

Between Sacrament and Contract Marriage as Covenant in John Calvin's Geneva

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Introduction

"Reformation denial" has become the new fashion among many Western historians today. A generation ago, the sixteenth-century Protestant Reformation was almost universally regarded as a formative era in the development of Western ideas and institutions. Today, it is regularly described as a historians' fiction and historical failure. Martin Luther, John Calvin, Thomas Cranmer, and other sixteenth-century figures certainly called for reforms of all sorts, recent interpretations allow. But they inspired no real reformation. Their ideas had little impact on the beliefs and behavior of common people. Their policies perpetuated elitism and chauvinism more than they cultivated equality and liberty. Their reforms tended to obstruct nascent movements for democracy and market economy and to inspire new excesses in the patriarchies of family, church, and state.²

The new two-volume *Handbook of European History 1400-1600*, prepared by forty leading historians, is part and product of this new historiographic fashion. In their introduction, the *Handbook* editors treat "the Reformation" as an ideological category of "nineteenth century Protestant historical belief," which served more to defend the self-identity of modern mainline Protestants than to define a cardinal turning point in Western history.³ Recent historiography, the

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²See critical commentary and sources in Berndt Hamm, Bernd Moeller, and Dorothea Wendenbourg, eds., *Reformations-Theorien: Ein kirchenhistorischer Disput über Einheit und Vielfalt der Reformation* (Göttingen: Vandenhoeck & Ruprecht, 1995); Scott Hendrix, "Reformation Impossible?" *Dialog* 35 (1996): 204-8; Steven Ozment, *Protestants: The Birth of a Revolution* (New York: Doubleday, 1992), ix-xiii, 1-7.

³Thomas A. Brady Jr., Heiko A. Oberman, and James D. Tracy, eds., *Handbook of European History 1400-1600: Late Middle Ages, Renaissance, and Reformation* (Leiden: Brill, 1994), 1:xiii-xv.

editors argue, has brought “changes of sensibility” that have now “robbed” the term *Reformation* of any utility and veracity. Particularly, “the rise of economic and social history tended to carve the boundary between modern and older Europe ever more deeply into the era between 1750 and 1815.” Moreover, “the ebbing prestige of individualism and Christianity in European high culture undermined the [Reformation] concept’s explanatory power.”⁴

The editors report that the period from 1400 to 1600 must now be viewed not as a revolutionary era in its own right but only as a preparation for the great Enlightenment revolutions of the eighteenth century. The period from 1400 to 1600 was only a transitional era, featuring “a gradual, fluctuating, highly contextualized blending of ‘late medieval’ with ‘early modern.’ . . .” Its “three principal trends” are (1) “the late medieval depression of economy and population and the fifteenth-century recovery”; (2) “the rupture of Christendom . . . and its supersession by the Europe of the national states”; and (3) “the founding of the first European seaborne empires in the wider world. . . . Depression and recovery, Christendom and the states, Europe and the empires—these are three profoundly important changes specific to this era of late medieval-to-early modern transition.”⁵

From the perspective of European legal history, this thesis is neither cogent nor cognizant of legal developments. The concept of “reformation” was not a theological invention of Luther, Calvin, and later Protestants. It was a legal convention of the jurists of the early fifteenth century, who called for the wholesale reformation of the doctrines, structures, and methods of public, private, and criminal law.⁶ The legal reformation movement, which these jurists inaugurated, first inspired the 1438 “Reformation of Emperor Sigismund,”⁷ followed by nearly two centuries of increasingly radical and effective legal reformations in the cities and territories of Germany, Switzerland, the Netherlands, and elsewhere in the Holy Roman Empire.⁸ The movement brought with it sweeping changes in the methods and styles of legal science and philosophy—new statutes and codes; new forms of legal rhetoric, pedagogy, and systematics; new

⁴Ibid., xv-xvi.

⁵Ibid., xvii.

⁶R. Schulze, “Reformation (Rechtsquelle),” in *Handwörterbuch zur deutschen Rechtsgeschichte* (Berlin: n.p., 1990), 468.

⁷Heinrich Koller, ed., *Reformation Kaiser Sigmunds* (Stuttgart: Anton Hiersemann, 1964), with discussion in Lothar Graf zu Dohna, *Reformatio Sigismundi: Beiträge zum Verständnis einer Reformschrift des fünfzehnten Jahrhunderts* (Göttingen: Vandenhoeck & Ruprecht, 1960).

⁸The most important of these early legal reformations are collected in Wolfgang Kunkel, Hans Thieme, and Franz Beyerle eds., *Quellen zur neueren Privatrechtsgeschichte Deutschland*, vol. 1 (H. Bohlaus Nachfolger, 1936). For a summary of more recent literature, see Olav Moorman van Kappen, “Stadtrechtsreformationen des 16: Jahrhunderts in den Niederlanden,” in *Recht, Verfassung und Verwaltung in der frühneuzeitlichen Stadt*, ed. Michael Stolleis (Vienna: Böhlau, 1991), 141-49.

formulations and divisions of public and private law; and many other changes associated with “the rise of legal humanism” and “the reception of Roman law.”⁹ The legal reformation also introduced major revisions to sixteenth-century European criminal laws and procedures, administrative structures and processes, and constitutional powers and rights.¹⁰ To be sure, this legal reformation retained ample adherence and coherence with earlier traditions of canon law, civil law, and customary law. And to be sure, the eighteenth-century Enlightenment-based revolutions and later codification movements transformed many European legal systems. But the sixteenth century was, by comparison, an equally fertile and revolutionary era.

