

Draft

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Protestant Teachings on Sex, Marriage and the Family

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Sex, marriage, and family life were one of the hotly contested issues of the sixteenth-century Protestant Reformation and one of the first institutions to be reformed. The leading Protestant theologians of the sixteenth century — Martin Luther (1483-1546) and Philip Melanchthon (1497-1560), John Calvin (1509-1564) and Martin Bucer (1491-1551), Thomas Cranmer (1489-1556) and Heinrich Bullinger (1504-1575) — all prepared lengthy tracts on the subject in their first years of reform. Scores of leading jurists took up legal questions of marriage in their legal opinions and commentaries, often working under the direct inspiration of Protestant theology and theologians. Virtually every city and territory on the Continent that converted to the Protestant cause in the first half of the sixteenth century had new marriage laws on the books within a decade after accepting the Reformation. And, it was Henry VIII's "great marriage affair" with Catherine that prompted the English break with Rome.

The Protestant reformers' early preoccupation with marriage was partly driven by their reaction to the prevailing Catholic sacramental theology and canon law of marriage that had dominated the West for the prior half millennium. The medieval Catholic Church's jurisdiction over marriage was, for the reformers, a particularly flagrant example of the church's usurpation of the state's authority. The Catholic sacramental concept of marriage, on which the church predicated its jurisdiction, was for the reformers a self-serving theological fiction. The canonical prohibition on marriage of clergy and monastics ignored the Bible's teachings on sexual sin and the Christian vocation as the reformers understood them. The church's intricate rules governing sexual desire and expression, even within marriage, were seen a gratuitous insult to God's gift of marital love and an unnecessary intrusion on private life and Christian conscience. The canon law's long roll of impediments to

¹ For detailed sources covered in this summary article, see my volumes, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2d enl. ed. (Louisville, KY: Westminster John Knox Press, 2012), chaps. 3-8; *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002), 177–256; *Sex, Marriage and Family in John Calvin's Geneva*, 2 vols. (Grand Rapids, Mich.: Wm. B. Eerdmans Publishing Co., 2005, 2014) (with Robert M. Kingdon); *To Have and to Hold: Marrying and its Documentation in Western Christendom, 400-1600* (Cambridge: Cambridge University Press, 2007) (with Philip L. Reynolds); and *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007), 209-.

engagement and marriage and its prohibitions against complete divorce and remarriage stood in considerable tension with the Protestant understanding of the natural and biblical right and duty of each fit adult to marry and remarry.

Many Protestant theological leaders acted on these new teachings about sexuality and marriage in the first decades of the Reformation. Most of these early Protestant clergy were ex-priests or ex-monastics who had forsaken their orders and vows, and married shortly thereafter. New Protestant converts followed their examples by marrying, divorcing, and remarrying in open contempt of canon law rules. A few radical Anabaptist groups even experimented with polygamy and communal wives before 1555. As Catholic Church courts and their secular counterparts began punishing these canon law offenses with growing severity, Protestant theologians and jurists rose to the defense of their coreligionists—producing a welter of new writings that denounced traditional norms and pronounced a new Protestant gospel in favor of marital and sexual freedom.

Political leaders rapidly translated this new Protestant gospel into new civil laws in place of the Catholic Church's canon laws. Long envious of the church's jurisdiction over marriage, Protestant magistrates had new marriage laws on the books usually within a decade after accepting Protestantism. These new Protestant marriage laws together (1) shifted marital jurisdiction from the church to the state; (2) abolished monasteries and convents; (3) commended, if not commanded, the marriage of clergy; (4) rejected the sacramentality of marriage and the religious tests and spiritual impediments traditionally imposed on Christian unions; (5) banned secret or private marriages and required the participation of parents, peers, priests, and political officials in the process of marriage formation; (6) sharply curtailed the number of impediments to engagements and marriages that abridged the right to marry or remarry; and (7) introduced fault-based complete divorce with a subsequent right for divorcees to remarry. The Western legal tradition would not see such sweeping reforms of its marital laws again until the liberal cultural and constitutional reforms of the last half century.

This chapter surveys the new Protestant teachings on sex, marriage and family life to emerge in the Reformation era and their influence on Western Protestant lands and laws from the 16th to the 19th centuries. It also analyzes the later reforms of these traditional Protestant teachings brought on by Enlightenment liberalism, and the influence of these reforms in Protestant common law lands.

Sources of Teachings on Sex and Marriage

Given their cardinal teaching of *sola Scriptura*, Protestants from the start to the Bible to inspire their teachings on sex and marriage. For them, Genesis 1 and 2 were axiomatic statements of the created order and natural law of marriage. God had created marriage as a “two-in-one-flesh union” between a man and a woman designed for them to “be fruitful and multiply” and to be protected from sexual sin and temptation. Also axiomatic for Protestants was the Decalogue that commanded

children to “honor” their parents, and spouses to avoid adultery and even “coveting” their neighbor’s wife or maidservants. Instructive as well were the many Mosaic laws on sex, marriage, and family life, which the Hebrew Prophets – especially Hosea, Ezekiel, and Malachi -- wove into a robust and refined ethic of marital fidelity and sexual propriety, modeled on Yahweh covenantal love for his elect people of Israel.²

Protestants also drew heavily on the New Testament. Matthew 19 was critical for them, where Jesus taught that a lawful marriage could not be “rent asunder” “except in the case of adultery,” and a remarriage of divorcees could not be contracted too easily for fear of adultery. So was 1 Corinthians 7 that stipulated the “conjugal rights” that husbands and wives alike could enjoy in each other’s bodies, commended regular marital sex to protect both spouses from “burning” with lust, and allowed parties to separate in the event of desertion by one spouse of the other. Also important for Protestants were the household codes governing husbands and wives, parents and children, masters and servants set out in Colossians 3, 1 Peter 2, and Ephesians 5 and 6. These codes, together with sundry scattered New Testament injunctions against sexual immorality of all sorts, informed a rich Protestant tradition of confessional and catechetical statements on marriage, and ever more dense and detailed household manuals and books of domestic etiquette and deportment.³ All these New Testament passages culminated in the masterful depiction of the marital household in Ephesians 5 as a mutually sacrificial, loving, and intimate “*mysterion*” modeled on the loving and faithful union of Christ and the church.⁴

A second common point of departure for Protestant teachings on sex and marriage were the writings of classical Greek and Roman authors, which had also shaped medieval thought. Particularly influential for Protestants were Aristotle’s insights that marriage is a natural institution that is fundamental and foundational to any republic; that marriage is at once “useful,” “pleasant,” and “moral” in its own right; that it provides efficient pooling and division of specialized labor and resources within the household; and that it serves both for the fulfillment and happiness of spouses, and for the procreation and nurture of children.⁵ Also influential was the Stoic idea that marriage is a “sacred and enduring union” that entailed a sharing of the persons, properties, and pursuits of husband and wife in service of marital affection and friendship, mutual caring and protection, and mutual procreation and

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³ John Witte, Jr. and Heather M. Good, “

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education of children.⁶ Roman law, both before and after the Christianization of the Empire, had distilled these classical ideas about marriage, and defined its basic legal form and set out rules for its valid formation and dissolution. Marriage, Roman law provided, was formed by the mutual consent of a fit man and a fit woman and their families and involved a complex exchange of property and prerogatives. Children born to or adopted by the married couple were legitimate and heritable, and came under the authority of the paterfamilias who had obligations for their nurture, care, and education. A breakdown or betrayal of the marriage could lead to divorce, with rights to remarry thereafter, at least for the innocent party. Many early Protestants, both in Europe and eventually North America, were proud neo-Aristotelians and neo-Stoics,⁷ and were leaders of the so-called “reception of Roman law” into early modern Protestant lands.⁸

A third point of departure for Protestants were the writings of St. Augustine (354-340), Bishop of Hippo. Augustine had rejected the anti-marital sentiments of other more sexually ascetic Church Fathers, and had argued that marriage is a good institution, even if celibacy might be better for those naturally gifted with continence. Marriage offers three essential goods to the couple and the community, said Augustine. First, it provides a created, natural means of procreation, nurture, and education of children. Second, it provides a form of enduring fidelity that assures husbands and wives of mutual caring, support, and friendship, and mutual protection from the temptations of sexual sin. Third, marriage provides a source and symbol of permanent union between Christians, even if the couple is not blessed with children, or if their children are now emancipated. Augustine’s emphasis on the inherent goods of marriage was a vital trope for medieval writers, and would remain so for Protestants, who emphasized both the public and private goods of this institution, and made it the anchor of their social and political theory.

A final common point of departure was the medieval tradition of canon law that had created its own synthesis of biblical, classical, and patristic teachings.⁹ This would seem to be an unlikely source for a Protestant world that had begun with Luther burning the canon law books and Henry VIII burning England’s legal bridges

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⁷ The neo-Platonic renaissance; Ernst Cassirer.

⁸ Reception see Berman, I and R II; Law and Protestantism:

⁹ For good overviews, see James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987); Charles Donahue, *Law, Marriage and Society in the Later Middle Ages* (Cambridge: Cambridge University Press, 2007); R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974); Theodore Mackin, S.J., *Marriage in the Catholic Church*, 2 vols. (New York: Paulist Press, 1984-1989); Philip L. Reynolds, *Marriage in the Western Church: The Christianization of Marriage During the Patristic and Early Modern Periods* (Leiden: E.J. Brill, 1994).

with Rome. But, despite this early iconoclasm, it soon became clear to Protestants that the medieval canon law, once purged of its abusive provisions, remained a valuable and sophisticated source of Christian law for church and state alike. The Protestant reformers echoed the canonists' teaching that was not only a natural institution created by God, but also a contractual unit, formed in its essence by the mutual consent of the parties. This contract prescribed for couples a life-long relation of love, service, and devotion to each other and proscribed unwarranted breach or relaxation of their connubial and parental duties. They also accepted the various canonical sex crimes like adultery, concubinage, incest, polygamy, sodomy, abortion, and infanticide as violations of the natural law of marriage, further elaborated in the Bible.¹⁰

Unlike medieval canonists and scholastics, however, Protestants rejected the medieval subordination of marriage to celibacy and the celebration of marriage as a sacrament. According to common Protestant lore, the person was too tempted by sinful passion to forgo God's soothing remedy of marriage. The celibate life had no superior virtue and was no prerequisite for ecclesiastical service. It led too easily to prostitution, concubinage, and homosexuality and impeded too often the access and activities of the clerical office. Moreover, marriage was not a sacrament. It was instead an independent social institution ordained by God and equal in dignity and social responsibility with the church, state, and other social estates. Participation in marriage required no prerequisite faith or purity and conferred no sanctifying grace, as did the true sacraments of baptism and the eucharist.

