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Chapter 1

“It Takes a Society to Raise a Family”: The Multidimensional Family Sphere

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Abstract

This chapter reconstructs traditional teachings on sex, marriage, and family life, and connects them with modern family law and family theory. It presents the marital family as a sphere, or a globe. At the bottom is (1) a natural pole that anchors the natural goods of marriage and natural human inclinations, appetites, and capacities for sex, marriage, and family life. Radiating up from this natural pole are: (2) a social dimension that articulates the public goods of the marital family, and the important supportive role of social institutions and professions, not least church and state; (3) an economic dimension that reflects the union of properties, labor, and rights in marriage and the family, and the channeling, expressive, and signaling functions of modern family law; (4) a communicative dimension expressed in public liturgies, celebrations, and symbols on important family days, as well as the vital private daily communications among spouses, parents, and children; and (5) a contractual dimension, expressed in the complex formal promises that form a marital household and define ongoing family rights, duties, and expectations. At the top of the sphere is (6) a spiritual pole that helps integrate these dimensions around sacramental, covenantal, or other transcendent ideals for family life.

Keywords: marital family sphere, natural pole, spiritual pole, social dimension, economic dimension, communicative dimension, contractual dimension

¹ This chapter is adapted from my *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties* (Cambridge: Cambridge University Press, 2019), chap. 7, which provides more detailed analysis and references, hereafter CSF.

Introduction

This volume on the family, like the other titles in this book series, explores the role of sundry social systems, separately and together, in shaping individual character and collective values in late modern liberal societies. Historically in the West, the marital family was regarded as the cornerstone of character formation and social organization. Aristotle and the Roman Stoics called the union of husband and wife, and parent and child, the “foundation of the polis” and “the private font of public virtue.” The Church Fathers and medieval Catholics called the monogamous marital household the “seedbed” of the city, “the sacramental force that welds Christian society together.” Early modern Protestant theologians, common law jurists, and utilitarian philosophers alike called the marital household, a “little church” and a “little commonwealth,” the first school of love and justice, nurture and education, charity and citizenship, discipline and production. Echoing these traditional insights, evolutionary scientists now argue that humans have developed enduring pair-bonding strategies of reproduction as the fittest means for long-term survival and success as a species. Modern social scientists and public-health experts have pointed to the stable marital household as a critical source of happiness and flourishing for men, women, and children. The tradition has long taught that while the marital family is neither good for everyone nor always good, it offers essential private goods to most couples and children and vital public goods to church, state, economy, and society.²

Today, however, the marital family has become more fragmented and fragile in liberal societies. Many states now offer several off-the-rack legal models of straight and same-sex marriage, civil union, and domestic partnership with shrinking formal and functional distinctions between these domestic forms and simple nonmarital cohabitation. Strong new privacy laws protect all manner of voluntary sexual interactions among consenting adults, and rapidly growing portions of the population are “drifting into sex and parenthood without marriage.”³ To be sure, some 90 percent of American citizens with college educations and sufficient means now form stable marital families and rear and form their children in intact homes—markedly stronger numbers than thirty years ago at the height of the sexual revolution and with its 50 percent divorce rate.⁴ But persons with fewer means and less education today “have all but given up on marriage,” June Carbone and Naomi Cahn report in a sobering comprehensive study. “For the majority of Americans who haven’t graduated from college, marriage rates are low, divorce rates are high, and a first child is more likely to be born to parents who are single than to parents who are married.”⁵ And the rates of nonmarital cohabitation and procreation are considerably higher in most parts of Western Europe, even while many European nations are losing the cultural cohesion,

² See detailed sources in *ibid.* and in my *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, 2nd. ed. (Louisville, KY: Westminster John Knox Press, 2012), hereafter FSC.

³ Isabel V. Sawhill, *Generation Unbound: Drifting into Sex and Parenthood without Marriage* (Washington, DC: Brookings Institution Press, 2014).

⁴ See detailed annual statistics and analysis by the National Marriage Project at the University of Virginia <http://nationalmarriageproject.org/> and the Institute for American Values, <http://www.americanvalues.org/>.

⁵ June Carbone and Naomi Cahn, *Marriage Matters: How Inequality Is Remaking the American Family* (Oxford: Oxford University Press, 2014), 19–20.

political will, and economic capital needed to maintain the modern welfare state that absorbed many of the responsibilities historically discharged by the church and family. As the late great Jonathan Sacks, chief rabbi of the United Kingdom, put it:

Sex has become, for the first time since the conversion to Christianity of the Roman Emperor Constantine, an almost value-free zone. Whatever happens between two consenting adults in private is, most people now believe, entirely a matter for them. The law may not intervene; neither may social sanction. It is simply not other people's business. Together with a whole series of other changes, the result has been that what marriage brought together has now split apart. There has been a divorce between sex and love, love and marriage, marriage and reproduction, reproduction and education and nurture. Sex is for pleasure. Love is a feeling, not a commitment. Marriage is now deeply unfashionable. Nurture has been outsourced to specialized child carers. Education is the responsibility of the state. And the consequences of failure are delegated to social workers.⁶

It is easy to lament the breakdown of the modern family and the seeming slide into a sexual state of nature where life is “nasty, brutish, and short,” particularly for women, children, the elderly and the disabled bereft of reliable kin altruism, diaconal care, or social welfare. But happily, in recent years a number of leading scholars, advocates, and religious, cultural, political, and public-health leaders have responded decisively in leading a powerful new “marriage movement.” This movement combines traditional teachings and modern social science and public-health findings to advocate for stable marital families, responsible sex and parentage, and proper family planning as essential for private flourishing and social stability. And this movement has pressed for robust new church, state, and economic policies in support of the stable marital family—including, notably, same-sex families.

Part of this profamily movement, I submit, requires us to rethink the place and role of the marital family in late modern liberal societies and the interaction of the family with other powerful social systems. Perhaps the marital family is no longer the “foundation of the polis,” as Aristotle wrote, or “the cornerstone of Western civilization,” as the United States Supreme Court confidently pronounced.⁷ But the family remains an essential institution in late modern liberal societies that still does and should shape our public and private lives, characters, and value formation, even if it is now more interwoven with and newly dependent on other social institutions. This is the flip side of the traditional Western teaching that the stable family is the foundation of a well-ordered society: a well-ordered society is just as much the foundation of a stable family. Without strong social and institutional supports, the marital family is “pitifully vulnerable,” the late

⁶ Jonathan Sacks, *The Home We Build Together: Recreating Society* (London: Continuum, 2007), 210.

⁷ Aristotle, *Politics*, 1.1.1; Reynolds v. U.S., 98 U.S. 145, 164–66 (1879).

great sociologist Robert Bellah reminded us. Just as “it takes a village to raise a child, . . . it takes a society to raise a family.”⁸

To make this claim, I present the modern marital family as a sphere, or a globe—with a natural pole on the bottom, a spiritual pole on top, and various social, economic, communicative, and contractual dimensions radiating between them. At the bottom of this sphere is (1) a *natural* pole that anchors the natural goods of marriage and the inherent human inclinations, appetites, capacities, and imperatives for sex, marriage, and family life. Radiating up from this natural pole are: (2) a *social* dimension that articulates the public communal functions and goods of marriage and the family, and that recognizes the complex groups of institutions and professions that support and interact with the domestic household and its members; (3) an *economic* dimension that reflects the union of properties, labor, and entitlements by marriage, the ongoing material rights and duties of spouses, parents, and children during and after a marriage, and the channeling, expressive, and signaling functions of modern family law; (4) a *communicative* dimension, expressed in the public liturgies, celebrations, and symbols that mark the formation of a marriage and the birth or confirmation of a child as well as in the vital private daily communications among spouses, children, and household dependents concerning sex, finance, labor, nurture, formation, social responsibilities, and more; and (5) a *contractual* dimension, expressed in the complex formal promises and provisions that form a marriage and household, and the ongoing obligations that attach to the relationships of husband and wife, parent and child, family and society. At the top of the sphere is (6) a *spiritual* pole that helps binds together the natural, social, economic, communicative, and contractual dimensions of the marital family around sacramental, covenantal, or other transcendent ideals, and stipulates the spiritual inspirations and aspirations that marriage and family life provide for husbands and wives, parents and children, and broader communities.