It was the theological reformation inaugurated by Martin Luther in 1517 that helped to render this legal reformation of Europe so pervasive and resilient. And, in turn, it was the legal reformation begun in the previous century that helped to render the theological reformation so instantaneously effective and revolutionary. These legal and theological reformation movements remained mutually inspiring and integrating after the early 1520s in many areas of Protestant Europe. For example, many of the leading jurists of sixteenth-century Germany were converts to the evangelical cause and were quick to translate the new theological ideas of the day into new legal forms.¹¹ Lutheran theologians replaced the traditional sacramental understanding of marriage with a new social concept of marriage and family life. On that basis, Lutheran jurists developed a new civil law of marriage, featuring requirements of parental consent, church consecration, and peer presence for the validity of marriage, and the modern law of divorce on grounds of adultery, desertion, abuse, and frigidity.¹² Lutheran theologians introduced a radical new theology of the uses of the moral law, rooted in the Bible, particularly the Ten Commandments. On that basis, Lutheran jurists transformed traditional natural-law theory; introduced sweeping changes in the civil laws of sumptuousness and public morality; and developed an integrated theory of the retributive, deterrent, and rehabilitative functions of criminal law and punish-

⁹For literature, see Helmut Coing, ed., *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte* (München: Paul Siebeck, 1973-1977), vols. 1-2/2.

¹⁰See sources and discussion in Harold J. Berman and John Witte Jr., “The Transformation of Western Legal Philosophy in the Lutheran Reformation,” *Southern California Law Review* 62 (1989): 1573-1660; R. H. Helmholz, ed., *Canon Law in Protestant Lands* (Berlin: Duncker & Humblot, 1992). The classic text is Roderich von Stintzing, *Geschichte der deutschen Rechtswissenschaft: Erste Abteilung* (Bonn: Verlag von R. Oldenbourg, 1880).

¹¹*Ibid.* See also Karl Köhler, *Luther und die Juristen: Zur Frage nach dem gegenseitigen Verhältnis des Rechtes und der Sittlichkeit* (Bonn: Verlag von Rud. Besser, 1873).

¹²See sources and discussion in John Witte Jr., “The Transformation of Marriage Law in the Lutheran Reformation,” in *The Weightier Matters of the Law: Essays on Law and Religion*, ed. John Witte Jr. and Frank S. Alexander (Atlanta: Scholars Press, 1988), 57-98.

ment.¹³ Lutheran theologians introduced the concept of the magistrate as the *Landesvater*, called by God to enforce both tables of the Decalogue in the community. On that basis, Lutheran jurists introduced many of the legal forms and forums of the modern welfare state with state-run churches, schools, charities, workhouses, hospitals, and the like.¹⁴ Viewed through the binocular of law and religion, therefore, the “German Protestant reformation” is hardly the ideological concept or idle category that recent historiography suggests.

A similar claim may be made about the theological and legal reformation, inaugurated in 1536 by the Geneva reformer John Calvin. During his Genevan tenure from 1536 to 1538, and again from 1541 until his death in 1564, Calvin led a sweeping reformation of Genevan religious, political, and legal institutions. He introduced fundamental changes in systematic and biblical theology, as well as in biblical ethics and ecclesiology, that have shaped the Reformed tradition until this day. He also introduced fundamental changes in church-state relations, moral and sumptuary laws, criminal laws and procedures, education and poor relief, marriage and family laws, and much else. His influence left an indelible impression not only on sixteenth-century Geneva and surrounding rural polities but eventually on transplanted Calvinist communities throughout Huguenot France, the Pietist Netherlands, Presbyterian Scotland, Puritan England and New England, various parts of the German Palatinate, Poland, Czechoslovakia, Hungary, and eventually South Africa. So profound and enduring was his influence on the Western legal tradition that, two centuries later, even a religious skeptic such as Jean-Jacques Rousseau had only praise for his compatriot: “Those who consider Calvin only as a theologian fail to recognize the breadth of his genius. The editing of our wise laws, in which he had a large share, does him as much credit as his *Institutes [of the Christian Religion]*. . . . [S]o long as the love of country and liberty is not extinct among us, the memory of this great man will be held in reverence.”¹⁵

This article takes up one small part of the story of the Calvinist reformation—the reformation of marriage law and theology in sixteenth-century Geneva. Calvin’s reformation of marriage fell into two distinct phases. In the first half of his career, Calvin the *jurist* was primarily at work. Content to repeat theological commonplaces on marriage, he directed most of his energy to the

¹³See Berman and Witte, “Transformation” and John Witte Jr. and Thomas C. Arthur, “The Three Uses of the Law: A Protestant Source of the Purposes of Criminal Punishment?” *Journal of Law and Religion* 10 (1994): 433-65.

¹⁴See sources and discussion in John Witte Jr., “The Civic Seminary: Sources of Modern Public Education in Reformation Germany,” *Journal of Law and Religion* 12 (1996): 173-223.

¹⁵ *Du contrat social* (1762), 2.7 n, reprinted in Jean Jacques Rousseau, *The Social Contract and the Discourse on the Origin of Inequality*, ed. Lester G. Crocker (New York: Washington Square Press, 1967), 44 n. For comparable and contrary evaluations of Calvin’s reformation, see quotations and sources in John Witte Jr., “Moderate Religious Liberty in the Theology of John Calvin,” *Calvin Theological Journal* 31 (1996): 359-61.

establishment of a new marriage law for Geneva. A comprehensive Marriage Ordinance of 1545 brought old canon law rules and new civil law reforms into an impressive new synthesis. An Ecclesiastical Ordinance of 1541/7 and a Civil Ordinance of 1543 brought the city council and the church consistory into an imposing new alliance for the enforcement of these laws. When these legal reforms met with widespread resistance in Geneva in the later 1540s and early 1550s, Calvin the *theologian* went to work. In a series of late-life letters, sermons, and biblical commentaries, Calvin laid out a comprehensive covenant theology of marriage and family life that served to integrate and rationalize much of the new legal structure. This theological apologetics, together with the stepped-up activities of the Genevan consistory, helped to render the new marriage law on the books a new law of action—in Geneva and, eventually, in the dispersed reformed communities of Europe and their many colonies.