Mainline Protestant Models of Sex and Marriage

From these common sources, the Lutheran, Calvinist, and Anglican traditions constructed their own models of marriage. Lutherans emphasized the social dimensions of marriage, Calvinists the covenantal dimensions, Anglicans the commonwealth dimensions. Each Protestant tradition also assigned principal legal responsibility for marriage quite differently. Lutherans consigned legal authority mostly to the state, Calvinists to both state and church together, Anglicans mostly to the church subject to growing state oversight. These differences in emphasis and authority among early Protestants were based, in part, on differences among their theological models of marriage.

Lutheranism. The Lutheran tradition that dominated Germany and Scandinavia from the sixteenth to nineteenth centuries, developed a social model of marriage, grounded in Martin Luther's doctrine of the heavenly and earthly kingdoms.¹¹ Marriage, Luther and his colleagues taught, was a social estate of the

¹⁰ See sources in my *Law and Protestantism*, chaps. 2, 4..

¹¹ For general overviews, see Steven Ozment, *Ancestors: The Loving Family in Old Europe* (Cambridge, MA: Harvard University Press, 2001); Joel F. Harrington, *Reordering Marriage and*

earthly kingdom of creation, not a sacred estate of the heavenly kingdom of redemption. Though divinely ordained, marriage was directed primarily to human ends, to the fulfilling of civil and spiritual uses in the lives of the individual and of society. Marriage revealed to persons their sin and their need for God's marital gift: this was its theological use. Marriage restricted prostitution, promiscuity and other public sexual sins: this was its civil use. Marriage taught love, restraint, and other public virtues: this was its pedagogical use.

All fit men and women were free and encouraged to marry, clerical and lay alike, unless they had the rare gift of continence. We are all sinful creatures, Luther and his followers 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 sundry 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.¹² "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."¹³ The Apostle Paul has identified this group as the permanently impotent and the eunuchs; very few others can claim such a unique gift.

This understanding of marriage as a protection against sin undergirded the Lutheran reformers' bitter attack on traditional rules of mandatory celibacy. To require celibacy of clerics, monks, and nuns, the reformers believed, was 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

Society in Reformation Germany (Cambridge: Cambridge University Press, 1995); Uwe Sibeth, *Eherecht und Staatsbildung: Ehegesetzgebung und Eherechtsprechung in der Landgrafschaft Hessen(-Kassel) in der frühen Neuzeit* (Darmstadt: Hessischen Historischen Kommission Darmstadt, 1994); Herman Selderhuis, *Marriage and Divorce in the Thought of Martin Bucer*, trans. John Vriend and Lyle D. Biersma (Kirksville, MO: Thomas Jefferson University Press, 1999); Hartwig Dieterich, *Das protestantische Eherecht in Deutschland bis zur Mitte des 17. Jahrhunderts* (Munich: Claudius Verlag, 1970).

¹² LW 54:31.

¹³ LW 28:912, 27-31; LW 45:18-22

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, was hardly a prerequisite to true clerical service of God. Instead, wrote Luther, a former monk, it led to "great whoredom and all manner of fleshly impurity and ... hearts filled with thoughts of women day and night."¹⁴

Marriage, in fact, was an especially important calling for the pastor, Lutherans argued. A pastor's own marital experience could only enhance his pastoral ministry to the married, and his marital parsonage would serve as a model for proper Christian living in the community. Marriage was also an important calling for the widow and the widower: this newly single party, who had known the warmth and pleasures of sexual intimacy, would be doubly tempted to sexual sin in its sudden absence.

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 neither. 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. If Adam had not fallen, the love of bride and groom would have been the loveliest thing."¹⁵ "There's more to [marriage] than a union of the flesh," Luther wrote, although he considered sexual intimacy and warmth to be essential to the flourishing of marriage. "There must [also] be harmony with respect to patterns of life and ways of thinking."¹⁶

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 *über alles* 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 young men and older women beyond child-bearing years or between couples who knew full well that they could have no

¹⁴ LW 12:98.

¹⁵ WA 2:167; see also WA 13:11; WA 17/2:350ff.

¹⁶ WA TR 5, No. 5524, LW 54:444.

children.¹⁷ 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.”¹⁸ 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 helping their children establish their own new homes when they had grown up.¹⁹

In addition to the divine gift of love, marriage also sometimes bestowed on the couple the divine gift of children. Luther treated procreation as an act of co-creation and co-redemption 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. Childrearing, 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. See therefore how good and great is God’s work and ordinance.”²⁰ This last image – of parents serving as priests to their children – was a new and further application of the familiar Protestant doctrine of the priesthood of all believers. It added further concreteness to the Protestant effort to soften the hard medieval distinction between a superior clergy and a lower laity: all persons are priests to their peers, and all parents are priests to their children, called to care for them in body, mind, and soul alike.

The education of children fell not only to parents. The Lutheran reformers were pioneers in creating public schools for the religious and civic education of all children, and producing a welter of catechisms, textbooks, and household manuals to assist in the same. 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 early modern Protestant lands – Lutheran, Calvinist, and Anglican alike. It added a crucial public dimension to the parents’ private procreation and nurture of their children. Philip Melanchthon, the so-called “teacher

¹⁷ See, e.g., WA TR No. 4, No. 5212; LW 2:301ff.

¹⁸ Quoted by Ozment, *Ancestors*, 36-37. See the interesting portrait of Katherine and other Reformation women in Kirsi Irmeli Stjerna, *Women and the Reformation* (Malden, MA, 2009)

¹⁹ LW 45:39ff.

²⁰ LW 45:46.

of Germany,” called the public school a “civic seminary” designed to allow families, churches, and states alike to cooperate in imbuing both civic learning and spiritual piety in children.²¹

This Lutheran model of sex, marriage, and family life, distilled into sundry Lutheran catechisms, confessions, handbooks, and household manuals, remained at the core of German and Scandinavian culture and law, and their colonies in the Americas and Africa, until the Enlightenment reforms of the nineteenth century.

Calvinism. The Calvinist tradition, established in mid-sixteenth century Geneva, set out a covenantal model of marriage.²² This model confirmed many of the Lutheran theological and legal reforms, but cast them in a new ensemble. Marriage, John Calvin and his followers taught, was not a sacramental institution of the church, but a covenantal association of the entire community, modeled on the covenant relationship between Yahweh and ancient Israel. A variety of parties participated in the formation of this covenant. The marital parties themselves swore their betrothals and espousals before each other and God -- rendering all marriages tripartite agreements, with God as third party witness, participant, and judge. The couple's parents, as God's “lieutenants” for children, gave their consent to the union. Two witnesses, as God's priests to their peers, served as witnesses to the marriage. The minister, holding God's spiritual power of the Word, blessed the couple and admonished them in their spiritual duties during the mandatory church wedding liturgy. The magistrate, holding God's temporal power of the sword, registered the couple and protected them in their person and property after the compulsory state licensing and registration of the marriage. Each of these parties – parents and peers, ministers and magistrates -- was considered essential to the legitimacy of the marriage, for they each represented a different dimension of God's involvement in the covenant. To omit any such party was, in effect, to omit God from the marriage covenant.

The covenant of marriage, as Calvin and his followers understood it, was grounded in the order of creation and governed by the law of God. At creation, God ordained the structure of marriage to be a life-long union between a fit man and a fit woman of the age of consent and with the capacity to enter a marital contract with each other. God assigned to this marriage the interlocking goods and goals of mutual love and support of husband and wife, mutual procreation and nurture of

²¹ See LP, chap. 7.

²² Robert M. Kingdon, *Adultery and Divorce in Calvin's Geneva* (Cambridge, Mass./London, 1995); Walter Köhler, *Zürcher Ehegericht und Genfer Konsistorium*, 2 vols. (Leipzig: Verlag von M. Heinsius Nachfolger, 1942); Cornelia Seeger, *Nullité de mariage divorce et séparation de corps à Genève, au temps de Calvin: Fondements doctrinaux, loi et jurisprudence* (Lausanne: Méta-Editions, 1989); John Witte, Jr. and Robert M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva*, 2 vols. (Grand Rapids, MI: Wm. B. Eerdmans, 2005-2012).

children, and mutual protection of both parties from sexual sin. Thereafter, God set forth in reason, conscience, and the Bible, a whole series of commandments and counsels for proper adherence to this ideal created structure and purpose of marriage.

God's moral law for the covenant of marriage set out two tracks of marital norms, Calvin taught -- civil norms, which are common to all persons, and spiritual norms, which are distinctly Christian. This moral law, in turn, gave rise to two tracks of marital morality -- a simple morality of duty demanded of all persons regardless of their faith, and a higher morality of aspiration demanded of believers in order to reflect their faith. It was the church's responsibility to teach aspirational spiritual norms for marriage and family life. It was the state's responsibility to enforce mandatory civil norms. This division of responsibility was reflected in sixteenth-century Geneva and later Calvinist polities in the procedural divisions between the church consistory and the city council. In marriage cases, the consistory was the court of first instance, and would call parties to their higher spiritual duties, backing their recommendations with threats of spiritual discipline. If such spiritual counsel and discipline failed, the parties were referred to the city council to compel them, using civil and criminal sanctions, to honor at least their basic civil duties for marriage.

This Calvinist covenantal model mediated both contractual and sacramental understandings of marriage. On the other hand, this covenant model confirmed the contractual and consensual qualities of marriage -- without subjecting it to the personal preferences of the parties. Marriage depended for its validity and utility on the voluntary consent of the parties. But marriage was more than a mere contract, for God was a third party to every marriage covenant, and he set its basic terms in the order and law of creation. Freedom of contract in marriage was thus effectively limited to choosing maturely which party to marry -- with no real choice about the form, forum, or function of marriage once a fit and willing spouse was chosen.