Social theorists talk a lot about “social spheres”—spheres of justice, liberty, love, governance, morality, education, and so on.⁹ At minimum, this language is descriptive of the distinct institutions or sectors of modern differentiated societies and their respective contributions to private and public life. But talk of spheres is also prescriptive for many theorists who aim to define and defend more clearly the natural or voluntary associations that buffer the individual from the state and other dominating institutions. Given the long and cruel experiences with political tyranny and totalitarianism in the West, many writers press for the separation, independence, freedom, autonomy, or even sovereignty of the spheres of family, church, academy, media, market, and other institutions, both from each other and from the state. Various theories of social or structural pluralism, civil society, subsidiarity, sphere sovereignty, voluntary

⁸ Robert Bellah, “Epilogue: It Takes a Society to Raise a Family,” in Steven M. Tipton and John Witte Jr., eds., *Family Transformed: Religion, Values, and Society in American Life* (Washington, DC: Georgetown University Press, 2005), 286–98.

⁹ See, for example, Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 2010); Michael G. Kammen, *Spheres of Liberty* (1985; repr., Jackson: University of Mississippi Press, 2011); Stephen B. Post, *Spheres of Love: Toward a New Ethics of the Family* (Dallas, TX: Southern Methodist University Press, 1994); Harvey Lazar and Christian Leuprecht, eds., *Spheres of Governance* (Montreal/Kingston, ON: McGill-Queens University Press, 2007).

associations, the independent sector, multiculturalism, multinormativity, and other such labels are now crowding the bookshelves—both liberal and conservative, religious and secular, and featuring all manner of methods and logics.

This chapter draws on some of this literature to describe briefly the six dimensions of the marital family sphere as historically constructed and potentially reconstructed for our modern day—the natural, social, economic, communicative, contractual, and spiritual dimensions. This sphere metaphor is a heuristic device—a picture to describe the various modes of family life, the different disciplinary perspectives on the family, and the range of institutions and professions in which the family is now embedded. But in stressing the multidimensionality of the marital family sphere, I am also pushing against theorists and trends that have sought to flatten the marital family into one or two dimensions, or to abolish it altogether as a distinct and necessary social institution.

The Nature of the Marital Family

The Western tradition has long treated the marital family as a “natural” association. The ancient Greeks taught that “marriage was created by Nature immediately after the dispersal of Chaos,” as one Greek liturgist put it. “The ordering of the universe took place because of Marriage and perhaps . . . Love too was created then.” Marriage helped “to create man, and contrived to make him virtually immortal, furnishing successive generations to accompany the passage of time.”¹⁰ Moreover, thought the ancient Greeks, marriage helped to complete a person’s life. “Love is born into every human being,” Plato wrote famously; “it calls back the halves of our original nature together; it tries to make one out of two and heal the wound of human nature.”¹¹ In his *Laws*, Plato thus advised young men to marry “for the city’s good” and to restrict “procreative intercourse to its natural function,” for such “moderation” will bring “untold good. It is dictated, to begin with, by nature’s own voice . . . and wins men to affection of their wedded wives. There are also numerous other blessings which will follow.”¹²

The Bible taught that God created humans as “male and female,” called them to join together as “two in one flesh,” and commanded them to “be fruitful and multiply” and to fill the earth.¹³ God created and inclined the first man and woman to find completion in each other: “This at last is bone of my bones, and flesh of my flesh,” Adam said on first meeting Eve.¹⁴ God endowed humans with the physical capacity to join together and beget children. The Judeo-Christian tradition taught that these natural qualities and duties continued after the fall into sin and the expulsion of humans from Paradise. But

¹⁰ *Menander Rhetor*, trans. and ed. D. A. Russell and N. G. Wilson (Oxford: Oxford University Press, 1981), 136–39.

¹¹ *Plato: Symposium*, trans. Alexander Nehamas and Paul Woodruff (Indianapolis: Hackett Publishing Co., 1989), 25–31.

¹² Plato, *Laws*, VI.773b; VIII.839a–b.

¹³ Genesis 1:26–28.

¹⁴ Genesis 2:23–24.

marriage also served as a remedy to allay sexual sin. Rather than allow sinful people to burn with lust, God provided the institution of marriage so that couples could direct their natural drives and desires toward the service of each other, their children, their kin, and their broader communities. Scores of variations on these stories about the mythical or natural origins of the marital family have echoed in the history of Western thought.

Many Western liberals have been brought up on a social-contract variation of this same idea. In moving from a “state of nature” to an organized society, the first contract humans formed was the marital contract between a free and equal man and woman. This contract came before social, political, ecclesiastical, and other private contracts and provided the most basic protection of the natural rights and liberties of men, women, and children. As the first and most fundamental contract, the marital family demanded the support and protection of all other contractual associations, including the church, state, society, and economy.

The Western tradition has long taught not only that the marital family has its origins in nature but also that family members get guidance from natural law. This law is, most basically as the Roman jurists put it, “the law that nature has taught all animals,” giving them “natural inclinations” to protect, preserve, and perpetuate themselves through natural procreative means.¹⁵ Natural law also consists of the “natural instincts” or “intuitions” that are unique to humans and the “common customs” and “conventions” that have emerged among humans over time.¹⁶ These distinctly human qualities of natural law are known, refined, and applied in human societies through the exercise of reason and conscience, medieval and early modern writers emphasized. Many animals, driven only by their natural instincts for self-preservation, kill and eat each other and take each other’s homes, food, mates, and offspring. Rational humans, by contrast, have declared these to be crimes of homicide, theft, adultery, and infanticide and have set up laws to deter and punish such harms. Many male animals engage in violent sex, keep harems, and often abandon their mates and offspring. Rational humans, however, have learned to prohibit and punish these acts as crimes of rape, polygamy, and desertion, which defy the natural justice owed to the victim and the community.

Furthermore, humans have learned that exclusive and enduring pair-bonding strategies of marital procreation are the best way to ensure paternal certainty and joint parental investment in their children. This stability is crucial since human babies, unlike the young of most other animals, are born tiny, vulnerable, and utterly dependent on their parents’ care for a very long time. Moreover, stable marriages are the best way to ensure that men and women are treated with equal dignity and respect, and that husbands and wives, parents and children, provide each other with support, protection, and edification throughout their lifetimes. The natural law thus inclines humans toward

¹⁵ *Justinian’s Institutes*, trans. Peter Birks and Grant McLeod (Ithaca, NY: Cornell University Press, 1987), I.1.2; *The Digest of Justinian*, ed. Theodor Mommsen and Paul Krüger, trans. Alan Watson, 4 vols. (Philadelphia: University of Pennsylvania Press, 1985), I.1.3.