The Case of the French Noblewoman

A 1552 case before the Geneva consistory provides a good opening view of this new law and theology of marriage, as well as the tensions that lingered between them in Calvin's mind. A "certain noblewoman from Paris," as she anonymously identified herself, sent a long letter to the consistory on June 24, 1552.¹⁶ The noblewoman's choice of anonymity was deliberate, for she wrote to complain bitterly of her husband's "idolatry and persecution of Christians," and to inquire whether "the law of marriage compels her to live with her husband, or whether the Gospel permits her to leave him and to seek liberty [in Geneva]." The prevailing law of Geneva gave husband and wife alike an equal right to sue for divorce on proof of adequate cause—a procedural equality for which Geneva had already become quite famous. Thus, if she moved to Geneva, this noblewoman could easily press an *ex parte* case against her husband for divorce. The prevailing popular stigma against divorce, however, rendered such suits very dangerous for a woman, particularly this one. By leaving her husband and homeland, she would at minimum put her liberty and property at risk. By filing a divorce suit against her husband, she would likely imperil her own life and limb as well.

Ten years earlier, this noblewoman had converted from Catholicism to the evangelical cause—contrary to her husband's confession and command. At first, he had indulged her somewhat, she writes, "though he held her all the time to the papal idolatry, forcing her to go to Mass and to undertake journeys and pilgrimages and make vows to the saints." Six years later, however, he and his relatives began a ruthless campaign against her and her Protestant coreligionists. "Some he throws into prison; others he charge[s] before the judge

¹⁶Letter d'une dame inconnue à la Compagnie des Pasteurs, 24 juin 1555, in *Registres de la compagnie des pasteurs de Genève au temps de Calvin*, ed. Jean-Francois Bergier (Geneva: Droz, 1964), 1:138-40. The editors speculate that the woman was Madame de Cany, with whom Calvin had corresponded several times before.

and nobility.” “He forbids his wife to speak to any of them.” He censors her letters, shadows her movements, threatens her servants with “the fire” not to conspire in her heresy. He forbids her to perform charity or to “sing Psalms or hymns or anything else in the praise of the Lord.” He forces her continued compliance with “papal idolatry.” If she disobeys him, he “threatens to throw her into the water or some other secret death”—suggesting that he might “amuse himself by having her burnt or killing her slowly in a permanent dungeon.” Until now, she has suffered “in becoming Christian silence,” she writes, indicating that she fears relating any more in her letter lest her husband find her out. She assures Calvin and his colleagues, however, that she has endured “grievous and severe assaults [and] . . . every kind of affliction of both spirit and body.” She urges the Geneva consistory “to meet together to formulate a reply to her sad request so that she may have a resolution of her case, for she has no desire to live any longer in such idolatry.”

Calvin’s opinion, on behalf of the “unanimous” Geneva consistory, vacillates between pastoral gentleness and biblical legalism.¹⁷ Calvin, the pastor, opens with a few lines of “pity and compassion” for the noblewoman’s “most severe and cruel servitude” suffered on account of “her true and pure religion.” “[W]e bear in mind the perplexity and anguish in which she must be . . . praying God that it would please Him to give her relief.”

Calvin, the jurist, however, had little relief to give her. “Since she has asked for our counsel, regarding what is permissible,” he writes, “our duty is to respond, purely and simply, on the basis of what God reveals to us in his Word, closing our eyes to all else.” The new Genevan law followed the strict biblical view that divorce is permitted only on grounds of adultery (and, in rare cases, malicious desertion). Cruelty and abuse were insufficient grounds for divorce, and “voluntary divorce” by either or both parties was out of the question. A marital couple’s differences in religion was also an insufficient ground for divorce. To the contrary, said Calvin, citing 1 Corinthians 7:13 and 1 Peter 3:1, “a believing party cannot, of his or her own free will, divorce the unbeliever . . . but should endure bravely and persevere with constancy . . . and make every effort to lead her partner into salvation.” It would be an irony, said Calvin, “to abrogate the order of nature” in marriage for the sake of one form of Christianity over another. The parties must continue to live together, “and no matter how great his obstinacy might be, she must not let herself be diverted from the faith, but must affirm it with constancy and steadfastness, whatever the danger.”

A little later in his opinion, Calvin, the pastor, softened this interpretation and seemed to be charting a road to relief. “If the party should be persecuted

¹⁷“Réponse de la Compagnie à la lettre précédente Genève, 22 juillet 1552,” in *Registres de la compagnie*, 140–41, reprinted from G. Baum, et al., *Ioannis Calvini opera quae supersunt omnia* (Brunsvigae: C. A. Schwetschke et filium, 1892), 10:239–41 [hereafter CO]. Though the opinion is unsigned it bears Calvin’s unmistakable tone and content.

to the extent that she is in danger of denying her faith” or imperilling her life, he writes, “then she is justified in fleeing.” A spouse need not put soul and body in mortal jeopardy for the sake of the marriage but may leave when faced with such a dire threat. “This does not constitute a voluntary divorce,” said Calvin. The apostasy and cruelty together are tantamount to dissolution of the marriage itself, and an innocent party need not endure them. Given what the noblewoman had described in her letter—“grievous and severe assaults and every kind of affliction of both spirit and body”—this seemed to provide a rationale for finding in her favor.

Calvin, the jurist, had the final word in the case, and he found against her. His judgment rested on a rather technical legal point of inadequacy of notice, which he read into the same passages from Peter and Paul already cited. Contrary to what Scripture requires, Calvin concluded, the noblewoman had not given adequate notice to her husband of her religious dissatisfaction. “What she says in her letter is that she is only silent and dissimulates. When pressed to defile herself with idolatry, she yields and complies. This being so, she has no excuse for leaving her husband, without having made a more adequate declaration of her faith”—though, as Calvin recognized, she would doubtless have to endure “greater compulsion” as a consequence of such declaration. “If thereafter,” Calvin concluded, “she finds herself in grave peril, with her husband persecuting her to death, she may avail herself of the liberty which our Savior grants to His followers for escaping the fury of wolves.”