On the one hand, this covenant model confirmed the sacred and sanctifying qualities of marriage -- without ascribing to it sacramental functions. Marriage was regarded as a holy and loving fellowship, a compelling image of the bond between Yahweh and his elect, Christ and his church. But marriage was no sacrament, for it confirmed no divine promise as did the sacraments of baptism and the eucharist. To be sure, Calvin argued, echoing Luther and other early Reformers, marriage symbolizes the union of Christ with his Church, as St. Paul wrote in Ephesians 5:32: "This is a great mystery (*mysterion*), and I am applying it to Christ and the church." But the Greek term "*mysterion*" in this passage means "mystery," not sacrament, as the Latin Vulgate and medieval theologians had rendered it. In this passage, Calvin argued, 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 that are 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. And the examples go on. The marriage analogy is similar: "Marital love is like the union of Christ and the church." So be faithful and sacrificial to your spouse.²³

Denying the sacramental quality of marriage, had dramatic implications for how a marriage should be formed, maintained, and dissolved in Calvinist and other lands. First, there should no formal religious or baptismal tests for marriage. 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. Second, because marriage was not a sacrament, divorce and remarriage were licit, and sometimes even necessary. To be sure, marriages should be stable and presumptively indissoluble. But this presumption could be overcome if one of the essential marital goods were chronically betrayed by adultery, desertion, cruelty, or crime -- the marriage was again broken. If the parties could not be reconciled to regular cohabitation and consortium, they could divorce and seek another marriage.²⁴

This new Calvinist model of marriage was reflected in a long series of new statutes that Calvin and his colleagues helped to craft for Geneva in the 1540s to 1560s, and these were emulated in numerous Calvinist communities scattered in Switzerland, Germany, Hungary, France, the Netherlands, Scotland, England, and later North America and various African colonies. These statutes governed in copious detail marital formation, maintenance, and dissolution, child care, custody, and control, spousal rights, responsibilities, and remedies and more. They also set out an increasingly severe code of sexual ethics, with stern prohibitions on fornication, adultery, sodomy, pornography, prostitution, dancing, mixed bathing, and other public expressions of sex. These stern codes of sexual ethics would also become the backbone of later Puritanical sexual ethics of colonial America and Victorian austerity of nineteenth century England. In Calvin's own day, it was largely the consistory court that enforced this sexual morality; in later Calvinist communities, both church and state authorities alike participated in this vigilant sexual discipline.

Anglicanism. The Anglican tradition of the sixteenth to eighteenth centuries brought forth a commonwealth model of marriage.²⁵ This model embraced the social

²³ LW 36:97ff.

²⁴ WA Br 3:288-290; WA 15:558ff.; Brecht 2:93-94.

²⁵ Chilton L. Powell, *English Domestic Relations 1487–1653: A Study of Matrimony and Family Life in Theory and Practice as Revealed by the Literature, Law, and History of the Period* (New York: Columbia University Press, 1917); Eric Josef Carlson, *Marriage and the English Reformation* (Oxford: Blackwell, 1994); James T. Johnson, *A Society Ordained by God: English Puritan Marriage Doctrine in the First Half of the Seventeenth Century* (Nashville: Abingdon Press,

and covenantal models of marriage taught by Lutherans and Calvinists, but also went beyond them. Marriage, Anglican writers argued, was at once a gracious symbol of the divine, a social unit of the earthly kingdom, and a solemn covenant with one's spouse. But the essential cause, condition, and calling of the family was that it served and symbolized the common good of the couple, the children, the church, and the state all at once. Marriage, Anglican divines like Thomas Becon () and Richard Hooker () argued, was appointed by God as "a little commonwealth" to foster the mutual love, service, and security of husband and wife, parent and child. It was likewise appointed by God as a "seedbed and seminary" of the broader commonwealth to teach church, state, and society alike essential Christian and political norms and habits.

Anglican and Anglo-Puritan writers argued even more expansively than Continental Protestants that marriage at once served and symbolized the commonwealth (literally the "common good"), of the couple, the children, the church, and the state. William Perkins (1558-1602) put it thus in 1590: "[M]arriage was made and appointed by God himself to be the foundation and seminary of all sorts and kinds of life in the commonwealth and the church.... [T]hose families wherein the service of God is performed are, as it were, little churches; yea, even a kind of paradise on earth."²⁶ Robert Cleaver (c. 1561-1625) opened his famous 1598 tract, *A Godly Form of Householde Gouernment* with an oft-repeated maxim: "A household is as it were a little commonwealth, by the good government whereof, God's glory may be advanced, the commonwealth which stands of several families, benefited, and all that live in that family, may receive much comfort and commodity."²⁷ William Gouge (1578-1653) premised his massive 800 page *Domestic Duties* (1622) on the same belief that "the family is a seminary of the Church and the Commonwealth," and is indeed in its own right, "a little church, and a little commonwealth, whereby a trial may be made of such as are fit for any place of authority, or subjection in Church or commonwealth."²⁸

Like the political and ecclesiastical commonwealths, Anglican divines argued, the domestic commonwealth was created as a hierarchical structure. God had created Eve as "a help meet" for Adam. He had called Adam and Eve to mutual

1970); Lawrence Stone, *The Family, Sex, and Marriage in England, 1500–1800* (New York: Harper & Row, 1979).

²⁶ William Perkins, *Christian Oeconomy or a Short Survey of the Right Manner of Erecting and Ordering a Family According to the Scriptures*, in *The Work of William Perkins*, ed. Ian Breward (Appleford: The Sutton Courtney Press, 1970), 418-419. I have modernized the spelling and punctuation in this and the next five quotations.

²⁷ Robert Cleaver, *A Godly Forme of Householde Gouernment* (London: Thomas Creed, 1598), 1.

²⁸ William Gouge, *Of Domesticall Duties: Eight Treatises* (London: J. Haviland, 1622), 17-18.

society among themselves and mutual procreation of children (Gen 1:28, 2:18). After the Fall, He had commanded that Adam "shall rule over" Eve (Gen. 3:16). As heir of Adam, the modern husband was thus the head of his wife. As heir of Eve, the modern wife was his subject, his "help meet." Together husband and wife were the heads of their children and the rest of the household. Each of these offices in the family hierarchy was bound by a series of duties, rooted in the Bible and natural law, which dozens of thick household manuals and catechisms of the day elaborated.²⁹

Faithful maintenance of domestic duties and offices, Anglican divines believed, was the best guarantee of individual flourishing and social order within the broader commonwealths of church and state. Robert Cleaver put it thus: "[I]f masters of families do not practice catechizing and discipline in their houses and thereby join their helping hands to Magistrates, and Ministers, social order and stability will soon give way to chaos and anarchy."³⁰ "A consonable performance of household duties ... may be accounted a public work," William Gouge echoed. For "good members of a family are likely to make good members of church and commonwealth."³¹ Daniel Rogers (1573-1652) concurred, arguing that a stable marriage and household served as "the right hand of providence, supporter of laws, states, orders, offices, gifts, and services, the glory of peace, ... the foundation of Countries, Cities, Universities, ... Crowns and Kingdoms."³² Dozens of Anglican and Anglo-Puritan writers, from 1600 onward, expounded this "commonwealth model" of marriage.³³

At first, this commonwealth model served to rationalize the traditional hierarchies of husband over wife, parent over child, church over household, state over church. After decades of experimentation, England in the mid-sixteenth century had formally rejected most Protestant legal reforms of marriage introduced on the Continent. It returned to much of the medieval canon law of marriage administered by the church, but now under the supreme headship of the English Crown and the legal direction of Parliament. To call the marital household "a little commonwealth"

²⁹ See sources in FSC, 130-193.

³⁰ Cleaver, *Householde Gouernment*, A3.

³¹ Gouge, *Domesticall Duties*, 17, 27.

³² Daniel Rogers, *Matrimoniall Honour* (London: Philip Nevil, 1642), 17.

³³ See, e.g., Gordon J. Schocet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth Century England* (New York: Basic Books, 1975), 179-91; Mary Lynn Shanley, "Marriage Contract and Social Contract in Seventeenth-Century English Political Thought," *Western Political Quarterly* 32 (1979):187-189; Beatrice Gottlieb, *The Family in the Western World from the Black Death to the Industrial Age* (Oxford: Oxford University Press, 1993), 89-109.

was to signal its subordinate place within the new hierarchy of social institutions that comprised "the great commonwealth" of England. It was also to call the household to an internal hierarchy of offices that matched the royal and episcopal offices of the great commonwealth – with the paterfamilias' role of ruler within each family serving as a miniature model of the king as the supreme head of the church and commonwealth of England. The commonwealth model was thus used to integrate a whole network of parallel domestic and political duties rooted in the Bible and English tradition. Anglican divines and moralists expounded at great length the reciprocal duties of husband and wife, parent and child, master and servant that would produce a well-ordered little commonwealth. And, in keeping with the tradition of stability of the great political commonwealth of England, these same Anglican writers prohibited the dissolution of this little domestic commonwealth of the family by divorce. Robert Filmer's *Patriarcha* (c. 1642), gave this conservative, patriarchal rendering of the commonwealth model of marriage its classic formulation – and his work helped to distill and anchor both political theories of absolute monarchy and theological theories of absolute male headship within the marital household.

As the political concept of the English commonwealth was revolutionized and democratized in the seventeenth century, however, so was the English commonwealth model of marriage. Particularly during the English Commonwealth period of 1640-1660, when a coalition of Protestant revolutionaries overthrew the English establishment and executed King Charles I, the traditional hierarchies of husband over wife, parent over child, and church over family were challenged with a revolutionary new principle of equality. The biblical duties of husband and wife and of parent and child were recast as the natural rights of each household member against the other. The traditional idea of a created natural order met with a new idea of marriage, society, and state formed voluntarily by contracts by individuals in the state of nature. Just as the English commonwealth could be rent asunder by force of arms when it abused the people's natural rights, so the family commonwealth could be put asunder by suits at law when one spouse abused the other's marital rights. Just as the King could be beheaded for abuses in the Commonwealth, so the paterfamilias could be removed from the head of the little commonwealth for abuses in the household. John Milton () offered an early this egalitarian rendering of the English commonwealth model in a series of mid-seventeenth century tracts.

Even more expansive was the later exposition of this egalitarian ideal of marriage by English philosopher, John Locke (1632-1704) in his famous *Two Treatises on Government*, which began as direct rebuke of Robert Filmer's *Patriarcha*. Locke rejected Filmer's patriarchal interpretation of the creation story. God did not create Adam and Eve as ruler and subject, but as husband and wife, said Locke. Adam and Eve were created equal before God. Each had natural rights to use the bounties of Paradise. Each had natural duties to each other and to God. After the fall into sin, God expelled Adam and Eve from the Garden. He increased man's labor in his use of creation. He increased woman's labor in the bearing of children. But God, said Locke, not abrogate the natural equality, rights, and duties

with which God created Adam and Eve, and all persons after them. They do not render all wives eternally subject to their husbands.