¹⁶ *Decretum Magistri Gratiani*, ed. Emil Friedberg; repr. ed. (Graz: Akademische Druck- u. Verlagsanstalt, 1959), Dist. 1, c. 7.

stable marital families. It also encourages humans to outlaw polygamy, fornication, adultery, and easy divorce that violate a spouse's natural rights as well and to outlaw desertion, abuse, neglect, and disinheritance that violate a child's natural rights. Medieval Catholic, early modern Protestant, and liberal Enlightenment thinkers alike have offered numerous variations on this account of the natural foundations of the marital family. Today, evolutionary scientists, economists, social scientists, and public-health experts alike have shown that enduring and stable pair-bonding strategies are the most expedient and efficient means of human reproduction and flourishing—comprising what Claude Lévi-Strauss once called the “deep structure”¹⁷ of survival and reproductive success that the human species has evolved.

It Takes a Society to Raise a Family

Even the most robust natural law theorists have always understood that the natural configuration of the marital family standing alone is unstable. Human nature and customs might incline us to behave in certain ways in organizing our domestic lives, and many people do follow these natural inclinations without much further prompting. But given the Jekylls and Hydes that perilously reside within all of us, natural inclinations and rational calculus by themselves produce too wobbly a normative framework. In reality, a good number of people stray on occasion from sexual conduct that is healthy and expedient for themselves, their families, and their communities. And a few folks stray all the time, harming others and imposing personal and social costs by their conduct. Aristotle saw this: “Just as man is the best of the animals when completed, when separated from law and adjudication he is the worst of all”—especially “with regard to sex and food.”¹⁸

Churches and states are two critical social institutions that have long been tasked with raising the family. Churches for nearly two millennia—and states for even longer—have set out ideals, guides, rules, and procedures for sexual etiquette, courtship, and betrothal; for marital formation, maintenance, and dissolution; for conjugal duties, debts, and desires; for parental roles, rights, and responsibilities. Both institutions also kept overlapping rolls of sexual sin and crime and maintained interlocking tribunals to teach and enforce these rules. The church guided the inner life through its canons, confessionals, and courts, while the state guarded the outer life by policing and punishing sex crimes.

With the liberal reforms and gradual pluralization of Western societies over the past two centuries, most of these legal functions have gradually shifted from the church to the state. Today the modern state dominates Western family law. The state sanctions marital formation and dissolution. State laws nudge, facilitate, and reward citizens for creating and maintaining stable marital households. State officials intervene in family

¹⁷ Quoted and discussed in Bernard Chapais, *Primeval Kinship: How Pair-Bonding Gave Birth to Human Society* (Cambridge, MA: Harvard University Press, 2008), 10–11, 194.

¹⁸ Aristotle, *Politics*, bk. 1, chap. 2.

disputes and, when necessary, help dissolve marital families, divide marital properties, and reassign parental responsibilities. State officials protect the rights of family members as well as the sexual liberties of the broader citizenry. State laws facilitate transmitting family property to the next generation and provide victims of sexual harm avenues of redress while punishing sexual criminals.

While the modern state now dominates family law, however, modern churches and other religious communities still help govern some aspects of the family lives of their voluntary members, and some communities still have complex faith-based legal systems that operate alongside the state.¹⁹ For many couples, the church (and comparably the synagogue, mosque, and temple) remains an important site of marital preparation and weddings. The church is the site of baptisms (and comparable initiation rituals in other communities), where parents and godparents, families and congregations together pledge to love and support and nurture the faith and life of this newly baptized child. The church is the site of spiritual formation, where youth learn the ways of God and prepare themselves for public confirmation or profession of faith. The church is sometimes the site of primary education, now usually done in coordination with the state and other social institutions. The church is often the site of diaconal welfare and caretaking—providing food, shelter, care, and emergency relief to widows and orphans, the poor and needy, the stranger and sojourner. The church is sometimes the site of mediation, arbitration, and dispute resolution within families.²⁰ And the church is the usual site of funerals, which are critical moments of intense pastoral care and support as the family mourns its losses, rearranges its responsibilities, and tends to the needs of family members who are left. All these church services remain profoundly important institutional support for the marital family.

Beyond the church and the state, the Western tradition has long supported the marital family with many other associations and professionals. Long fundamental to the proper formation and functioning of marriage and the family have been the three classic professions of law, theology, and medicine. Legal professionals prepare the banns that churches announce and register the marriage certificates and marital properties of the new married couple. They help enforce, amend, and dissolve the contracts of marriage and marital property. They summon the legal resources to support and protect wives and children from neglect and abuse, and arrange for adoptions, guardianship, and other forms of institutional care and protection. They litigate marital and family disputes in state courts and sometimes church tribunals. They help probate the wills and administer the trusts that are vital to the transmission of the family name and property to the next generation. Religious professionals, both clerical and lay, provide premarital counseling for the courting couple and consecrate their wedding. They baptize, catechize, and confirm children and provide moral discipline for the household. They provide pastoral care and support for the family and orchestrate involvement of the

¹⁹ See overview in Norman Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013).

²⁰ See Michael J. Broyde, *Sharia Tribunals, Rabbinical Courts, and Christian Panels: Religious Arbitration in America and the West* (Oxford: Oxford University Press, 2017); Michael Helfand, “Arbitration’s Counter-Narrative: The Religious Arbitration Paradigm,” *Yale Law Journal* 124 (2015): 2994–3051.

broader religious community in guiding and nurturing the household and its members. Medical professionals teach new households the basics of nutrition and hygiene, fitness and aging, child care and development. They provide support, nurture, and care to families during pregnancy and childbirth, sickness or bereavement, abuse or divorce. Medical professionals help ease a person's pain and burdens in the final steps of life, and they certify death, with all the emotional, spiritual, and legal consequences that follow from this final declaration for the surviving family members.

As Western societies have become more differentiated and specialized, other associations and their professionals have become critical for marriage and the family as well. Therapists now assume a good deal of the psychological and practical counseling for courting couples, broken families, and grieving divorced or widowed persons. Accountants and financiers now participate in a good deal of a family's economics—filing taxes, planning school funds, and devising trusts, wills, and estates. Schools and universities now provide a great deal of the formal education and vocational training historically undertaken by households and churches. Clubs and associations—scout troops, athletic teams, and neighborhood groups—now provide children socialization and skill development. Hospitals and clinics, nurseries and hospices now assume a great deal of the family's health care from the beginning of life to the end.

The family is thus a distinct institution in its own right and an institution deeply interwoven with other institutions. Modern schooling, work, leisure, consumption, worship, legal regulation, and public administration all shape and color the ways we court and marry, bear and raise children, make and break family bonds. At the same time, most people see marriage and family life at the heart of what makes life worth living and essential to a society worth living in and working for. Marriage and family life not only realize romance but also inspire hard work and justify key aims of public policy and provision.²¹ In this sense, it does take a society, with all of its diverse institutions, to raise a family. And the breakdown of families causes severe private and public harms that rapidly ripple throughout a community.