This was a quite typical petition, and a quite typical response.¹⁸ With the death of Ulrich Zwingli, Martin Luther, and Martin Bucer by 1552, Calvin had emerged alongside Philip Melancthon as the leading Protestant authority on the Continent. Private litigants and political magistrates from throughout Europe sought his counsel on sundry questions of marriage theology and law.¹⁹ A number of parties, particularly women, moved to Geneva to avail themselves of its more egalitarian marriage procedures and the possibilities of finding relief from oppressive homes and laws. Many of these parties, while not always so desperate in their plight as this French noblewomen, often raised the same

¹⁸See comparable sentiments in “Letter to Mdme. de Pons (November 20, 1553),” in Jules Bonnet, ed., *Letters of John Calvin* (1855-1858; reprint, New York: Burt Franklin, 1972), 2:436; “Letter to Mdme de Rentigny (April 10, 1558),” *ibid.*, 3:416-18; *Letter to Unknown Woman (June 4, 1559)*, in CO 17:539; two undated consilia, in CO 10:255-58, 264-66. See discussion in Charmarie J. Blaisdell, “Calvin’s Letters to Women: The Courting of Ladies in High Places,” *Sixteenth Century Journal* 13, no. 3 (1982), and Nancy L. Roelker, “The Appeal of Calvinism to French Noblewomen in the Sixteenth Century,” *Journal of Interdisciplinary Studies* 2 (1970-71): 405. For a list of these letters, see Charmarie J. Blaisdell, “Calvin’s and Loyola’s Letters to Women: Politics and Spiritual Counsel in the Sixteenth Century,” in *Calviniana: Ideas and Influence of John Calvin*, ed. Robert V. Schnucker (Ann Arbor: University of Michigan Press, 1988), 235, 248-50.

¹⁹See, e.g., *Consilium (December 30, 1557)*, in CO 10:242-44: “So many people ask my advice that I am not always free to comply with all their requests, but I am not so capricious as to be displeased by their pious concerns.”

kind of basic issue—how to balance biblical and civil laws on marriage and divorce, formal and equitable interpretations of the law; and church and state responsibilities in the formation, maintenance, and dissolution of marriage.

Calvin's own vacillations in this case—between theological principles and civil precepts, pastoral equity and legal formality—is a miniature portrait of the central tension of his broader reformation of marriage in Geneva. In 1552, Calvin was in the interim between the first phase of his reformation of marriage that was focussed almost exclusively on law and the second phase of his reformation that blended law more fully with theology. As he moved from his first to his second phase, Calvin often tempered his earlier legalism, even while confirming most of his laws. On questions of spousal oppression and apostasy, Calvin remained firm in his judgment not to grant divorce unless the soul and body of the innocent spouse were truly imperiled.²⁰ This was consistent with (perhaps even caused by) his judgment not to countenance revolt against oppressive and apostate magistrates unless the soul and body of the citizen were truly imperiled. On many other marital questions, Calvin's early legal views underwent considerable theological tailoring and tempering as he moved into the second phase of his career. It is to those two phases of his career in marital reformation that we now turn.

The Early Reformation of Genevan Marriage

As a young Protestant neophyte in his early twenties, John Calvin naturally came under the influence of the first generation of Reformation leaders. In the years immediately following his conversion in 1532, Calvin read several writings of the leading Protestant lights—Martin Luther, Philip Melancthon, Martin Bucer, Heinrich Bullinger, and Ulrich Zwingli. In his early travels, he also came upon the new church ordinances of Basel, Berne, Brunswick, Strasbourg, and Zürich, which already enjoyed wide circulation and authority in the rapidly expanding Protestant world.²¹

Calvin's first formulations on marriage—from his 1536 *Institutes* to his 1545 *Marriage Ordinance* and its amendments—drew liberally from these disparate

²⁰On Calvin's general views of civil disobedience, see, e.g., *Ioannis Calvini Institutio Religionis Christianae* (Basel, 1536), 6.13 [hereafter *Institutes (1536)*]; *Comm. Dan.* 6:22; *Comm. Deut.* 5:16, with discussion and sources in Witte, "Moderate Religious Liberty," nn. 65 and 134. On the analogy between marital and civic relations, see *CO* 29:549, 636-38, with discussion in Josef Bohatec, *Calvins Lehre von Staat und Kirche mit besonderer Berücksichtigung des Organismusgedankens* (Aalen: Scientia Verlag, 1968), 652-53.

²¹John T. McNeill, *The History and Character of Calvinism* (New York: Oxford University Press, 1954), 93-158; A. Ganoczy, *La jeune Calvin. Genèse et évolution de la vocation réformatrice* (Wiesbaden: F. Steiner, 1966); Walter Köhler, *Zürcher Ehegericht und Genfer Konsistorium* (Leipzig: Verlag von M. Heinsius Nachfolger, 1942), 2:505-40 [hereafter Köhler, *Genfer Konsistorium*]. See church ordinances in Amelius Richter ed., *Die evangelischen Kirchenordnungen des sechszehnten Jahrhunderts. I: Vom Anfange der Reformation bis . . . 1542* (Nieuwkoop: B. DeGraaf, 1967).

Protestant sources. His theology of marriage remained rather rudimentary in these early writings, constituting little more than a distillation of prevailing Protestant principles. His legal formulations on marriage were more learned, ultimately yielding an impressive integration and elaboration of the Reformation's most daring legal reforms.