Men and women are born free and equal in the state of nature. But "God having made Man such a Creature, that, in his own Judgment, it was not good for him to be alone, put him under strong Obligation of Necessity, Convenience, and Inclination to drive him into Society," Locke argued. "The first Society" to be formed "was between Man and Wife, which gave beginning to that of Parents and Children." This "conjugal society," like every other society, "is made by a voluntary Compact between Man and Woman: and tho' it consists chiefly in such a Communion and Right in one another's Bodies, as is necessary to its Chief End, Procreation; yet it draws with it mutual Support and Assistance and Communion of Interest too, as necessary not only to unite their Care, and Affection, but also necessary to their common Off-spring, who have a Right to be nourished and maintained by them, till they are able to provide for themselves." Marriage has no necessary form or function beyond this "Chief End" of procreation, Locke argued against traditional understandings. Couples were free to contract about the rest of the relationship as they deemed fit. "Conjugal society might be varied and regulated by that Contract, which unites Man and Wife in that Society, as far as may consist with Procreation and the bringing up of Children till they could shift for themselves; nothing being necessary to any Society, that is not necessary to the ends for which it is made."

Locke, for example, described marriage as "the first society" that had to be formed as humans proceeded from the state of nature endowed with their natural rights. The marriage of a man and woman, he said, was "necessary not only to unite their care and affection, but also necessary to their common offspring, who have a right to be nourished and maintained by them, till they are able to provide for themselves." For Locke, men and women had a natural right to enter into a marital contract. But their children had a natural right to survival, support, protection and education. This imposed on their parents the natural duty to remain in their marriage once contracted, at least until their children were emancipated:

For the end of conjunction between male and female, being not barely procreation, but the continuation of the species, this conjunction betwixt male and female ought to last, even after procreation, so long as is necessary to the nourishment and support of the young ones, who are to be sustained by those that got them, till they are able to shift and provide for themselves.... [W]hereby the father, who is bound to take care for those he hath begot, is under an obligation to continue in conjugal society with the same woman longer than other creatures, whose young being able to subsist of themselves, before the

time of procreation returns again, the conjugal bond dissolves of it self, and they are at liberty.³⁴

Similarly, the eighteenth-century Scottish philosopher, David Hume, for all of his skepticism about traditional theology and morality, thought Aquinas and the medieval jurists were exactly right in their description of the natural rights and duties of parents and children. “The long and helpless infancy requires the combination of parents for the subsistence of their young; and that combination requires the virtue of chastity and fidelity to the marriage bed.” These natural conditions counsel not only for marriage but also against “voluntary divorce,” said Hume, despite our natural rights of contract and association. Hume agreed with Protestants that divorce was sometimes the better of two evils – especially where one party was guilty of adultery, severe cruelty to children, or malicious desertion of the family. But, outside of such narrow circumstances, he said, “nature has made divorce the doom of all mortals.” For with no-fault divorce, the children suffer and become “miserable.” Shuffled from home to home, consigned to the care of strangers and step-parents “instead of the fond attention and concern of a parent,” the inconveniences and encumbrances of their lives just multiply as the divorces of their parents and stepparents multiply. “This is no way to protect the essential rights of children,” Hume concluded.³⁵

William Blackstone, the leading common lawyer of the eighteenth century, argued similarly:

[T]he establishment of marriage in all civilized states is built on this natural obligation of the father to provide for his children: for that ascertains and makes known the person who is bound to fulfill this obligation: whereas, in promiscuous and illicit conjunctions, the father is unknown; and the mother finds a thousand obstacles in her way – shame, remorse, the constraint of her sex, and the rigor of laws – that stifle her inclinations to perform this duty.

“The duty of parents to provide for the maintenance of their children is a principle of natural law,” Blackstone went on, “laid on them not only by nature herself, but by their own proper act, in bringing them into the world.” And again: “The main end and design of marriage [is] to ascertain and fix upon some certain person, to whom the care, the protection, the maintenance, and the education of the children should belong.”

³⁴ John Locke, *Two Treatises on Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), II.2, II.77-86.

³⁵ David Hume, *Enquiries Concerning the Human Understanding and Concerning the Principles of Morals* [1777], 2d ed., ed. L.A. Selby-Bigge (Oxford: Clarendon Pres, 1902, 2d impr., 1963), 206-07; David Hume, *Essays Moral, Political, and Literary*, rev. ed., ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1987), Essay XIX “On Polygamy and Divorces”, pp. 182-87.

Much like the medieval lawyers half a millennium before him, Blackstone set out in detail the reciprocal rights and duties that the law imposes upon parents and children. Nature has “implant[ed] in the breast of every parent” an “insuperable degree of affection” for their child once they are “certain the child is theirs,” Blackstone wrote. The common law confirms and channels this natural affection and attachment by declaring that each child born into a family is the presumptive child of those parents, by requiring parents to maintain, protect, and educate those children, and by protecting the parents’ rights to discharge these parental duties against undue interference by state, church, or private parties. These “natural duties” of parents are the correlatives of the “natural rights” of their children, Blackstone further argued. Children have “a natural right to receive the support, education, and care” of their parents, and parents must respect their children’s rights. These duties continue even after divorce (through child support) and even after the parents die (through testamentary obligations their children).³⁶ These early teachings of Blackstone on the necessary interdependence of the rights of parents and children have long been axiomatic in the common law tradition on both sides of the Atlantic. English Parliamentary acts and American state statutes from the eighteenth century to our day are filled with detailed recitations of the duties of parents, the rights of children, and the collective rights of the family.

This revolutionary construction of the commonwealth model provided the rationale for the incremental liberalization of English marriage law in the course of the next two centuries. It also provided a stepping-stone for the development of a more overtly contractarian model of marriage slowly developed by Enlightenment reformers in the eighteenth and nineteenth centuries. Particularly in North America, liberal reformers, like Thomas Jefferson, John Adams, and James Madison, would draw heavily on Locke, Milton, and many of their English counterparts in the seventeenth century, to press for greater protection of women and children, within and beyond marriage, and great freedom for both men and women to enter and exit marriages.

From Protestant Confessionalism to Liberal Naturalism

Protestants, on both sides of the Atlantic, continued to expound covenantal and other rich theologies of marriage until the twentieth century. They continued to mine the Bible for further insights into the fundamentals of sex, marriage and family life – an exegetical exercise made better by the rise of the form critical method of interpretation that offered much more precise understanding of the dating, sequencing, and context of biblical passages. While these Protestant theologies of

³⁶ William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford: Oxford University Press, 1765), I.15.1, 1.16.1-3. This quote is largely a paraphrase of Montesquieu, *Spirit of the Laws*, 23.2.

marriage did change in accent and application over time and across denominational lines, the main Protestant models of marriage introduced in the sixteenth and early seventeenth centuries did not change much before the twentieth century.³⁷

The more innovative changes in Protestant marriage theory after the Reformation era came at the philosophical level. From the later seventeenth century on, a whole series of Protestant writers developed rich natural law accounts of marriage -- building on, but going beyond the natural law arguments of the original Protestant Reformers. Most of these later Protestant writers accepted biblical norms and Protestant teachings on sex, marriage, and family life. God, they commonly said, created marriage for the mutual comfort of men and women, their mutual procreation of children, and their mutual protection from sin and temptation. All fit and able adults should marry, unless uniquely called to a single life. Monogamous marriage between unrelated parties was the sole legitimate form and forum for sex. Incest, polygamy, adultery, fornication, concubinage, prostitution, sodomy, and bestiality were all strictly forbidden. Marriages should proceed first with an engagement, then with public banns, and finally with a church wedding. Valid marriages required parental consent, peer witnesses, and civil registration with the state to complement the pastor's consecration in the church. Marital parties should support and care for each other throughout their lives, and provide for each other and for their children in their last wills and testaments. Both fathers and mothers must share in the care, education, and protection of their children. Divorce is allowed on proven grounds of adultery, malicious desertion, or other serious fault, with remarriage allowed at least to the innocent party and ongoing household support required of the guilty party.

Rather than simply adducing the Bible and Christian theology as their highest authorities, however, these later Protestant writers sought to build a natural law account of these main features of marriage – using rational and empirical arguments that would be cogent even to those with different religious convictions. These Protestant natural law theorists used various methods to make their case. Some drew increasingly sophisticated inferences from bonding patterns and reproductive strategies among animals, building on Aristotelian-Thomistic insights and anticipating the findings of modern evolutionary biologists. Some uncovered the common forms and norms of marriage that were shared by Jews, Christians, and Muslims, sometimes even by “pagans,” “heathens,” and “exotic” religions from Asia, Africa, and the Americas -- all of which they took as evidence of a common natural law at work in the hearts and consciences of all men. Some developed a practical, prudential, and even utilitarian logic of what worked best for husbands and wives, parents and children to exercise and enjoy their natural rights and duties in the household. Orthodox Protestant theologians sometimes decried these efforts, especially as some of their philosophical brethren edged toward the purely

³⁷ See Brent Waters, *The Family in Social and Political Thought* (Oxford: Oxford University Press, 2007); John Witte, Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2d. ed. (Louisville, KY: Westminster John Knox Press, 2011).

rationalist, and sometimes anti-Christian, formulations of the later French Enlightenment. But most Protestant natural law theorists on marriage saw their efforts as a complement to, even a confirmation of, the work of the theologians.³⁸ For our purposes, this Protestant natural law theory is a key step in the development of the double rational and theological language of marriage that we think Christians and other persons of faith still need today, not only to communicate among themselves but to speak to the rest of society.

Part of this early modern Protestant natural law theory of marriage was its own alternative theological exercise – to show the existence of a common natural theology of marriage that Christianity shared with the many other religions that were being discovered in the new age of world trade, mission, and colonization. Part of it was a philosophical exercise – to prove the existence, if not the truth, of traditional marital forms and norms, much like others sought to prove the existence of God against the growing ranks of skeptics and atheists. Part of it was an historical exercise – to retrieve and reconstruct some of the rational core of marriage and family life developed by classical writers, neo-classical movements being highly fashionable in early modern Protestant universities and intellectual circles. And part of this was a jurisprudential exercise – to create a common law of marriage that would form part of a universal law of nations that could transcend, if not pacify, the many European nations that had become locked in bloody religious warfare.

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Hugo Grotius and the Early Modern Natural Law on Sex and Marriage

John Locke's Commonwealth Model and the Road to Modernity

John Locke's reconstruction of the commonwealth model of marriage in his famous *Two Treatises on Government* (1690) provides a good example of a

³⁸ See generally on early modern Protestant natural law, and the controversies it occasioned within some Protestant circles, Luigi Lombardi Vallauri and Gerhard Dilcher, eds., *Christentum, Säkularisation, und modernes Recht*, 2 vols. (Baden-Baden: Nomos Gesellschaft, 1981); Stephen Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (Grand Rapids, MI: Wm. B. Eerdmans, 2006); David VanDrunen, *Natural Law and the Two Kingdoms: A Study in the Development of Reformed Social Thought* (Grand Rapids, MI: Wm. B. Eerdmans, 2010); John Witte, Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007); .

transition figure who sought to mediate these traditional Christian models of marriage with the emerging teachings of the Western Enlightenment.³⁹ His insights also provide a good example of an early attempt to harmonize liberal and traditional views of marriage.