The Economics of the Family

Modern economists have measured the private and public harms of family breakdown and have stressed the utility and efficiency of stable marital families and family laws for social and economic life. These economists build on early modern household manualists like Richard Baxter and William Gouge who sketched the complex links between the marital household (the *oikos*) and economics (*oikonomika*). These manualists regarded the marital household as a vital economic unit in its own right, especially households with attendant shops, services, apprentices, and servants. They also considered the marital household as a vital source of virtue, discipline, skill, and vocational training central to the success of the broader economic system. Later economic theorists, such as Adam Smith and Jeremy Bentham, regarded the stable

²¹ Tipton and Witte, *Family Transformed*, 1–2.

marital family as an essential institution for modern economic flourishing. For them, the historical development of the marital contract proved to be the most effective means to ensure the community of the mutual care and support of husband and wife and their mutual investment in the nurture and education of their children and kin. The marital family further provided essential security and provision for parents and kin when they became injured, sick, older, and more dependent. And the marital family was a vital conduit to transmit property to the next generation.²²

Indeed, in premodern Western societies, most marriage contracts were primarily marriage settlements that recorded agreements about transfers of marital property. Although such contracts usually noted the marital consent and familial obligations of the parties, they spent much more ink on the property settlement between the couple and their respective families. Both ancient Jewish law and Roman law had far more detailed laws governing family property and inheritance than any other dimensions of the marital family. Building on these precedents, the Western legal tradition developed an intricate body of law governing family property. This law included the customs, rules, and procedures governing the man's betrothal gift to his fiancée and her family. It included laws directing the woman and her family to deliver a dowry to the new household, while retaining rights to a "marital portion" of this dowry as well as a "dower" interest in her husband's estate on his death, divorce, or desertion. Traditional family law also involved complex and evolving rules of the use, encumbrance, and alienation of marital property by husbands, wives, children, guardians, and trustees. It set out the rights and duties of material support that parents owe their children until their emancipation, and the complex system of child support, marital property division, and alimony in cases of divorce or annulment. And it included the obligation of children to provide nurture, care, and housing to their elderly parents and needy siblings, with the strong presumption that family members inherit the family property on the death of their loved ones. The economic dimension of marital families—as vital sites of production, consumption, education, welfare, charity, service, business, and property creation, accumulation, distribution, and transmission—has long been a critical feature of Western families and family law.²³

Rational-Choice Economics

Some of these earlier norms and forms of family economics still figure in the modern economic analysis of family life and law. One of the most famous formulations was by Nobel laureate Gary Becker in *A Treatise on the Family* (1981).²⁴ Becker offered a

²² See various examples in Jürgen von Hagen et al., eds., *The Impact of Economics on Character Formation in Late Modern Societies* (Leipzig: Evangelische Verlagsanstalt, 2020).

²³ See, for example, Philip L. Reynolds and John Witte Jr., eds., *To Have and to Hold: Marrying and Its Documentation in Western Christendom, 400–1600* (Cambridge: Cambridge University Press, 2007).

²⁴ Gary S. Becker, *A Treatise on the Family* (Cambridge, MA: Harvard University Press, 1981). See also Gary S. Becker and Kevin M. Murphy, "The Family and the State," *Journal of Law and Economics* 31 no. 1 (1988): 1–18. I learned much about the economics of the family from the late dean of family studies, Don S. Browning. See esp. his *From Culture Wars to Common Ground: Religion and the American Family Debate*, 2nd ed. (Louisville,

searching analysis of basic economic principles of production, labor, distribution, and decision-making at work in the marital household, viewed as an economic unit holding valuable “human capital.” The “rational choices” at work in human families, Becker argued, allow a person to fulfill a rather simple list of basic needs and desires, including “health, prestige, sensual pleasure, benevolence, or envy.”²⁵ The marital relations of husbands and wives efficiently and directly cater to those basic needs and desires, and rational adults thus choose this institution. When the marriage fails to deliver those goods, the parties divorce and remarry if they can. Moreover, Becker argued, a person’s care for his or her children and kin ultimately caters to the same basic needs and desires. For these acts are an indirect but valuable way of serving oneself and continuing one’s own existence. Humans are by nature “invested” in the well-being of their offspring and blood kin, because those other family members carry their genes and thereby extend their own existence and influence. Rational humans thus choose to make varying degrees of self-sacrifice for their children and kin, especially when those choices are incentivized and reinforced by powerful cultural signals and legal rewards.²⁶

This argument for kin altruism is one of the familiar natural foundations and dimensions of the marital family going back to Aristotle and Aquinas and echoed by Enlightenment liberals and common lawyers. But Becker went beyond traditional teaching in assigning calculable economic value to these expressions of family love and kin altruism. He argued that various types of human behavior within the family—including the loving and altruistic behavior of husbands and wives, parents and children, siblings and relatives toward each other—could be understood as human capital that was highly valuable not only to family members themselves but also to society as a whole. Moreover, humans have discovered over time that the most efficient way to maximize human capital in the marital household was to divide the labor “between married women, who traditionally have devoted most of their time to childbearing and other domestic activities, and married men, who have hunted, soldiered, farmed, and engaged in other ‘market’ activities,” Becker argued. “Women not only have a heavy biological commitment to the production and feeding of children,” but they also “have been willing to spend much time and energy caring for their children because they want their heavy biological investment in [re]production to be worthwhile.” By contrast, “men have been less biologically committed to the care of children, and have spent their time and energy on food, clothing, protection, and other market activities.” The remedy for the resulting gender imbalance in household labor, Becker argued, was the eventual creation of the bilateral marital contract. This contract bound the man to his wife and children and gave women more reliable support for their children as well as protection “against abandonment and other adversities,” especially during and after pregnancy.

KY: Westminster John Knox Press, 2000), 247–70; Don S. Browning, *Reviving Christian Humanism: The New Conversation on Spirituality, Theology, and Psychology* (Minneapolis, MN: Fortress Press, 2010), 127–48.

²⁵ Gary S. Becker, *Economic Approach to Human Behavior* (Chicago: University of Chicago Press, 1991), 5.

²⁶ Becker, *Treatise on the Family*, 277–306; see also Richard A. Posner, *Sex and Reason* (Cambridge, MA: Harvard University Press, 1992), 189.

Over time, the long-term marital contract yielded maximum efficiency and value for men, women, children, and their communities.²⁷

Becker's economic defense of the intact marital family with a division of labor between stay-at-home moms and go-to-work dads clearly went in a very traditional direction. One of Becker's insights, however, proved critical for modern family-law reform. That was his call for a better economic valuation of domestic labor within the home. Domestic tasks were typically performed by wives and mothers in the mid-twentieth century, when Becker was writing. But those tasks could clearly be shared or done by men, nannies, grandparents, or other relatives or household workers, as has become more normal today in Western liberal societies. Becker's economic analysis helped us see clearly how cleaning the house, preparing meals, running errands, picking up groceries, raising the children, or helping them with their homework and activities are all valuable forms of work and wealth that contribute to the human capital and value of families as well as individual members within it. Traditional "housework" is just as valuable as "going to work," Becker showed and can be done by men or women alike. The value of housework needs to be taken into much better account in evaluating the role and value of the family in society and the economy, and the respective roles of spouses and parents within and beyond the home. And the value of domestic labor needs to be better calculated and cashed out to the stay-at-home spouse in the event of divorce or death—not out of pity or patronage, but as a proper economic return on the investment of time and energy in labor. Becker's economic insights—together with powerful feminist arguments for married women's property claims—have helped to render more egalitarian the laws of marriage, divorce, family property, and inheritance in Western lands.

Behavioral Economics

Given the value of the marital family in modern liberal societies, behavioral economists like Nobel laureate Richard Thaler have also weighed in heavily.²⁸ Behavioral economists argue that state laws exercise an important *channeling* function by supporting social institutions or practices that promote health, safety, and welfare. Instead of using "thou shalt" or "thou shalt not" commands, the channeling function of law nudges citizens toward certain behavior and away from others. This happens with individual behaviors in many areas of life. The state often facilitates, licenses, encourages, sometimes even pays for or rewards desirable behavior. Think of voting in a state election, getting a free flu shot or vaccine, or going to college on a state scholarship. As for undesirable behavior, the state will sometimes impose taxes or fines

²⁷ Becker, *Economic Approach*, 205–14, 264–73; Becker, *Treatise on the Family*, 30–79.