Calvin's emphasis on the law of marriage, rather than its theology, could only be expected during the first phase of his career in Geneva. Calvin was still young in his theology, and the ready acceptance of Protestant marriage teachings in the city allowed him to direct his initial theological forays to more central and controversial doctrines. Calvin was more learned in law, having studied canon law and civil law with the great jurists Pierre l'Estoile, Guillaume Budé, and Andreas Alciat, and having learned the basics of Protestant marriage law from Bucer, Melancthon, and his Geneva colleague Guillaume Farel.²² Since Geneva still lacked a comprehensive new marriage law when he arrived, Calvin focused most of his initial efforts there.

Early Reforms of Marriage Theology

Calvin repeated, with only modest embellishment, the familiar Protestant attack on the prevailing Catholic theology of marriage. Like the Lutheran reformers, he grounded his attack in the theory of the two kingdoms.²³ He wrote

[T]here is a twofold government in man. One aspect is spiritual, whereby the conscience is instructed in piety and in reverencing God; the second is political, whereby man is educated for the duties of humanity and civil life that must be maintained among men. These are usually called the "spiritual" and the "temporal" kingdoms (not improper terms) by which is meant that the former sort of regime pertains to the life of the soul, while the latter has to do with the concerns of the present life—not only with food and clothing but with laying down laws whereby a man may live his life among other men honorably and temperately. For the former resides in the mind within, while the latter regulates only outward behavior.²⁴

Marriage, family, and sexuality are matters of the earthly kingdom alone, Calvin believed. Marriage is "a good and holy ordinance of God," designed to procreate children, to remedy incontinence, and to promote "love between husband and wife."²⁵ Its morals and mores are subject to the laws of God that

²²See Josef Bohatec, *Budé, und Calvin: Studien zur Gedankenwelt des französischen Frühhumanismus* (Graz: Ohlaus Nachfolge, 1950), 127-48; Quirin Breen, *John Calvin: A Study in French Humanism* (Grand Rapids: Eerdmans, 1931), 40-66, 86-99.

²³See Berman and Witte, "Transformation," 1585-1595.

²⁴*Institutes* (1536), 6.13, 6.14, 6.35.

²⁵*Ibid.*, 1.19, 1.22.

are written on the “tablet” of conscience, rewritten in the pages of Scripture, and distilled in the Ten Commandments. Marriage, however, is not a sacrament of the heavenly kingdom. Though it symbolizes the bond between Christ and His Church, marriage confirms no divine promise and confers no sanctifying grace, as do the true sacraments of baptism and the Eucharist. Though it is a righteous mode of Christian living in the earthly kingdom, marriage has no bearing on one’s salvation or eternal standing.²⁶ Moreover, celibacy is not an obligation of the earthly kingdom. The celibate life is a “special gift of God,” commended only to those “rare persons” who are continent by nature. “[I]t is the hypocrisy of demons to command celibacy,” and “giddy levity” to exult the celibate state over the marital estate, Calvin charged. For the Church to command celibacy is to “contend against God” and to spurn His gracious “remedy” for lust. For the Church to subordinate marriage to celibacy is to commit the spiritual “arrogance” of supplanting God’s ordinance with a human tradition.²⁷ Two decades earlier, such teachings would have been revolutionary. By the late 1530s, they had become familiar refrains in the Protestant litany.

Early Reforms of Marriage Law

Critique of Canon Law

Calvin took up, with more originality, the Protestant attack on the Catholic canon law of marriage, which had governed Genevan life continuously until just before his first arrival there in 1536.²⁸ He issued a lengthy and bitter broadside against the arguments from Scripture, tradition, and the sacraments that the Church had adduced to support its vast ecclesiastical jurisdiction. “[T]he power to frame laws was both unknown to the apostles, and many times denied the ministers of the church by God’s Word,” he insisted. “[I]t is not a church which, passing the bounds of God’s Word, wantons and disports itself to frame new laws and dream up new things” for spiritual life.²⁹ The Bible alone is a sufficient guide for a person’s Christian walk and a church’s corporate life. For the

²⁶Ibid., 4.1, 5.68-71.

²⁷Ibid., 5.68-71, 6.25.

²⁸Geneva adopted a formal “résolution de vivre selon la loi évangélique” on May 21, 1536, triggering a series of shifts in jurisdiction from clergy to magistracy within a few years. See Emile Rivoire and Victor van Berchem, eds., *Les sources du droit du canton de Genève* (Aarau: Sauerländer, 1927-1935), vol. 2, item no. 701 [hereafter *Les sources du droit du canton de Genève*]. Ironically, a decade before, the city council had unequivocally confirmed its support for the church’s jurisdiction over marriage. See “Statute of December 20, 1528,” in *Les sources du droit du canton de Genève*, item no. 621; see also item no. 571 (a November 13, 1521, confirmation of ecclesiastical jurisdiction by Charles II, Duke of Savoy). See general discussion in Köhler, *Genfer Konsistorium*, 2:514-15, 541-55; Cornelia Seeger, *Nullité, der divorce et séparation de corps a Genève, au temps de Calvin: Fondements doctrinaux, loi et jurisprudence* (Lausanne: Memories et documents publiés par la société, d’histoire de la suisse romande, 1989), 22-29, 188-89, 200 [hereafter Seeger,].

²⁹*Institutes* (1536), 6.17, 6.20.

Church to impose new laws upon its own members is to obstruct the simple law and liberty of the Gospel. For the Church to impose its own laws upon civil society is to obscure its essential pastoral, prophetic, and pedagogical callings. To be sure, said Calvin quoting St. Paul, “all things [must] be done decently and in order.” Certain rules and structures “are necessary for internal discipline [and] the maintenance of peace, honesty, and good order in the assembly of Christians.” But the church has no authority to impose laws “upon consciences in those matters in which they have been freed by Christ”—in the so-called adiaphora, the external and discretionary things of life that do not conduce to salvation.³⁰ Marriage and family life are among these adiaphora. Laws governing such matters lie within the province of the state, not the church.