In his *Two Treatises*, Locke set out to refute Robert Filmer's monarchical theory of government, which was among the strongest traditional formulations of the Anglican commonwealth model available in the mid-seventeenth century. Filmer had argued that God had created the patriarchal domestic commonwealth headed by the paterfamilias as the source of the hierarchical political commonwealth headed by the King. God had created Adam and Eve as founders not only of the first marriage and family, but also of the first state and society. Adam was the first husband but also the first ruler. Eve was the first wife, but also the first subject. Together with their children, they comprised at once a domestic and a political commonwealth. All persons thereafter were, by birth, subject to the highest male head, descended from Adam.⁴⁰

Locke responded to Filmer first by flatly denying any natural or necessary connection between the political and domestic commonwealths, between the authority of the paterfamilias and the power of the magistrate. "[T]he Power of a Magistrate over a Subject," he wrote, "may be distinguished from that of a Father over his Children, a Master over his Servant, a Husband over his Wife, and a Lord over his Slave." The "little Commonwealth" of the family is "very far from" the great commonwealth in England "in its Constitution, Power and End." "[T]he Master of the Family has a very distinct and differently limited Power, both as to time and extent, over those several Persons that are in it; ... he has no Legislative Power of Life and Death over any of them, and none too but what a Mistress of a Family may have as well as he."

Locke responded next by denying Filmer's patriarchal interpretation of the creation story in Genesis 1:26-28: "Then God said, 'Let us make man in our image, after our likeness.... So God created man in his own image, in the image of God he created him, male and female he created them. And God blessed them, and God said to them, 'Be fruitful and multiply and fill the earth and subdue it...'." God did not create Adam and Eve as ruler and subject, but as husband and wife, said Locke. Adam and Eve were created equal before God. Each had natural rights to use the

³⁹ John Locke, *Two Treatises of Government* (1698), ed. Peter Laslett (Cambridge: Cambridge University Press, 1960). The quotes that follow are from ibid., I.9, 47, 98, II.2, 77-86. On Locke's family theory, see sources and discussion in Scott Yenor, *Family Politics: The Idea of Marriage in Modern Political Thought* (Waco, TX: Baylor University Press, 2011), 19-38.

⁴⁰ Robert Filmer, *Patriarcha and other Political Works*, ed. Peter Laslett (Oxford: Oxford University Press, 1949); G.J. Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth Century England* (New York: Basic Books, 1975).

bounties of Paradise. Each had natural duties to each other and to God. After the fall into sin, God expelled Adam and Eve from the Garden. He increased man's labor in his use of creation. He increased woman's labor in the bearing of children. He said to Eve: "thy desire shall be to thy husband, and he shall rule over thee" (Gen. 3:16). These words, said Locke, which Filmer "calls the Original Grant of Government were not spoken to Adam, neither indeed was there any Grant in them made to Adam; they were a Punishment laid upon Eve." These words do not abrogate the natural equality, rights, and duties with which God created Adam and Eve, and all persons after them. They do not render all wives eternally subject to their husbands. And they certainly do not, as Filmer insists, give "a Father or a Prince an Absolute, Arbitrary, Unlimited and Unlimitable Power, over the Lives, Liberties, and Estates, of his Children and Subjects."

Men and women are born free and equal in the state of nature. But "God having made Man such a Creature, that, in his own Judgment, it was not good for him to be alone, put him under strong Obligation of Necessity, Convenience, and Inclination to drive him into Society," Locke argued. A person entered into society by entering into voluntary contracts with other persons of similar inclination. To that extent, the commonwealths of marriage, church, and state might be said to be related, said Locke. Each of these commonwealths was formed by the voluntary agreement of free and equal persons, moving from the state of nature to a social state.

"The first Society" to be formed "was between Man and Wife, which gave beginning to that of Parents and Children." This "conjugal society," like every other society, "is made by a voluntary Compact between Man and Woman: and tho' it consists chiefly in such a Communion and Right in one another's Bodies, as is necessary to its Chief End, Procreation; yet it draws with it mutual Support and Assistance and Communion of Interest too, as necessary not only to unite their Care, and Affection, but also necessary to their common Off-spring, who have a Right to be nourished and maintained by them, till they are able to provide for themselves." Marriage has no necessary form or function beyond this "Chief End" of procreation, Locke argued against traditional understandings. Couples were free to contract about the rest of the relationship as they deemed fit. "Conjugal society might be varied and regulated by that Contract, which unites Man and Wife in that Society, as far as may consist with Procreation and the bringing up of Children till they could shift for themselves; nothing being necessary to any Society, that is not necessary to the ends for which it is made."

Locke thus combined a contractual and naturalist perspective on marriage. It was a natural right for a man and woman to enter into a marital contract. It was a natural duty for them to render procreation an essential condition of their marital contract. It was the natural right to survival of their child that imposed on parents a further natural duty to remain in their marriage once contracted till their children were self-sufficient. "For the end of conjunction between Male and Female, being not barely Procreation, but the continuation of the Species, this conjunction betwixt Male

and Female ought to last, even after Procreation, so long as is necessary to the nourishment and support of the young Ones, who are to be sustained by those that got them, till they are able to shift and provide for themselves.... whereby the Father, who is bound to take care for those he hath begot, is under an Obligation to continue in Conjugal Society with the same Woman longer than other Creatures, whose young being able to subsist of themselves, before the time of procreation returns again, the Conjugal Bond dissolves of it self, and they are at liberty...."

The logical end of Locke's argument was that the childless couple, or the couple whose children were of age, should be free to divorce, unless they had found some other "Communion of Interest" to sustain their contract. Locke dithered on the question of divorce. It was not essential to his political argument to speak definitively on the subject, and he knew the dangers of loose literary speculation on it in England in his day. In his private diary, he wrote quite brashly: "He that already is married may marry another woman with his left hand. . . . The ties, duration, and conditions of the left hand marriage shall be no other than what is expressed in the contract of marriage between the parties."⁴¹ In his *Two Treatises* and other publications, he only flirted with the doctrine of divorce and remarriage, suggesting delicately that the matter be left to private contractual calculation: "[T]he husband and wife, though they have but one common Concern, yet having different understandings will unavoidably sometimes have different wills too; it therefore being necessary, that the last Determination, i.e., the Rule, should be placed somewhere, it naturally falls to the Man's share, as the abler and the stronger. But the reaching but to the things of their Common Interest and Property, leave the Wife in the full and free possession of what by Contract is hers by peculiar Right, and gives the Husband no more power over her Life, than she has over his. The Power of the Husband being so far from that of an absolute Monarch, that the Wife has, in many cases, a Liberty to separate from him; where natural Right, or their Contract allows it, whether that Contract be made by themselves in the state of Nature, or by the Customs or Laws of the Countrey they live in; and the Children upon such Separation fall to the Father's or the Mother's Lot, as such Contract does determine."

The other logical end of this argument was that the state had little role to play within marriage and the family. For the state likewise was a voluntary assembly, formed by a governmental contract among like-minded parties. The state was formed after marriage and the family, and was ultimately subordinate to it in priority and right. The marriage contract sets the terms of the agreement between husband and wife, parent and child. The state could intervene only to enforce these contractual rights and duties, and only to vindicate the natural rights and duties of each party within the household. "For all the ends of Marriage being to be obtained under Politick Government, as well as in the state of Nature, the Civil Magistrate doth not abridge this Right, or Power of either naturally necessary to those ends,

⁴¹ Diary Entry, 1678, 1679, quoted in editor's note to *ibid.*, II, 81, in Laslett, ed., *Two Treatises* (paperback ed.), 364

viz., Procreation and mutual Support and Assistance whilst they are together; but only decides any Controversie that may arise between Man and Wife about them."

Locke did not press this contractarian reconstruction of the commonwealth model to the revolutionary ends that some Enlightenment writers would reach in the following centuries. Locke was a man of pious Anglo-Puritan stock who remained firmly devoted to biblical teachings throughout his life. What he gave with his political hand, he took back with his theological hand. His famous *Letters on Toleration* and *The Reasonableness of Christianity* were tracts of deep Christian conviction. In each of them, Locke called church and state to end their unhealthy alliance, to soften their belligerent dogmatism, to return to the simple moral truths of the New Testament. In each of these tracts, he also insisted on coating his doctrine of natural rights and duties with a number of classic Christian conceptions about the natural propriety of heterosexuality, monogamy, procreation, nurture and education of children, and the like. "[H]e that shall collect all the moral rules of the philosophers and compare them with those contained in the New Testament," he wrote, "will find them to come short of the morality delivered by our Saviour, and taught by his apostles.... Such a law of morality Jesus Christ hath given us in the New Testament [is] a full and sufficient rule for our direction, and conformable to that of reason."⁴²

On the strength of these convictions, Locke endorsed a whole series of biblical teachings on marriage and sex that stood in considerable tension with his more radical statements on marriage in the *Two Treatises*. For example, Locke endorsed Christ's reading of the Commandment against adultery as an injunction not only against "actual uncleanness, but all irregular desires [and] causeless divorces." He endorsed St. Paul's injunctions against fornication, saying that such conduct "might be so unsuitable to the state of a christian man, that a christian society might have reason to animadvert upon a fornicator ... as not comporting with the dignity and principles of that religion, which was the foundation of their society." He glossed St. Paul's teachings in I Corinthians 7 on the relative merits of marriage and celibacy with a matter-of-fact tone that reflects comfortable acceptance of traditional Christian doctrine. Glossing St. Paul's statements on the rights and duties of husbands and wives, Locke wrote: "The woman (who in all other rights is inferior) has here the same power given her over the man's body, that the man has over her's. The reason whereof is plain; because if she had not her man, when she had need of him, as well as the man his woman, when he had need of her, marriage would be no remedy against fornication." He paraphrased, without comment, Paul's requirement that husband and wife remain together till parted by death. He glossed Paul's later requirements that wives must submit to their husbands, and husbands to love their wives thus: "It is from the head that the body receives its vigorous constitution of

⁴² John Locke, *The Reasonableness of Christianity*, in *The Works of John Locke*, 12th ed. (London: C. & J. Rivington et al., 1824), 6:140-143. See also *ibid.*, 11-15, and the fuller account in his *Essay on the Law of Nature*, W. von Leyden, trans. and ed. (Oxford: Oxford University Press, 1954).

health and life; this St. Paul pronounces here of Christ, as head of the church, that by that parallel which he makes use of, to represent the relation of husband and wife, he may both show the wife the reasonableness of her subjection to her husband, and the duty incumbent on the husband to cherish and preserve his wife....”⁴³

Locke stretched the commonwealth model of marriage -- and indeed all prior Christian models of marriage -- to the breaking point. On the one hand, he was a devout Christian, fully conversant with biblical teachings on marriage and sexuality, but not fully comfortable with their theological exposition or legal implementation in his day. On the other hand, he was a devoted libertarian, fully supportive of the revolutionary reconstruction of the English commonwealth, but not fully satisfied with its philosophical foundation or its legal reification during the Glorious Revolution. From both perspectives, he pressed for a variety of reforms of marriage, family, and sexuality – even while retaining much of the traditional understanding of marriage as heterosexual monogamous union presumptively for life designed for the mutual protection, pleasure, and procreation of husband and wife.