²⁸ See, for example, Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New York: Penguin Books, 2008); Robert Ellickson, *The Household: Informal Order around the Hearth* (Princeton, NJ: Princeton University Press, 2008); Eric A. Posner, *Law and Social Norms* (Cambridge, MA: Harvard University Press, 2000); Eric A. Posner, ed., *Social Norms, Nonlegal Sanctions, and the Law* (Northampton, MA: Edward Elgar, 2007); Richard H. McAdams, *The Expressive Powers of Law: Theories and Limits* (Cambridge, MA: Harvard University Press 2015).

on it or withhold benefits for those who indulge in it. Think of smoking, not wearing seat belts, or dropping out of high school. The theory of legal channeling stipulates that, over time, the more desirable behavior encouraged by the state will become more customary, even natural or reflexive, and the undesirable behavior will be viewed as aberrant and perhaps even stigmatized.²⁹

The channeling function of law also works at the institutional level, writes University of Michigan family-law scholar Carl Schneider.³⁰ The modern corporation is a good example, he writes. The law channels businesses, merchants, and investors to use this legal form for economic transactions. The state gives the corporation a special set of rights and benefits, including the ability to hold property in perpetuity, to limit personal liability for officers and investors, to reduce taxes, and to survive over time and in different places at once. Because of the law's channeling function, the corporate form "has become familiar, natural, and comfortable" for most citizens, Schneider writes. Enterprises small and large are now attracted to it, and the law facilitates corporate formation, investment, accountability, and dissolution through specialized corporate laws. While businesses can and do use other legal forms, the corporation is now the default legal position in many Western societies.³¹

The marital family is a comparable institution that state law needs to "shape, sponsor, and sustain," Schneider argues, given the public and private goods it offers. The state should continue to recognize and preserve the marital family as a valuable, even superior, form of intimate association, and the state should "channel," "nudge," "signal," and "recruit" adult parties toward participation in it. Like the corporation, marriage offers various legal benefits, privileges, and rights not available to other domestic unions. And like corporate law, family law sets easy default rules for parties who wish to enter this institution, rather than forcing parties to create this legal form from scratch or forgo its legal benefits. The modern state cannot require parties to marry or to have or forgo children. Indeed, constitutional law now protects sexual intimacy, cohabitation, contraception, abortion, and procreation by natural or artificial means without marriage. But the channeling function of family law, political theorist Stephen Macedo writes, in glossing Schneider, helps create and normalize "the social expectation that people ought to get married [as] a kind of rite of maturity" and to raise their children so much as possible in an intact marital family.³²

Alongside channeling, Schneider continues, family law also has an *expressive* function. It "provides a voice in which citizens may speak," and it can "alter the behavior of people the law addresses."³³ This expressive function has always been important in

²⁹ See Tasmin Shaw, "The Invisible Manipulators of Your Mind," *New York Review of Books*, Apr. 20, 2017, reviewing Michael Lewis, *The Undoing Project: A Friendship That Changed Our Minds* (New York: Norton, 2017).

³⁰ Carl E. Schneider, "The Channeling Function in Family Law," *Hofstra Law Review* 20 (1992): 495–532, at 498, 503–04. See further Carl E. Schneider and Margaret F. Brinig, *An Invitation to Family Law: Principles, Process, and Perspectives*, 3rd ed. (St. Paul, MN: West Publishing, 2006), 211–21, 507–09.

³¹ Schneider, "The Channeling Function," 499.

³² *Ibid.*, 498.

³³ *Ibid.*

Western family law. By law, historically, public betrothals were announced by town criers, preachers, or posted banns; while this expressive function now takes the form of voluntary announcements in local newspapers, wedding invitations, marriage registries, and Facebook postings, its importance remains. By law after the sixteenth century, and by custom for many centuries before, weddings were public ceremonies and celebrations—now culminating with the final statement from the presiding official, “by the power of the state vested in me, I pronounce you husband and wife.” By law, the newly married couple registered their marriage with the state, expressing to themselves and the world that they now have a new status as a marital couple and marital household. By law, a newly born or adopted child triggered not only private announcements but also a state birth certificate announcing the child’s name, place, and time of birth, and the name of the parents, the most responsible parties for that child. All these expressive legal steps are designed to alter the behavior of people—not only the new couple and family but also their neighbors. The community is invited to support the new couple and family, to respect their new marital bond and family privacy, and to hold these parties accountable to the commitments they have made to each other and their children. “Marriage is the ‘committed relationship’ par excellence,” Macedo writes. And by entering into a legal marriage, a couple expresses to the world that they are “making this commitment . . . to particular principles, people, and projects, and carrying those commitments forward over decades,” faithfully, flexibly, and fully for each other and their children.³⁴

The Communicative Dimension of the Family

The channeling and expressive functions of church, state, and society are part of the complex communicative dimensions of the marital family. Complex because so many different sectors of society are in communication about the marital family and its members. Complex in that the modes of communication range from subtle signals and nudges to overt statements and visual media depictions. And complex because of the range of subjects being communicated.

The marital family is not only the object of communication by other institutions, however. It is also the site and subject of unique forms of communication between husband and wife, parents and children. This, too, is an ancient and enduring teaching in the West. In the fifth century, the Orthodox Christian sage John Chrysostom called for “constant and open communication” between husband and wife. Sounding much like a modern marriage therapist, he pointed to the “symphony” of verbal, affectionate, sexual, financial, parental, and management communication that becomes a healthy marriage and marital household. He also urged couples to appreciate the more subtle and sensitive symbolic, sacrificial, and symbiotic ways that spouses learn to intuit and respond to each other’s needs, cares, and desires. For Chrysostom, marriages are “incarnations” of divine love, sacrifice, and commitment; families are “living icons” of

³⁴ Stephen Macedo, *Just Married: Same-Sex Couples, Monogamy, and the Future of Marriage* (Princeton, NJ: Princeton University Press, 2015), 92–93.

traditions, memories, and rituals.³⁵ In the seventeenth century, English poet John Milton wrote similarly that “the apt and cheerful conversation of man with woman is the chief and noblest purpose of marriage.” “Where loving [conversation] cannot be, there can be left of wedlock nothing but the empty husk of an outside matrimony”—dry, shriveled, and dispensable. Aptness can strain cheerfulness: candid conversations between spouses can be painful. Cheerfulness can strain aptness: blissful domestic ignorance can be tempting. But aptness and cheerfulness properly belong together in a marriage, Milton tells us. Where they fail, the marriage fails.³⁶

Anglican theologian Oliver O’Donovan writes that today, communication remains “the dynamic side” of community, “the treating of goods as common and the readiness to discern private interest only insofar as it is compatible with common interest.”³⁷ As social creatures, we inhabit many communities of communication—political communities into which we are born, religious communities into which we are initiated, neighborhood communities in which we live, and sundry other communities that we inhabit or seek out for work, play, education, investment, pleasure, consumption, art, science, health care, services, and more. Each of these communities has its distinct norms and forms of communication that convey meaning, purpose, promise, or friendship.

But the most sublime, intense, and enduring forms of communication usually occur within marriage.³⁸ In marriage, we are the most intimate: we communicate our deepest feelings, passions, fears, aspirations, intuitions, and experiences with our spouse. In marriage, we are the most vulnerable: we share our very life, body, memories, health, happiness, well-being, food, money, and material goods with our spouse. And in marriage we are the most fully committed: marriage carries an expectation of fidelity, loyalty, and permanence that is communicated in the daily sharing of life, home, bed, and board and goes beyond that of any other community.