Particularly, the Church’s sacramental theology of marriage, Calvin argued, has led all Christendom down a “long legal trail of errors, lies, frauds, and misdeeds.”³¹ Calvin singled out for special critique the familiar targets of earlier Protestant attacks—the Church’s “usurpation” of marital jurisdiction from secular judges, its condonation of secret marriages of minors without parental consent, its restrictions on the seasons for betrothal, its long roll of marital impediments beyond “the law of nations and of Moses,” its easy dispensations from marital rules for the propertied and the powerful, its prohibitions against divorce and remarriage. “[P]apal tyranny” and “iniquitous laws,” he wrote, have “so confused matrimonial cases . . . that it is necessary to review the controversies that often ensue therefrom in light of the Word of God” and “to make certain new ordinances by which [marriage] may be governed.”³²

Ecclesiastical and Civil Ordinances

The city council of Geneva soon made “certain new ordinances” for the governance of marriage. The 1541 Ecclesiastical Ordinance and the 1543 Civil Ordinance of Geneva—both drafted, in part, by Calvin—set out the church’s new role in the family life and law of the community.³³ The church’s “four

³⁰See *Institutes* (1536), dedicatory epistle, and 6.4, 6.14-32; Geneva Catechism (1536), item 17, with further discussion in Witte, “Moderate Religious Liberty,” 366-69.

³¹*Institutes* (1536), 5.71.

³²*Ibid.*, 5.71, 6.25, 6.31; *Articles concernant l’organisation de l’Église et du culte à Genève, proposés au Conseil par les ministres le 16 janvier 1537*, CO 10:5, 13.

³³See “Les Ordonnances ecclésiastiques d’l’Église de Genève (1541),” in *Registres de la compagnie des pasteurs*, ed. Jean-François Bergier and Robert M. Kingdon 2 vols. (Geneva: Droz, 1964), 1:1. A slightly altered version appears in *Les sources du droit du canton de Genève*, vol. 2, item no. 794. A truncated version was issued in 1547 for rural areas and is reprinted in CO, 10:51-58. See also “Les Ordonnances sur les offices et officiers (1543),” in *Les sources du droit du canton de Genève*, 2:409-34, translated as *The Laws and Statutes of Geneva, as well Concerning Ecclesiastical Discipline, as civill regiment*, trans. R. Fils (London: Rouland Hall, 1562) (STC 11725). On the latter tract, see Robert M. Kingdon, “Calvin et la constitution Genevoise,” in *Actualité, de la Réforme* (Geneva: Labor et Fides, 1986), 209-19; id., “Calvinus Legislator: The 1543 ‘Constitution’ of the City-State of Geneva,” in *Calvinus Servus Christi*, ed. Wilhelm H. Neusner (Budapest: Presseabteilung der Raday-Kollegiums, 1988), 225-32.

offices” of pastors, teachers, elders, and deacons were to propound a purely biblical ethic of marriage and family life among its members—freed from the distortions of the canon law and free from the directions of a central episcopacy. Pastors were to expound relevant biblical passages from the pulpit; teachers were to explain them more simply to students and catechumens. Elders were to discipline sexual license and marital discord among church members; deacons were to aid orphans, widows, and the sexually abused. All church leaders were to set an example of sexual modesty, chastity, and integrity in their lives. Any pastor, the ordinances ordered, caught in fornication, “dissolute dancing,” or sexual “scandal” was to be summarily dismissed.

The 1541 Ecclesiastical Ordinance established a central consistory for Geneva to work “hand-in-hand” with the Small Council in the governance of marital matters.³⁴ The Small Council was the chief magisterial body of the city, which operated with several standing specialty committees—for finance, public works, charity, and the like. The consistory was established as a new standing committee to aid the Small Council in its governance of the moral, religious, sexual, and familial life of the city. The presiding officer of the consistory was one of the four leading syndics of the Small Council.³⁵ The members of the consistory included both laity and clergy divided into two companies: (1) a Company of Elders (ten to twelve citizens elected from the three other representative city councils); and (2) a Company of Pastors (comprised of up to twelve pastors drawn from local churches). The “Moderator” of the Company of Pastors was John Calvin—who by his office and by his learning exerted a formidable influence on the consistory’s deliberations.

The Genevan consistory came to serve as something of a hearings court of first instance and a mediator of last resort in cases of sex, marriage, and family life (among many other subjects).³⁶ The consistory met once a week for several hours. Parties could petition the consistory voluntarily or be subpoenaed to appear—often on the recommendation of a local pastor or magistrate. Pleadings were oral. Proceedings were recorded by a notary. Testimony was given under oath.³⁷ Parties and witnesses could be questioned by any consistory member. Documentary or physical evidence could also be demanded and examined. The consistory process was designed to be less formal and more

³⁴Quote from Köhler, *Genfer Konsistorium*, 188. See studies in Seeger, *Marriage*, 199-304; Robert M. Kingdon, *Adultery and Divorce in Calvin’s Geneva* (Cambridge: Harvard University Press, 1995), 7-30; E. William Monter, *Studies in Genevan Government, 1536-1605* (Geneva: Droz, 1964), 57-83.

³⁵See details in “Les Ordonnances sur les offices et officiers (1543),” in *Les sources du droit du canton de Genève*, 2:409-34.

³⁶Robert M. Kingdon, “Calvin and the Family: The Work of the Consistory of Geneva,” in *Calvin’s Work in Geneva*, ed. Richard C. Gamble (New York: Garland, 1992), 93, 95.

³⁷Oaths were formally required only in 1556, though several earlier consistory cases show that the practice antedated the statutory requirement. See Bergier and Kingdon, eds. *Registres de la Compagnie*, 2:68 for the requirement.

flexible than that of a courtroom—though it was doubtless equally unnerving to parties and witnesses, who generally appeared without legal counsel and without any guarantee of procedural rights. Over time, the Geneva consistory became rather famous, as we have seen, and parties throughout the Protestant world would look to it or write it for direction on questions of marriage and family life.