Locke the theologian and Locke the political philosopher agreed on many points of marital reform -- greater freedom of marital contract, greater equality of husband and wife, greater emphasis on the procreation and education of children, greater restraint on the separation of couples with children, greater protection of wives, children, and servants from abuse. On this twin theological and philosophical foundation, Locke helped to prepare the way for many of the legal reforms in the common law of England and the broader English Commonwealth over the next three centuries. His views on marriage had no immediate legal impact, but they proved remarkably prescient and prophetic.

Locke the theologian and Locke the political philosopher, however, parted ways on many points as well. Locke the theologian emphasized the biblical norm of marriage as a hierarchical order headed by the husband with subjection by the wife. Locke the philosopher emphasized the voluntary organization of marriage as a negotiated contract between two equal parties. Locke the theologian vested both church and state with a prominent role in the policing of marital and sexual conduct. Locke the philosopher countenanced no role for the church, and a minimalist role for the state in policing the conduct of the household. Locke the theologian emphasized the duties of marital love, spiritual companionship, and sexual fidelity for life. Locke the philosopher emphasized the rights of marital equality, procreative capacity, and parental fidelity until children came of age.

⁴³ See, Locke, *Reasonableness of Christianity*, 115; id., *A Paraphrase and Notes on St. Paul's First Epistle to the Corinthians*, in Locke, *Works*, 7:118-23 (notes on I Cor. 6:12, 7:1-4); id., *A Paraphrase and Notes on St. Paul's Epistle to the Ephesians*, in Locke, *Works*, 7:488 (notes on Eph. 5:23).

Many skeptical readers of his day dismissed Locke as an intellectual schizophrenic, a man incapable of harmonizing his theological convictions and political speculations on marriage, and thus prone to intemperate remarks and indecisive principles on both scores. More sympathetic readers hailed Locke as a methodological genius, a man who liberated the theology and politics of marriage from each other. By distinguishing a natural versus biblical, and a political versus theological discourse on marriage, Locke broke the presumed organic connections between the domestic commonwealth and the political commonwealth, household and state, father and king, child and subject. The household could have its own order and organization based on the marital contract; the state could have its own offices and functions based on the social contract. The church could have its norms for marriage based on biblical revelation; the state could have its norms for marriage based on natural rights. The church could ground its norms of authority and obedience in the Fifth Commandment ("Honor your father and mother"); the state could ground its norms for authority and obedience in the social contract. A pious Christian could accept the literal truths of the Bible for his private life, yet advocate the liberal reforms of the social contract for public law.

To accept Locke's method was to accept the proposition that it was no longer necessary to integrate the spiritual, natural, social, and contractual perspectives on marriage in an organic model -- whether the Anglican commonwealth model or any of the other sacramental, social, or covenantal models of the tradition. With Locke's method, natural and contractual perspectives on marriage could be fully expounded without reference to their religious and social implications. Religious and social perspectives on marriage could be fully defended without reference to their natural or contractual dimensions. Moreover, it was no longer necessary for state, church, or civil society to play an integrated role in the governance of marriage. Marriage was the first society a person entered from the state of nature, and the terms of the marital contract together with the person's natural rights and duties were superior to all other governing norms. If the married person chose to enter into a political, or an ecclesiastical, or a civic society, he or she could subscribe to the marital norms of that particular society. But these sets of norms were independent of each other, and subordinate to the natural and contractual norms of the marital contract.

Hugo Grotius, the seventeenth-century Dutch political philosopher on whom Locke partly relied for his philosophical constructions, once ventured the impious hypothesis that the law of nature could be valid even if "we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him."⁴⁴ This idea was hardly original with Grotius, and hardly acceptable to the establishment of his day. But Grotius's articulation of it in the midst of the bitter religious warfare and persecution of early seventeenth-century Europe proved propitious. It helped to set afoot the

⁴⁴ Hugo Grotius, *De Jure Belli ac Pacis* (1625), Prolegomena, 11.

development of a law of nations and a law of the sea that did not depend upon a common theological foundation or necessary role for the Christian church.

A similar claim might be made about Locke's "impious hypothesis" that a law of marriage could be valid even if God were not acknowledged as the founder of the marriage contract, or the church not accepted as an agent in the governance of marriage. This idea, too, was hardly original with Locke, and hardly acceptable to the establishment of his day. But Locke's articulation of an independent naturalist and contractarian theory of marriage in the midst of the revolutionary upheaval of English society also proved propitious. It helped to set afoot the development of an Anglo-American theory and law of marriage and the family that eventually no longer depended upon established theological doctrines or upon a necessary legal role for the church – though it left open voluntary religious and ecclesiastical forms and forums of marriage.

Locke's early insights live on in the common law traditions of separating church and state in the governance of sex, marriage, and family life. In most common law lands today, it is the state that defines the norms of marriage, family, and sexuality that are permissible in the community, even though these state's norms often depart radically from prevailing religious teachings. Also in most common law nations today, religious officials still may officiate at weddings and declare a couple married "by the power of the state vested" in them. These religious officials also still have freedom to add steps to the state's marital formation requirements (such as premarital counseling) and to refuse to marry same-sex or interreligious couples, or those whose moral lives are not consonant with the religious community's teaching.

Common law lands, however, now face growing pressure for a stronger separation of religion and state in the formation and governance of marriage. One manifestation of this separationist pressure is the agitation to end the traditional practice of giving religious officials the power to declare a marriage on behalf of the state. That reform, which has support among selected clergy and political officials, would entirely separate the religious consecration of marriage from its legal formation, giving the state a monopoly over marriage law. It would also relieve the growing pressure on religious communities to consecrate every form of marriage recognized by the state, even those forms directly contrary to the religious communities' teaching.

A second, opposite manifestation of this separationist pressure is the agitation for religious communities to have their own religious laws governing marriage which their voluntary faithful have freedom to adopt in lieu of state law. That reform, which has its strongest support among some minority religions in the

West, especially Jews and Muslims, would leave the choice of what marriage law governs entirely in the hands of the married couple.⁴⁵ The argument to provide citizens with a straight choice between state and religious marriage laws is now pressed in part on the Lockean terms which we discussed above. One of Locke's most basic teachings is that marriage is a pre-political and pre-legal institution. It comes before the state and its positive laws, both in historical development and in ontological priority. As we saw, Locke regarded the marital contract as "the first contract" and "the first society" to be formed as men and women came forth from the state of nature. The broader social contract came later, presupposing stable marital contracts. And contracts to form state governments, churches, and other voluntary associations within this broader society came later still. Why, on this simple contractarian logic, modern reformers now argue, should the state get exclusive jurisdiction over marriage? After all, it was sixteenth-century Protestants, not eighteenth-century Enlightenment philosophers who first vested the state with marital jurisdiction. But why is state jurisdiction over marriage mandatory, or even necessary? Before the sixteenth-century Protestant Reformation -- and in many Catholic lands well after the Reformation, too -- the Catholic canon law and Catholic church courts governed marriage. Moreover, even in Protestant England until the nineteenth century, the state delegated to ecclesiastical courts the power to treat many marriage and family questions. There is evidently nothing inherent in the structure of Western marriage and family law that requires that it be administered by the state. And there is nothing ineluctable in liberalism's contractarian logic that requires marital couples to choose the state rather than their own families or their own religious communities to govern their domestic lives -- particularly when the state's liberal rules diverge so widely from their own beliefs and practices. On this latter argument, conservative Muslims sometimes join hands with selected conservative Christians and critical liberals who call for exemption from, or the abolition of, state marriage law – conservative Christians because the state has betrayed traditional Christian teachings on marriage, critical liberals because the state is encroaching on individual privacy and sexual autonomy.⁴⁶

It is hard to predict where these reformist movements might lead. But it is quite clear that Western democracies today are facing as radical a transformation of sex, marriage, and family law as anything that obtained in the Protestant Reformation. In the midst of such tumult, it is wise to revisit these great battles of

⁴⁵ See the range of perspectives in Joel A. Nichols, ed., *Marriage and Divorce in a Multicultural Context: Multitiered Marriage and the Boundaries of Civil Law and Religion* (Cambridge: Cambridge University Press, 2011).

⁴⁶ See sources and discussion in John Witte, Jr., "The Future of Muslim Family Laws in Western Democracies," *Sharia in the West*, ed. Rex Ahmar and Nicholas Aroney (Oxford: Oxford University Press, 2011), 279-292.

the sixteenth century to see what was at stake, to see why they constructed what they did, and to see whether those earlier reformers still have something valuable to teach us, even in these post-modern and post-Christian times.

Protestants, on both sides of the Atlantic, continued to expound covenantal and other rich theologies of marriage until the twentieth century. They continued to mine the Bible for further insights into the fundamentals of sex, marriage and family life – an exegetical exercise made better by the rise of the form critical method of interpretation that offered much more precise understanding of the dating, sequencing, and context of biblical passages. While these Protestant theologies of marriage did change in accent and application over time and across denominational lines, the main Protestant models of marriage introduced in the Reformation did not change much before the twentieth century.⁴⁷ We shall sample the contributions of a few modern Protestant theologians in later chapters as we develop our own constructive position.

