohr, 1955–), vols. 6–25. For overviews, see Hartwig Dieterich, *Das protestantische Eherecht in Deutschland bis zur Mitte des 17. Jahrhunderts* (Munich: Claudius Verlag, 1970); Ozment, *When Fathers Ruled*, 25–99; Witte, *From Sacrament to Contract*, 136–54.

scripture. Because of their emphasis on the godly responsibility of the prince, the pedagogical role of the church and the family, and the priestly calling of all believers, the reformers insisted that both marriage and divorce be public. The validity of marriage promises depended upon parental consent, witnesses, church consecration and registration, and priestly instruction. Couples who wanted to divorce had to announce their intentions in the church and community and petition a civil judge to dissolve the bond. In the process of marriage formation and dissolution, therefore, the couple was subject to God's law, as appropriated in the civil law, and to God's will, as revealed in the admonitions of parents, peers, princes, and pastors.

Luther was deeply involved in crafting and advocating these legal reforms in the first two decades of the Reformation. He eventually attracted a whole coterie of other theologians, moralists, and jurists to teach these reforms in the universities, and to implement them—city by city, territory by territory—in the more than two hundred polities of the Holy Roman Empire that converted to the Lutheran cause as well as the Nordic lands that eventually established Lutheranism. Because of all these changes, marriages in Lutheran lands were easier to enter and exit. Family life was more public and participatory. Wives and children were afforded greater rights and protections. Abused spouses were given a way out of miserable homes. Divorcees and widow(er)s were given a second chance to start life anew. Ministers were married, rather than single, and called to exemplify and implement the ideals of Christian marriage and sexual morality in their own parsonages. Many of the legal reforms of marriage introduced by the Lutheran reformers would remain at the heart of the German and broader Western legal tradition until the twentieth century.

But not all was sweetness and light in the Lutheran Reformation of domestic life. Yes, Luther did regard marriage as an essential remedy for lust and a singular pathway for procreation of children. But these sentiments led him and his fellow reformers several times to countenance polygamy for spouses caught in loveless or sexless marriages or incapable of having children. In our day, these early Protestant precedents have provided important platforms for the modern case for the pluralization of marriage.³⁵ Yes, the Protestant reformers did outlaw monasteries and cloisters. But these reforms also ended the vocations of many single women and men, placing a new premium on the vocation of marriage. Ever since, adult Protestant singles have chafed in a sort of pastoral and theological limbo, objects of curiosity and pity, even suspicion and contempt. These are stigmata which adult singles still feel today in more conservative Protestant churches, despite new singles ministries to help them. Yes, the Protestant reformers did remove clerics as mediators between God and the laity, in expression of St. Peter's teaching of the priesthood of all believers. But they ultimately interposed husbands between God and their wives, in expression of St. Paul's teaching of male headship within the home. Ever since, Protestant married women have been locked in a bitter struggle to gain fundamental equality both within the marital household

³⁵ See John Witte Jr., *The Western Case for Monogamy over Polygamy* (Cambridge: Cambridge University Press, 2015), 205–18.

and without—a struggle that has still not ended in more conservative Protestant communities today.³⁶

Recommended Readings

Dieterich, Hartwig. *Das protestantische Eherecht in Deutschland bis zur Mitte des 17. Jahrhunderts*. Munich: Claudius Verlag, 1970.

Frassek, Ralf. *Eherecht und Ehegerichtsbarkeit in der Reformationszeit*. Tübingen: Mohr Siebeck, 2005.

Harrington, Joel F. *Reordering Marriage and Society in Reformation Germany*. Cambridge: Cambridge University Press, 1995.

Hendrix, Scott. "Luther on Marriage." *Lutheran Quarterly* 14/3 (2000): 335–50.
_____. "Masculinity and Patriarchy in Reformation Germany." *Journal of the History of Ideas* 56 (1995): 177–93.

Lazareth, William. *Luther on the Christian Home*. Philadelphia: Muhlenberg Press, 1960.

Lindberg, Carter. "The Future of a Tradition: Luther and the Family." In *All Theology is Christology: Essays in Honor of David P. Scaer*. Edited by Dean O. Wenthe, et al. Fort Wayne, IN: Concordia Theological Seminary Press, 2000.

Luther, Martin. *Luther's Works*. Edited by Jaroslav Pelikan and Helmut T. Lehmann. 55 vols. St Louis, MO: Concordia, 1955–68.

Ozment, Steven. *Ancestors: The Loving Family in Old Europe*. Cambridge, MA: Harvard University Press, 2001.

³⁶ See Ozment, *When Fathers Ruled*, 50–79.

_____. *When Fathers Ruled: Family Life in Reformation Europe*. Cambridge, MA: Harvard University Press, 1983.

Stjerna, Kirsi Irmeli. *Women and the Reformation*. Malden, MA: Blackwell Publishers, 2009.

Witte, John Jr. *Law and Protestantism: The Legal Teachings of the Lutheran Reformation*. Cambridge: Cambridge University Press, 2002.

Wunder, Heide. *He is the Sun, She is the Moon: Women in Early Modern Germany*. Translated by Thomas Dunlap. Cambridge, MA: Harvard University Press, 1998.