Both the 1541 Ecclesiastical Ordinance and the 1543 Civil Ordinance explicitly barred the consistory from exercising any jurisdiction over marriage—any power to make and enforce civil or criminal laws. The consistory could administer only spiritual sanctions of admonition, catechization, or public confession to conduct its affairs—a spiritual arsenal supplemented, after a long fight, with the power of excommunication. Cases or issues that required legal action or orders were referred to the Council for legal disposition. In such instances, the consistory's findings of fact and recommendations of action were probative but not binding on the Council.

Critics of the day saw little distinction between this new Protestant consistory and the old Catholic Church courts that had enjoyed plenary jurisdiction over marital matters in Geneva until five years previously. The Ecclesiastical Ordinance, however, sought to safeguard against such a “reversion” by appointing to the consistory both lay and ministerial officers led by a powerful lay syndic and by expressly curtailing the consistory's legal power: “[M]inisters have no civil jurisdiction and wield only the spiritual sword of the Word of God, as St. Paul commands them,” the Ordinance reads. “Disputes in marital cases are not spiritual matters but are mixed up with politics, and must remain a matter for the magistracy.” “There must be no derogation by the consistory from the authority of the civil council or magistracy; the civil power must proceed unhindered.”³⁸

The civil power must not proceed unguided, however. Clear and comprehensive rules are “the sinews of the commonwealth [and] the souls of the civil power,” Calvin believed. Such rules were especially critical for governing the tender subjects of sex, marriage, and family life.³⁹ The Genevan authorities had already, since the 1480s, supplemented a good deal of the canon law of crimes with its own criminal prohibitions against sexual sins—prostitution, adultery, fornication, rape, incest, bigamy, sodomy, bestiality, and the like.⁴⁰ These criminal laws were tightened and amended, in part at Calvin's urging, in the early

³⁸“Les Ordonnances ecclesiastiques,” in Bergier and Kingdon, *Registres de la Compagnie*, 1:9, 13. Similar language appears in *Les Ordonnances sur les offices et officiers* (1543), item “du.”

³⁹*Institutes* (1536), 6.47 (quoting in part from Cicero's *Laws*).

⁴⁰See the statutes from 1481-1536 collected in *Les sources du droit du canton de Genève*, vol. 2, items 290, 294, 297, 300, 302, 345, 373, 398, 405, 420, 147, 485, 496, 510, 524, 562, 580 with brief discussion in Köhler, *Genfer Konsistorium*, 553-54.

1540s.⁴¹ But Geneva still lacked a civil law of marriage to replace the canon law system.

Marriage Ordinance

In 1545, Calvin and four members of the Council thus drafted a comprehensive Marriage Ordinance for Geneva and surrounding rural polities—cleverly culling its provisions from an array of biblical, canonical, and civil law sources. The Ordinance was not a legal code, though Calvin called it that. The Ordinance neither moved from general principles to concrete rules nor covered all relevant subjects equally or systematically. It was instead a large, learned, and (sometimes) loose collection of rules for the governance of marital formation, maintenance, and dissolution. Though the Ordinance was debated and amended several times before its formal adoption in 1561, its basic provisions served from the start as the new common law of marriage for Geneva.⁴²

The Ordinance dwelt at length on betrothals—seeking to safeguard against secret marriages and to secure the consent of the couple, their parents, and the broader community to this vital first step of intimate union. The consent of the couple was the essence of betrothal, and the drafters took pains to secure it. Betrothal promises had to be made “simply,” “unconditionally,” and “honorably in the fear of God.” Ideally, such betrothals were to be initiated by “a sober proposal” from the man, accepted by the woman, and witnessed by at least two persons of “good reputation”—though deviations from this procedure were tolerated. Betrothals made in secret, qualified with conditions, or procured by coercion were automatically null—and the couple themselves, as well as any

⁴¹See, e.g., “Statutes of February 22, 1539, May 25, 1540, c. January, 1541, December 23, 1541, January 14, 1544,” in *Les sources du droit du canton de Genève*, item nos. 756, 757, 775, 786, 795, 813. See also the roll of five proclamations at the conclusion of “Les Ordonnances sur les offices et officiers (1543),” in *Les sources du droit du canton de Genève*, 2:428-30. What survives of Calvin’s other efforts to pass a criminal code for Geneva (as well as ordinances on civil procedure, evidence, taxation, inheritance, contracts, and administrative law) is in CO 10:125-46. See discussion in Josef Bohatec, *Calvin und das Recht*, (1934; reprint, Aalen: Scientia Verlag, 1991), 209-79.

⁴²The Ordinance was completed on November 5, 1545, presented to the Small Council on November 10, and to twelve representatives of the General Council on November 13. It was commended but not formally approved and circulated thereafter among ministers and magistrates of Geneva and beyond in slightly varying drafts. On November 11, 1549, another committee, again led by Calvin, was convened to study existing marriage law and to recommend improvements to the Marriage Ordinance. Calvin presented his report on November 25, but complained on January 30, 1550, that still no official position had been taken on the ordinance. On May 1, 1551, Calvin again complained to the Council that the lack of clear guidelines led to much confusion over questions of marriage. It was not until 1561 that it finally received formal endorsement, now with a few more amendments, CO 10:33 n. The 1545 version is in CO 10:33; a 1547 version in Bergier and Kingdon, *Registres de la Compagnie*, 30; the final 1561 version is incorporated in *Les Ordonnances ecclésiastiques (1561)*, in CO 10:91 and Richter, *Die evangelischen Kirchenordnungen*, 1:342. The following analysis and quotations are based on provisions common to all three drafts, unless otherwise noted.

accomplices in their wrongdoing, faced punishment. Betrothals procured through trickery or “surprise,” or made “frivolously, as when merely touching glasses when drinking together,” could be annulled on petition by either party. Betrothals involving a newcomer to the city were not valid until the parties produced proof of the newcomer’s integrity of character and eligibility for marriage. Absent such proof, the couple had to wait a year before they could marry.⁴³