The more innovative changes in Protestant marriage theory after the Reformation era came at the philosophical level. From the later sixteenth to the later nineteenth centuries, a whole series of Protestant writers developed rich natural law accounts of marriage -- building on, but going beyond the natural law arguments of the original Protestant Reformers that we sampled in the last chapter. Most of these later Protestant writers accepted biblical norms and Protestant teachings on sex, marriage, and family life. God, they commonly said, created marriage for the mutual comfort of men and women, their mutual procreation of children, and their mutual protection from sin and temptation. All fit and able adults should marry, unless uniquely called to a single life. Monogamous marriage between unrelated parties was the sole legitimate form and forum for sex. Incest, polygamy, adultery, fornication, concubinage, prostitution, sodomy, and bestiality were all strictly forbidden. Marriages should proceed first with an engagement, then with public banns, and finally with a church wedding. Valid marriages required parental consent, peer witnesses, and civil registration with the state to complement the pastor's consecration in the church. Marital parties should support and care for each other throughout their lives, and provide for each other and for their children in their last wills and testaments. Both fathers and mothers must share in the care, education, and protection of their children. Divorce is allowed on proven grounds of adultery, malicious desertion, or other serious fault, with remarriage allowed at least to the innocent party and ongoing household support required of the guilty party.

Rather than simply adducing the Bible and Christian theology as their highest authorities, however, these later Protestant writers sought to build a natural law account of these main features of marriage – using rational and empirical arguments that would be cogent even to those with different religious convictions. These Protestant natural law theorists used various methods to make their case. Some

⁴⁷ See Brent Waters, *The Family in Social and Political Thought* (Oxford: Oxford University Press, 2007); John Witte, Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2d. ed. (Louisville, KY: Westminster John Knox Press, 2011).

drew increasingly sophisticated inferences from pair-bonding patterns and reproductive strategies among some animals, building on Aristotelian-Thomistic insights and anticipating the findings of modern evolutionary biologists. Some uncovered the common forms and norms of marriage that were shared by Jews, Christians, and Muslims, sometimes even by “pagans,” “heathens,” and “exotic” religions from Asia, Africa, and the Americas -- all of which they took as evidence of a common natural law at work in the hearts and consciences of all men. Some developed a practical, prudential, and even utilitarian logic of what worked best for husbands and wives, parents and children to exercise and enjoy their natural rights and duties in the household. Orthodox Protestant theologians sometimes decried these efforts, especially as some of their philosophical brethren edged toward the purely rationalist, and sometimes anti-Christian, formulations of the later French Enlightenment. But most Protestant natural law theorists on marriage saw their efforts as a complement to, even a confirmation of, the work of the theologians.⁴⁸

Part of this early modern Protestant natural law theory of marriage was its own alternative theological exercise – to show the existence of a common natural theology of marriage that Christianity shared with the many other religions that were being discovered in the new age of world trade, mission, and colonization. Part of it was a philosophical exercise – to prove the existence, if not the truth, of traditional marital forms and norms, much like others sought to prove the existence of God against the growing ranks of skeptics and atheists. Part of it was an historical exercise – to retrieve and reconstruct some of the rational core of marriage and family life developed by classical writers, neo-classical movements being highly fashionable in early modern Protestant universities and intellectual circles. And part of this was a jurisprudential exercise – to create a common law of marriage that would form part of a universal law of nations that could transcend, if not pacify, the many European nations that had become locked in bloody religious warfare.

⁴⁸ See generally on early modern Protestant natural law, and the controversies it occasioned within some Protestant circles, Luigi Lombardi Vallauri and Gerhard Dilcher, eds., *Christentum, Säkularisation, und modernes Recht*, 2 vols. (Baden-Baden: Nomos Gesellschaft, 1981); Stephen Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (Grand Rapids, MI: Wm. B. Eerdmans, 2006); David VanDrunen, *Natural Law and the Two Kingdoms: A Study in the Development of Reformed Social Thought* (Grand Rapids, MI: Wm. B. Eerdmans, 2010); John Witte, Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007); .

The leading sixteenth-century Protestant reformers – Martin Luther (1483-1546) and Philip Melanchthon (1497-1560), John Calvin (1509-1564) and Martin Bucer (1491-1551), Thomas Cranmer (1489-1556) and Heinrich Bullinger (1504-1575) – all wrote at length on marriage. In their view, God had created and ordered marriage to achieve three purposes (*causae*) or goals (*fines*): (1) the mutual love and support of husband and wife; (2) the mutual procreation and nurture of children; and (3) the mutual protection of both spouses from sexual sin – usually put in that order of priority.⁴⁹

This early Protestant formulation of the marital goods of love, procreation, and protection was no invention of the sixteenth century. This trilogy had already appeared more than a millennium before in Roman law and in Isidore of Seville's (d. 636) *Etymologies* (though Isidore made procreation the first good).⁵⁰ By the sixteenth century, it had also become a standard formula among Catholic canonists and theologians to describe the purposes or reasons for marrying (*causae*), as opposed to the inherent goods (*bona*) of marriage itself. Most early Protestants rejected this medieval distinction between the purposes and goods of marriage.

⁴⁹ See sources in FSC 96-108, 143-150 and the copiously documented interplay of the theology and practice of marital and familial love in Steven Ozment, *Ancestors: The Loving Family in Old Europe* (Cambridge: Harvard University Press, 2001); Steven E. Ozment, *Flesh and Spirit: Private Life in Early Modern Germany* (New York: Viking Press, 1999); Steven E. Ozment, *When Fathers Ruled: Family Life in Reformation Europe* (Cambridge: Harvard University Press, 1983).

⁵⁰ Isidore, *Etymologiae*, 9.7.27.

From God's point of view, they argued, marriage has built-in purposes that God wishes to see achieved among his creatures. From humanity's point of view, these are the created goods that we need to realize. To make fine distinctions between the goods and purposes, causes and effects, ends and means, motivations and measures of marriage, most early Protestants believed, is ultimately to engage in idle casuistry. For most Protestants, love, procreation, and protection was the essential formula.

This formula overlapped with Augustine's formula of faith, children and sacramentality, but amended it in critical ways. Like Augustine, Protestants emphasized the good of marital faithfulness (*fides*). But they cast this good in increasingly overt terms of marital love, affection, friendship, and companionship, sometimes adducing Stoic and Roman sources in so doing. Also, like Augustine, Protestants emphasized the good of procreating children (*proles*). But they amended this good with the familiar medieval gloss that procreation included the Christian nurture and education of children. They underscored this amendment by insisting on the creation of schools for the religious and civic education of all children, and by producing a welter of catechisms, textbooks, and household manuals to assist in the same.⁵¹

Unlike Augustine, however, the early Protestant reformers emphasized protection from sexual sin as a good in itself, not just a function of *fides*. Since the

⁵¹ See LW 45:11-49, 46:259-320; LP, chaps. 6-7.

fall into sin, humankind has become totally depraved, the reformers insisted. Lust has pervaded the conscience of every person. Participation in marriage has become an absolute necessity. For without marriage, the person's distorted sexuality becomes a force capable of overthrowing the most devout conscience. A person is enticed by nature to prostitution, masturbation, voyeurism, and other sexual sins. The "good gift" of marriage, Luther wrote, should thus be declined only by those who have received God's gift of continence. "Such persons are rare, not one in a thousand, for they are a special miracle of God." The Apostle Paul has identified this group as the permanently impotent and the eunuchs; few others can claim such a unique gift.⁵²

Also unlike Augustine, Protestants gave no place to the marital good of *sacramentum* – either in the Augustinian sense of symbolic stability, or in the medieval Catholic sense of a permanent channel of sanctifying grace. For most early Protestants, marriage was neither a sacrament of the Church on the order of baptism or the eucharist, nor a permanent union dissolvable only upon death of one of the parties. To be sure, Protestants like Catholics believed that marriages should be stable and presumptively indissoluble. But this presumption could be overcome if one of the other marital goods were frustrated. If there was a 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 was a failure of procreation – by reason of sterility,

⁵² LW 45:18-22; 28:9-12, 27-31.

incapacity, or disease discovered shortly after the wedding – the marriage was also broken. Those spouses who could not reconcile themselves to this condition could seek an annulment and at least the healthy spouse could marry another. And if there was a failure of protection from sin – by reason of frigidity, separation, or cruelty – the marriage was again broken. If the parties could not be reconciled to regular cohabitation and consortium, they could divorce and seek another marriage.

Most early Protestants, especially Lutherans and Calvinists, thus tended to view the goods of marriage in more teleological terms than their Catholic brethren. Marriage was a means to love, to children, and to protection. Where such goods failed, the marriage failed, and such goods should be sought in a second marriage. Martin Bucer, the Strasbourg reformer who influenced Lutherans, Calvinists, and Anglicans alike, put the matter more flatly than most of his co-religionists: "A proper and useful" marriage, Bucer wrote, has "four necessary properties": "1. That the [couple] should live together.... 2. That they should love one another in the height of dearness.... 3. That the husband bear himself as the head and preserver of the wife instructing her to all godliness and integrity of life; that the wife also be to her husband a help, according to her place, especially furthering him in the true worship of God, and next in all the occasions of civil life. And 4. That they not defraud each other of conjugal benevolence." Marriages that exhibit these four properties must be maintained and celebrated. But even "where only one [property] be wanting in both or either party ... it cannot then be said that the covenant of matrimony holds good between such." To perpetuate the formal structure of marriage after a necessary property is lost, Bucer argued, is not only a destructive custom, but an unbiblical

practice. "[T]he Lord did not only permit, but also expressly and earnestly commanded his people, by whom he would that all holiness and faith of the marriage covenant be observed, that he could not induce his mind to love his wife with a true conjugal love, might dismiss her that she might marry to another" who is more meet and good.⁵³

This more teleological view of marriage is also reflected in the tendency of early Protestants to introduce alternative formulations of the goods of marriage than those inherited from the tradition. Aquinas and other medieval writers had considered, but then rejected, the notion that marriage might have additional or alternative goods beyond the Augustinian goods of faith, children, and sacramentality. The Protestant reformers showed no such reticence. They held out all manner of personal, social, and political goods that marriage could offer – in part, on the basis of a fresh reading of biblical and classical sources, in part in support of their relentless arguments against celibacy and monasticism.

One common Protestant formulation was that marriage had civil and spiritual “uses” in this life – a variant on the Protestant theory of the “uses of the moral law.”⁵⁴ Both Luther and Calvin sometimes spoke in these terms. On the one hand, they argued, marriage has general *civil uses* for all persons, regardless of their faith. Marriage deters vice by furnishing preferred options to prostitution, promiscuity,

⁵³ Martin Bucer, *De Regno Christi* (1550), 2.26, 38, 39, in Wilhelm Pauck, ed., *Melanchthon and Bucer* (Philadelphia: Westminster Press, 1969).