Communication is also at the heart of the relationship of parents and children. Berkeley law professor John E. Coons has written memorably about the creative power of words. By words God created the world. “God *said*, ‘let there be,’ . . . and there was.” So it is with procreation, Coons writes. “In a faint echo of the divine, children are the most important Word most of us will utter.”³⁹ We communicate our very substance to our children—our genes we now say, coded and coated with our instincts, inclinations, talents, strengths, weaknesses, resiliencies, and vulnerabilities. Mothers communicate their very bodies, blood, and being with their children throughout pregnancy, and then provide their newborns with life-giving food and drink through nursing. Parents share the

³⁵ See detailed sources in CSF, 20–29.

³⁶ John Milton, *The Doctrine and Discipline of Divorce*, 2nd ed. (London, 1644), chap. 13, in *The Complete Prose Works of John Milton* (New Haven, CT: Yale University Press, 1971), 2:235–56 (spelling modernized).

³⁷ Oliver O’Donovan, *Entering into Rest: Ethics as Theology*, vol. 3 (Grand Rapids, MI: Eerdmans, 2017), 47–48.

³⁸ *Ibid.*, 63–64, 140–46.

³⁹ John E. Coons, “The Religious Rights of Children,” in John Witte Jr. and Johan D. van der Vyver, eds., *Religious Human Rights in Global Perspective: Religious Perspectives* (The Hague: Martinus Nijhoff Publishers, 1996), 157–74, at 172. See further John E. Coons and Patrick M. Brennan, *By Nature Equal: The Anatomy of a Western Insight* (Princeton: Princeton University Press, 1999), 55–59.

tender singing, cooing, rocking, cuddling, and caressing that communicate the deep feelings of love and tenderness so vital to a child's well-being and healthy development. Developmental psychologist Erik Erikson once wrote that the first "greeting ceremonial" between a mother and a child "is the root of all subsequent ritualization" and communication.⁴⁰

The verbal and symbolic communications of parents and the broader family prove vital for the child's healthy development and maturation. This communication occurs in morning and bedtime rituals, table talks over meals, the lessons of reading, playing, praying, working, and interacting with parents, siblings, friends, and kinfolk in all kinds of ways.⁴¹ The Western tradition has long understood this. The Bible and other ancient texts called parents to communicate and commend the laws, traditions, and ways of God's people: "You shall teach them diligently to your children, and shall talk of them when you sit in your house and when you walk by the way, and when you lie down and when you rise."⁴² "Make them known to your children and children's children."⁴³ Such passages, and their many parallels in classic literature,⁴⁴ have inspired a long and deep tradition of reflection about how critical the evolving forms of communication are for a child's spiritual, moral, emotional, intellectual, and social formation. Books on child education, development, catechesis, and formation have, accordingly, been staples of the Western tradition from the start.⁴⁵ The early modern household manualists sought to routinize all this lore in hundreds of pages of rules, illustrations, pictures, and vignettes, helping parents and children understand and work through the escalating complexities of communication at different stages of the family life cycle. Such works have been replaced by a whole literary and virtual industry of child-rearing guides and therapeutic services today, religious and secular alike.⁴⁶

Many siblings and relatives also share a deep and enduring communicative bond with each other, in part because of their natural ties, in part because of their common experiences. There are many touching stories of mothers and children or twins, separated from each other at birth for various reasons, who have intuitive recognition and instant communication on first seeing each other later in life. Even children born of sperm donation experience some of this sensation on discovery of their biological fathers.⁴⁷ Not just natural ties but also common experience and communication are at work as siblings and other relatives slowly spin and stitch together the fabric of

⁴⁰ Erik Erikson, "The Development of Ritualization," in *The Religious Situation*, ed. Donald R. Cutler (Boston: Beacon Press, 1968), 711–33, quoted and discussed in Bellah, "Marriage in the Matrix," 25.

⁴¹ See, for example, Robyn Fivush and Judith A. Hudson, eds., *Knowing and Remembering in Young Children* (Cambridge: Cambridge University Press, 2013). See also the chapter by Fivush in this volume.

⁴² Deuteronomy 6:6–9.

⁴³ Deuteronomy 4:9.

⁴⁴ See, for example, Judith Evans Grubbs et al., eds., *The Oxford Handbook of Childhood and Education in the Classical World* (Oxford: Oxford University Press, 2014); Nicholas Orme, *Medieval Children* (New Haven, CT: Yale University Press, 2001).

⁴⁵ Marcia J. Bunge, ed., *The Child in Christian Thought and Practice* (Grand Rapids, MI: Eerdmans, 2000).

⁴⁶ See CSF, 111–28.

⁴⁷ Elizabeth Marquardt, *My Daddy's Name Is Donor: A New Study of Young Adults Conceived through Sperm Donation* (New York: National Marriage Project, 2011); Carolyn Campbell, *Together Again: True Stories of Birth Parents and Adopted Children Reunited* (New York: Berkley Books, 1999).

symbiotic attachment and communication that can last a lifetime, and that siblings can often pick up easily again, even after long intervals of silence and separation.

Communication with and within the marital family comes not only in daily routines and interactions. Communication at full volume and valence marks the great days of ritual celebration in the life of a marital family. The most prominent such occasions are weddings, which can be extravagant symphonies of communication, featuring rich liturgies and vows, triumphant music and dancing, beautiful clothes, flowers and jewels, food and drink, often shared with extended family and friends. Weddings are ancient ceremonies in the Western tradition and beyond.⁴⁸ In the Jewish tradition, the Talmud provided detailed liturgies and prayers for both betrothal and marriage, building in part on prototypes in the Book of Tobit. Weddings were essential community events, presided over by the rabbi and involving the entire local community.⁴⁹ The Christian tradition celebrated weddings from the start, though the earliest surviving marriage liturgies are from the eighth century.⁵⁰ Particularly among the Eastern Orthodox, wedding liturgies became extraordinary visual and verbal dramas of prayer, blessing, oaths, and rituals, including the Eucharist. Wedding liturgies grew more slowly in the Christian West, not becoming mandatory among Catholics until 1563, and subject to wide and perennial variation among Protestants. Great wedding feasts are often echoed on major wedding anniversaries—silver and gold, in particular—sometimes featuring the renewal of marital vows, with accompanying rings and jewels to underscore this new commitment. Childbirth, baptism, and other initiation rituals are also times for rich ceremonies and celebrations, filled with verbal and symbolic communication for families, friends, and fellow congregants alike to witness and to weigh in with pledges and promises of support and protection of the new child and parents.

The Contractual Dimensions of the Marital Family

The private and public communications of promise and commitment in marriage underscore the two final dimensions of the marital family sphere—the contractual and the spiritual. The contractual dimension, featuring the mutual promises and ongoing rights and duties of husbands and wives and of parents and children, has been a perennially prominent emphasis of the Western legal tradition, even if church and state have sometimes vied for control of these contracts. The spiritual dimension of the marital family has changed in definition and importance, especially in recent decades, but most parties still agree that “marriage is more than a mere contract”; it is a bond of “just love” and “abiding friendship” that transcends any other human relationship.⁵¹

⁴⁸ See examples in Don S. Browning et al., eds., *Sex, Marriage, and Family in the World Religions* (New York: Columbia University Press, 2006).

⁴⁹ Kenneth W. Stevenson, *Nuptial Blessing* (New York: Oxford University Press, 1982), 3–8.

⁵⁰ *Ibid.*, 33–122, with samples in Mark Searle and Kenneth W. Stevenson, *Documents of the Marriage Liturgy* (Collegeville, MN: Liturgical Press, 1992).