⁵⁴ See chapter 10 herein.

pornography, and other forms of sexual pathos. Marriage cultivates virtue by offering love, care, and nurture to its members, and holding out a model of charity, education, and sacrifice to the broader community. Marriage enhances the life of a man and a woman by providing them with a community of caring and sharing, of stability and support, of nurture and welfare. Marriage enhances the life of the child, by providing it with a chrysalis of nurture and love, with a highly individualized form of socialization and education. On the other hand, marriage has specific *spiritual* uses for believers – ways of sustaining and strengthening them in the Christian faith. The love of wife and husband is among the strongest symbols Christians can experience of Yahweh's love for the elect, of Christ's love for the Church. The sacrifices one makes for spouse and child can be among the best expressions of Christian charity and agape. For Christian believers, Calvin wrote, marriage can thus be "a sacred bond," "a holy fellowship," a "divine partnership," "a heavenly calling," "the fountainhead of life," "the holiest kind of company in all the world," "the principal and most sacred ... of all the offices pertaining to human society." "God reigns in a little household, even one in dire poverty, when the husband and the wife dedicate themselves to their duties to each other. Here there is a holiness greater and nearer the kingdom of God than there is even in a cloister."⁵⁵

Other Protestants emphasized not only the civil and spiritual uses of marriage, but also its social and political goods. Building especially on Aristotelian

⁵⁵ Comm. Gen. 2:18, 21, 24, 6:2; Serm. Deut. 21:10-14; Comm. Mal. 2:14, 16; Comm. Harmony of the Gospels, Matt. 19:11; Comm. 1 Cor. 7:14, 9:11; Serm. 2 Tim. 5. See John Witte, Jr. and Robert M. Kingdon, *Sex, Marriage and Family in John Calvin's Geneva*, 3 vols. (Grand Rapids, MI: Wm. B. Eerdmans, 2005-).

and Roman law antecedents, Lutheran, Calvinist, and Anglican writers alike treated marriage as the created, natural foundation of civil society and political authority.

For example, Philip Melanchthon, Luther's eminent co-worker in Wittenberg, opened a long discussion of political authority thus:

The earthly life has orders (*Stände*) and works (*Werke*) which serve to keep the human race, and are ordained by God with certain limits and means. By this order we should know that this human nature is not created without the distinct counsel of God, and that God in this way lets his goodness shine on us to sustain and provide for us.

Matrimony is first, for God does not want human nature simply to run its course as cattle do. Therefore God ordained marriage (Gen. 2; Matt. 19; I Cor. 7) as an eternal, inseparable fellowship of one husband and one wife.... [M]atrimony is a very lovely, beautiful fellowship and church of God, if two people in true faith and obedience toward God cheerfully live together, together invoke God, and rear children in the knowledge of God and virtue.⁵⁶

Elsewhere, Melanchthon, like Luther, emphasized that marriage was one of the three great estates (*drei Stände*), along with the church and the state, that God had appointed for the governance of the earthly kingdom. The estate of marriage

⁵⁶ Philip Melanchthon, "Loci Communes (1555)," in Clyde Manschreck, trans., *Melanchthon on Christian Doctrine* (New York: Oxford University Press, 1965), 323.

was to teach all persons, particularly children, Christian values, morals, and mores. It was to exemplify for a sinful society a community of love and cooperation, meditation and discussion, song and prayer. It was to hold out for the church and the state an example of firm but benign parental discipline, rule, and authority. It was to take in and care for wayfarers, widows, and destitute persons – a responsibility previously assumed largely by monasteries and cloisters. Marriage was thus as indispensable an agent in God's redemption plan as the church. It was as indispensable an agent of social order and communal cohesion as the state.⁵⁷

Johannes Althusius (1557-1638), a distinguished Protestant jurist and political theorist, drew on sundry Christian and classical sources to construct a comprehensive covenantal theory of the state and society – again with marriage at its foundation.⁵⁸ "Politics is the art of associating men for the purpose of establishing, cultivating, and conserving social life among them," Althusius wrote, citing Aristotle. "The goal of political man is a holy, just, comfortable, and happy symbiosis, a life lacking nothing either necessary or useful."⁵⁹ All such political associations are formed by "individual men covenanting among themselves to communicate whatever is necessary and useful for organizing and living in private life."⁶⁰ At the base of every such association is marriage, which is a "natural, necessary, economic, and

⁵⁷ See sources in FSC, 42-73; LP, 214-232.

⁵⁸ Johannes Althusius, *Politica: Methodice digesta atque exemplis sacris et profanis illustrate* [1614], ed., Carl J. Friedrich (Cambridge, Mass.: Harvard University Press, 1932).

⁵⁹ Althusius, *Politica*, I.1-3, 17.

⁶⁰ Althusius, *Politica*, II.2, 27.

domestic society that is contracted permanently.... Therefore it is rightly called the most intense society, friendship, relationship, and union, the seedbed of every other symbiotic association."⁶¹

Althusius went on to elaborate the relations and functions of husband and wife, adducing scores of classical, biblical, and early Christian sources to support the early modern patriarchal ideal of an hierarchical household under the benign authority of the *paterfamilias*:

Husband and wife, who are bound to each other, communicate the advantages and responsibilities of married life. The director and governor of the common affairs of the marital association is the husband. The wife and family are obedient, and do what he commands. The advantages and responsibilities are either proper to one of the spouses, or common to both. Proper advantages and duties are either those the husband communicates to his wife, or those the wife communicates to her husband. The husband communicates to his wife his name, family, reputation, station in life, and economic condition. He also provides her with guidance, legal protection, and defense against violence and injury [and] supplies her with all other necessities, such as management, solicitude, food, and clothing.... The wife extends to her husband obedience, subjection, trust, compliance,

⁶¹ Althusius, *Politica*, II.14-15, 28 (citations omitted).

services, aid, honor, reverence, modesty, and respect. She brings forth children for him, and nurses and trains them. She joins and consoles him in misery and calamity. She accommodates herself to his customs, and without his counsel and consent she does nothing. And thus she renders to her husband an agreeable and peaceful life.

There are common advantage and responsibilities that are provided and communicated by both spouses, such as kindness, use of the body for avoiding harlotry and for procreating children, mutual habitation except when absence may be necessary, intimate and familiar companionship, mutual love, fidelity, patience, mutual service, communication of all goods and right ... management of the family, administration of household duties, education of children in the true religion, protection against and liberation from perils, and mourning of the dead.⁶²

Anglican and Anglo-Puritan writers argued even more expansively than Continental Protestants that marriage at once served and symbolized the commonwealth (literally the “common good”), of the couple, the children, the church, and the state. William Perkins (1558-1602) put it thus in 1590: “[M]arriage was made and appointed by God himself to be the foundation and seminary of all sorts and kinds of life in the commonwealth and the church.... [T]hose families wherein the service of God is performed are, as it were, little churches; yea, even a kind of

⁶² Althusius, *Politica*, II.38-49, 29-30 (citations omitted).

paradise on earth."⁶³ Robert Cleaver (c. 1561-1625) opened his famous 1598 tract, *A Godly Form of Householde Gouernment* with an oft-repeated maxim: "A household is as it were a little commonwealth, by the good government whereof, God's glory may be advanced, the commonwealth which stands of several families, benefited, and all that live in that family, may receive much comfort and commodity."⁶⁴ William Gouge (1578-1653) premised his massive 800 page *Domestic Duties* (1622) on the same belief that "the family is a seminary of the Church and the Commonwealth," and is indeed in its own right, "a little church, and a little commonwealth, whereby a trial may be made of such as are fit for any place of authority, or subjection in Church or commonwealth."⁶⁵

Like the political and ecclesiastical commonwealths, Anglican divines argued, the domestic commonwealth was created as a hierarchical structure. God had created Eve as "a help meet" for Adam. He had called Adam and Eve to mutual society among themselves and mutual procreation of children (Gen 1:28, 2:18). After the Fall, He had commanded that Adam "shall rule over" Eve (Gen. 3:16). As heir of Adam, the modern husband was thus the head of his wife. As heir of Eve, the modern wife was his subject, his "help meet." Together husband and wife were

⁶³ William Perkins, *Christian Oeconomy or a Short Survey of the Right Manner of Erecting and Ordering a Family According to the Scriptures*, in *The Work of William Perkins*, ed. Ian Breward (Appleford: The Sutton Courtney Press, 1970), 418-419. I have modernized the spelling and punctuation in this and the next five quotations.

⁶⁴ Robert Cleaver, *A Godly Forme of Householde Gouernment* (London: Thomas Creed, 1598), 1.

⁶⁵ William Gouge, *Of Domesticall Duties: Eight Treatises* (London: J. Haviland, 1622), 17-18.

the heads of their children and the rest of the household. Each of these offices in the family hierarchy was bound by a series of duties, rooted in the Bible and natural law, which dozens of thick household manuals and catechisms of the day elaborated.⁶⁶

Faithful maintenance of domestic duties and offices, Anglican divines believed, was the best guarantee of individual flourishing and social order within the broader commonwealths of church and state. Robert Cleaver put it thus: "[I]f masters of families do not practice catechizing and discipline in their houses and thereby join their helping hands to Magistrates, and Ministers, social order and stability will soon give way to chaos and anarchy."⁶⁷ "A consonable performance of household duties ... may be accounted a public work," William Gouge echoed. For "good members of a family are likely to make good members of church and commonwealth."⁶⁸ Daniel Rogers (1573-1652) concurred, arguing that a stable marriage and household served as "the right hand of providence, supporter of laws, states, orders, offices, gifts, and services, the glory of peace, ... the foundation of Countries, Cities, Universities, ... Crowns and Kingdoms."⁶⁹ Dozens of Anglican and Anglo-Puritan writers, from 1600 onward, expounded this "commonwealth model" of marriage.⁷⁰

⁶⁶ See sources in FSC, 130-193.

⁶⁷ Cleaver, *Householde Gouernment*, A3.

⁶⁸ Gouge, *Domesticall Duties*, 17, 27.

⁶⁹ Daniel Rogers, *Matrimoniall Honour* (London: Philip Nevil, 1642), 17.

⁷⁰ See, e.g., Gordon J. Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth Century England* (New York: Basic Books, 1975), 179-91; Mary Lynn Shanley, "Marriage Contract and Social Contract in Seventeenth-Century English Political Thought," *Western Political Quarterly* 32 (1979):187-189; Beatrice Gottlieb, *The Family in the Western World from the Black Death to the Industrial Age* (Oxford: Oxford University Press, 1993), 89-109.