⁵¹ Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2008).

Husbands and Wives

John Calvin reminded us that marriage may be “more than a contract, but it is not less than a contract.”⁵² In the Western legal tradition, a valid marriage depended in its essence on the mutual consent of the man and the woman. Even if the prospective bride and groom were represented by parents or guardians during the contract negotiation, their own consent to the marriage was essential. While Western authorities have tolerated arranged marriages and child marriages, particularly when those were politically or commercially advantageous, in theory both the man and the woman reserved the right to dissent from the arrangement upon reaching the age of consent. Moreover, Western authorities since biblical and classical times have warned parents and guardians against bullying children into unwanted unions. These protections for children have become stronger since early modern times, as the rights of children were set out more fully.⁵³

While persons were free to choose or to forgo marriage, they were not free to marry just anyone, anytime, or on any terms. Both parties had to be of the age of consent, with the mental, physical, and sexual capacity to enter a marital contract. They could not marry anyone related to them by blood or by marriage, or related to another by an existing marital contract; these were the impediments of consanguinity, affinity, and precontract that led to annulment. Prospective spouses had to be of comparable social and economic status and age and, ideally (in some communities, indispensably), of the same faith. The parties had to follow proper contractual forms and ceremonies, and younger parties needed the consent of both sets of parents or guardians, especially for a first-time marriage.

Legal requirements for valid marital formation are more flexible and fluid today. In growing numbers of Western countries, adults may now choose a same-sex spouse and marry someone of quite different social-economic status, culture, religion, or age. Parental consent, community participation, and liturgical celebration of marriage are less essential than they were in early modern times. But other conditions to a valid marriage contract, most importantly the demand for full and free consent on both sides, remain firmly in place in Western family law.

Many of the built-in obligations of the marital contract also remain. Ancient Jewish law required husbands to provide their wives with clothing, protection, support, sex, medical help, ransom, dower, and inheritance, on pain of communal censure or threat of divorce. Early Christian canon laws and penitential texts, building on both the Old and New Testaments, set out comparable mutual duties of husbands and wives, which were enforceable eventually in church courts. Medieval confessional manuals and early modern household manuals alike detailed the rights and duties that spouses owed each other throughout their lives and the testamentary duties to each other and to

⁵² See FSC, 159–216.

⁵³ See CSF, 256–74.

their children after death. Still today, lawfully married spouses have automatic contractual duties of mutual support, protection, and care, backed by laws of crime, tort (delict), and divorce. Modern laws still protect basic spousal evidentiary privileges and immunities, joint family property ownership, and rights to make vital health and medical decisions as surrogate for one's spouse and children. American laws still grant a surviving spouse strong claims to the late spouse's estates, insurance proceeds, residual social security and veterans benefits, and other entitlements. To be sure, couples today may create elaborate prenuptial contracts that differ somewhat from the default marital rules held out by the state, so long as the essentials of marriage are not subverted. But for most couples, the state's family law creates convenient frameworks of spousal rights and duties to facilitate their relationship and to identify and clarify the reliance and expectation interests they bring to the relationship.⁵⁴

Parents and Children

The contractual dimensions of the marital family involve the relationships not only of the two spouses, but also of parents and children. Summarizing traditional teachings, John Locke, for example, described the natural rights and duties of persons to marry and then conceive and bear children, to nurture, support, protect, and educate them, to set them up in their own new homes and vocations, and then to provide them with legacies through last wills and testaments. Children, in turn, had rights to have each of these natural duties of nurture, support, protection, education, and inheritance discharged to and for them—ideally by their natural parents or guardians or, in their absence, by church and state authorities who stood in loco parentis.⁵⁵

Children have not only rights but also duties to their parents, the Western legal tradition has long taught. The great English common lawyer William Blackstone summarized these obligations in classic terms: "The duties of children to their parents arise from a principle of natural justice and retribution. For to those who gave us existence, we naturally owe subjection and obedience during our minority, and honour and reverence ever after; they, who protected the weakness of our infancy, are entitled to our protection in the infirmity of their age; they who by sustenance and education have enabled their offspring to prosper, ought in return to be supported by that offspring, in case they stand in need of assistance. Upon this principle proceed all the duties of children to their parents, which are enjoined by positive laws."⁵⁶

A good number of these traditional children's obligations for parental care and support were absorbed by the twentieth-century welfare state—more so in Western Europe but also in North America. Nonetheless, more than half of the U.S. states still have laws obligating children to provide their needy parents with food, clothing, shelter, and medical care and to be accountable for at least some of their parents' bills even

⁵⁴ See sources and discussions in Linda C. McClain, *The Place of Families: Fostering Capacity, Equality, and Responsibility* (Cambridge: Cambridge University Press, 2006); Anita Bernstein, "For and Against Marriage: A Revision," *Michigan Law Review* 102 (2003): 129–212.

⁵⁵ CSF, 152–56.

⁵⁶ William Blackstone, *Commentaries on the Law of England* (Oxford: Clarendon Press, 1765), bk. 1, chap. 16.

after death. These old laws of intergenerational care are getting more attention of late, with the modern welfare state on the fiscal and ideological ropes, not only in the Americas but also in Western Europe. The responsibility of broader family and kin networks for elder care today is an area of intense new academic and public policy discussion, given ever longer life spans and ever shrinking public and private support structures.⁵⁷

The Marital Family as a Spiritual Institution

The Western legal tradition has long recognized that while the marital family is based in part on a contract, it is also more than a mere contract. United States Supreme Court Justice Joseph Story put this in classic terms:

Marriage is treated by all civilized nations as a peculiar and favored contract. It is in its origin a contract of natural law. . . . It is the parent, and not the child of society; it is the source of the city, a sort of seminary of the republic. In civil society it becomes a civil contract, regulated and prescribed by law, and endowed with civil consequences. In most civilized countries, acting under a sense of the force of sacred obligations, it has had the sanctions of religion superadded. It then becomes a religious, as well as a natural and civil contract; for it is a great mistake to suppose, that because it is the one, therefore it may not likewise be the other.⁵⁸

Story cited French philosopher Baron de Montesquieu, who had written that “it is a thing extremely delicate to fix exactly” the line between the temporal and spiritual dimensions of the marital family. For the reality is that “it has happened in all ages and countries, that religion has been blended with marriages. When certain things have been considered as impure or unlawful, and [have] nevertheless become necessary, they were obliged to call in religion to legitimate in the one case, and to reprove in others.”⁵⁹

For much of the past two millennia in the West, Christianity helped define these religious or spiritual dimensions of the marital family. In particular, the teaching that marriage is a sacrament or a covenant helped to tie together the diverse natural, social, economic, communicative, and contractual dimensions of family life and attach them to the spiritual pole of the marital family sphere. Christianity was also able to integrate the efforts of various associations and professions that served the marital household; the church’s theories of subsidiarity and sphere sovereignty recognized both the

⁵⁷ See, for example, sources and discussion in Amy Zietlow and Naomi Cahn, “The Honor Commandment: Law, Religion, and the Challenge of Elder Care,” *Journal of Law and Religion* 30 (2015): 229–59.

⁵⁸ See Joseph Story, *Commentaries on the Conflict of Laws, Foreign and Domestic, in Regard to Contracts, Rights, and Remedies, and Especially in Regard to Marriages, Divorces, Wills, Successions, and Judgments* (Boston: Hilliard Gray & Co., 1834), 100.

⁵⁹ Baron de Montesquieu, *The Spirit of the Laws* (1748), trans. Thomas Nugent (New York: Hafner Publishing Co. 1949), 2:67.

irreducibility of the family as a social sphere and the indispensability of the support provided by other institutions, not least the churches and church-based organizations.

Modern churches are heirs to the great sacramental and covenantal teachings of the Western tradition, which complement, stabilize, and elaborate the philosophical arguments about the nature of the marital family. Catholics have long taught that marriage is both an “office of nature and a sacrament of the church,” as Thomas Aquinas put it.⁶⁰ As a sacrament, marriage is a vital and visible expression of the enduring and mysterious love of Christ and his church. It elevates the natural goods of procreation and marital fidelity into a divine act, modeled on the creative act of God the Father in Paradise and the sacrificial act of God the Son, who gave himself up for the church. The sacrament of marriage also elevates the natural configuration of the marital family. It is no longer just a set of biological inclinations and moral instructions for men and women to form enduring and exclusive bonds for the sake of each other and their children. Sacramental marriage is now a permanent channel of divine grace, like baptism, and a permanent commitment to one’s family members, even if the parties grow estranged. Voluntary participation in sacramental marriage brings special divine blessings upon the couple, their children, and the broader communities of which they are a part, not least the church community. Sacramental marriage is also now a channel of divine work—the means God chose not only to perpetuate the human species but also to preserve the church.

Protestants have long taught that marriage is a covenant modeled on Yahweh’s covenant relationship with God’s chosen people of Israel. This covenantal theory treats marriage and family life as more than a mere contract but less than a divine sacrament. The marital covenant is grounded in the order of creation and governed by the laws of God set out in the Bible and further learned through tradition, reason, conscience, and experience. The marital covenant is designed for the mutual love and support of husband and wife, mutual procreation and nurture of children, and mutual protection of both parties from sexual sin. It is both a private and public institution, whose valid formation requires the involvement of parents, peers, pastors, and political officials alike. While divinely ordained and publicly sanctioned, however, marriage remains a conditional performance contract designed to serve the goods of the couple, their children, and the communities of which they were a part. If it fails or is betrayed in its fundamental purposes, the marital contact and household can be dissolved through annulment or divorce, leaving the parties to remarry.

These sacramental and covenantal logics provide modern churches with powerful tools not only to teach and minister to their own members but also to give moral witness, inspiration, and service to the broader public. This moral witness goes on in the countless forms and forums of family service offered by modern churches and religious charities, schools, hospices, orphanages, diaconal centers, emergency shelters, food banks, counseling centers, health and humanitarian missions, and programs of all sorts. These church-based organizations are staffed by millions of

⁶⁰ Thomas Aquinas, *Summa Theologica: Complete English Edition in Five Volumes*, trans. Fathers of the English Dominican Province, 5 vols. (New York: Benziger Bros., 1947–48), vol. 5, supplement, q. 49, art. 2.

volunteers and low-paid employees, who are usually unassuming, unnoticed, unheralded, and unreported.

What does get noticed and reported are the grimmer sides of the modern church's role in the family and society. Some Western Christian churches have rates of sexual pathos, marital abuse, and family breakdown that match those of secular society. Some churches and their leaders have forgotten their own rich traditions of Christian family theology and jurisprudence and now just go with the cultural flow. Some churches have gravely harmed themselves and their members with outrageous scandals surrounding clerical child and wife abuse, ministerial embezzlement and money laundering, and more. But these realities of human sinfulness are sadly present everywhere in our human lives and social institutions. Their presence does not mean that churches should be banned from family life and law, or denied their religious freedoms to serve and witness, as some modern commentators now argue. The criminals in the church should be prosecuted, the tortfeasors sued, and the recalcitrant banished. But the church must go on, devoting itself to profound confession, contrition, compensation, and conciliation and a renewed commitment to return to the vital roles as "prophets, priests, and kings" in service of the marital family.

In our "secular age,"⁶¹ Christianity no longer plays the fully integrating role for all families, though it still does for some church members who accept the church's teachings. Moreover, when Christianity lives up to its family ideals, the church provides secular society with inspirational and aspirational models and teachings of love, charity, and sacrifice for others to emulate. When Christianity abides by its diaconal calling, it provides marital counseling, adoption services, child care and education, and humanitarian aid and emergency relief, particularly for the classic biblical roster of "widows, orphans, poor, and sojourners in our midst." And when Christianity tends to its internal systems of "Christian law,"⁶² it provides its members with valuable rules and procedures for marital formation, maintenance, and dissolution as well as family mediation, arbitration, and reconciliation.

Concluding Reflections

This long chapter has reconstructed traditional Western teachings about the integrated marital family sphere and sampled the new variations on and modern reforms of these traditional teachings. I have used the running metaphor of the marital family sphere—with natural and spiritual poles and with various social, economic, communicative, and contractual dimensions radiating between these two poles. This sphere metaphor aims to provide an integrative picture of the various modes of family life, the different disciplinary perspectives on the family, and the range of social institutions and professions that have supported the family over the centuries, even more of them in modern differentiated societies. This multi-dimensional picture of the family allows us to appreciate the continued essential role of the family today -- separately and in tandem

⁶¹ Charles Taylor, *A Secular Age* (Cambridge, MA: Belknap Press, 2007).

⁶² Doe, *Christian Law*.

with other social spheres -- in shaping the morality, character, and values of children, parents, grandparents, and other household and kin members.

In stressing the multidimensionality of the marital family sphere, I am resisting the strong efforts of recent theorists who have sought to flatten the family into one or two dimensions, or to abolish it altogether as a separate legal and social institution. To be sure, I recognize, as some modern abolitionists of the family have made clear, that the marital family has been and can be a site of patriarchy and paternalism, abuse and exploitation, dysfunction and destructiveness. That calls for reforms of family laws and policies, not abolition of the family institution. Spousal and child abuse must be sternly punished; children's rights zealously vindicated; spousal egalitarian measures actively pursued; and exit rights from broken families jealously guarded. I also recognize that marriage and family life are not for everyone, and that in modern liberal societies the single life bears little of the stigma and suspicion that used to attach to spinsters, bachelors, and divorcees. Modern public policies and church ministries must be constantly reformed to address these shifting realities so that both single and married persons, marital and non-marital children, the elderly and widowed with and without kin networks are well served.

I further recognize that many adults have given up on the marital institution, given the fiscal, bureaucratic, emotional, and liberty costs of entry and exit from the household. In response, a number of leading scholars, advocates, and religious, cultural, political, and public-health leaders are leading a powerful new "pro-marriage" and "pro-family" movement. This movement combines traditional teachings and modern social science and public-health findings to advocate for stable marital families, responsible sex and parentage, and proper family planning as essential for private flourishing and social stability. This movement has pressed for robust new church, state, and economic policies in support of the stable marital family—including, notably, same-sex families – and in encouragement of those who are reticent to join more lasting domestic unions. This movement has documented the dangers of living in a sort of Wild West of domestic life with many constitutional liberties to protect sexual liberty and autonomy, but with fewer laws to support them and protect their longer-term interests or that of their children or other dependents. Particularly with the modern welfare state increasingly on the ideological and fiscal ropes in many Western lands, stronger family bonds and kin networks will become more essential for survival and flourishing, and for character formation and ethical education for all members.

The chapters that follow in this volume make out this case about the private and public goods and goals of family life from a variety of professional, confessional, and disciplinary perspectives. Together, these chapters demonstrate that just as the "family is the foundation of the polis," so the modern polis is the foundation of the modern family. It takes a marriage to make a family. It takes a village to raise a child. "And it takes a society to raise a family."