The consent of the couple’s parents was also vital to the validity of the betrothal. The consent of fathers was the more critical; maternal consent was required only when fathers were absent, and would be respected only if (male) relatives would concur in her views. In the absence of both parents, guardians would give their consent, again with priority for the male voice. Minor children—men under twenty, women under eighteen,—who entered marriage without such parental consent could have their betrothals unilaterally annulled by either set of parents or guardians.⁴⁴ Adult or emancipated children could proceed without their parents’ consent, though “it is more fitting that they should always let themselves be governed by the advice of their fathers.” The Ordinance makes clear that parental consent was only a supplement, not a substitute, for the consent of the couple themselves. Parents were prohibited, on pain of imprisonment, from coercing their children into unwanted engagements, or withholding their consent or payment of dowry until the child chose a favorite partner. They were further prevented from forcing youngsters into marriage before they were mature enough to consent to and participate safely in the institution. Minor children “observing a modest and reverent spirit,” could refuse to follow their parents’ insistence on an unwanted betrothed or a premature engagement. Other children, confronting a “negligent or excessively strict” father, could “have him compelled to give a dowry” in support of their marriage.

The consent of the broader state and church community also played a part in the betrothals. Betrothed couples were to register with a local civil magistrate, who would post notices of their pending nuptials and furnish the couple with a signed marriage certificate. Couples were to file this registration marriage thereafter with a local church, whose pastor was to announce their banns from the pulpit on three successive Sundays.⁴⁵ Such widespread notice was an open invitation for fellow parishioners and citizens alike to approve of the match or to voice their objections. Any number of objections could be raised at this stage—for example, that one of the parties was “incompetent” by reason

⁴³See also “Statute of June 4, 1537,” in *Les sources du droit du canton de Genève*, vol. 2, item no. 732 (requiring a one-year waiting period).

⁴⁴The 1545 version set the age of majority as twenty-four for men, twenty for women.

⁴⁵See also statute of January 18, 1541 in *Les sources du droit du canton de Genève*, vol. 2, item no. 785 (requiring churches to keep civil marriage registers); “Les ordonnances ecclésiastiques,” in Bergier and Kingdon, *Registres de la Compagnie*, 9 (regarding church announcements of banns).

of youth, imbecility, contagion, or a “wild spirit,” or that the parties were “incompatible” because of differences in age, religion, social rank, or economic status. These objections were not necessarily fatal to the betrothal, and officials were given wide discretion regarding their disposition. No such discretion was allowed if it was proved that the parties fell within one of the biblical degrees of consanguinity or affinity, that one of the parties had an “incurable contagious disease,” or that the prospective bride “taken to be virgin is not so.” All objections to betrothal, the Ordinance insisted, had to be voiced privately to the consistory, and only by citizens or by persons of good reputation. Such precautions helped to avoid the prospect of “defamation or injustice,” particularly “to an honorable girl.” Those who objected in an untimely or improper manner could be sued for defamation by the couple or their parents.

A couple, once properly betrothed, had little time to waste and little room to celebrate. Neither their publicly announced betrothal nor the civil registration of their marriage was sufficient to constitute a marriage. A formal church wedding had to follow—within three to six weeks of betrothal.⁴⁶ If the couple procrastinated in their wedding plans, they would be reprimanded by the consistory; if they persisted, they would be “sent before the Council so that they may be compelled to celebrate it.” If the prospective groom disappeared without cause, the woman was bound to her betrothal for a year. If the prospective bride disappeared, the man could break off the engagement immediately—unless there was evidence that she had been kidnapped or involuntarily detained.⁴⁷ Cohabitation and consummation prior to the wedding were strictly forbidden to the parties on pain of imprisonment. Pregnant brides to be, though spared prison, were required to do public confession for fornication prior to the wedding and to wear a veil signalling their sin of fornication on the day of the wedding.⁴⁸ Weddings were to be “modest affairs,” “maintaining the decorum and gravity befitting Christians,” and featuring a mutual swearing of oaths by the couple, as well as by their witnesses, followed by the blessing and sermon of the pastor.⁴⁹ Weddings could not be held on the same Sunday for which the Eucharist was scheduled lest “the honor of the sacrament” be impugned. This was a marked departure from prevailing Catholic and other Protestant traditions that saw Eucharistic celebration as a vital part of the consecration of the marriage.⁵⁰

⁴⁶This requirement superceded the 1543 Civil Ordinance provision that allowed “the marriages to be made whenever the party shall require it, on a Sunday or workday.” *Les Ordonnances sur les offices et officiers (1543)*, item “du.”

⁴⁷Desertion by fiancés is addressed first in the 1547 version, more fully in the 1561 version.

⁴⁸See also “Statutes of September 19, 1547,” in *Les sources du droit du canton de Genève*, vol. 2, item no. 845, and of July, 22, 1549, vol. 2, item. no. 862.

⁴⁹See details of the marriage service in CO 6:203.

⁵⁰*Les Ordonnances sur les offices et officiers (1543)*, item “du.” For the role of the Eucharist in marital consecration in other Christian traditions, see Witte, *From Sacrament to Contract*, 31, 165.

A marriage—once properly contracted, consecrated, and celebrated—was presumed permanent. The married couple was expected to maintain a common home. Both parties could be called to account for privately separating from bed or board—particularly if there was suspicion of adultery, harlotry, concubinage, or sodomy. Couples who “wrangled and disputed with each other” were to be admonished by the consistory to “live in peace and unity”—with severe cases of discord reported to the congregation for popular reproof or to the Council for criminal punishment. Husbands were forbidden to “ill treat,” “beat,” or “torment,” their wives and were subject to severe criminal sanctions if they persisted. The Ordinance made no provision, even in extreme cases, for the traditional halfway remedy of separation from bed and board (without divorce). An ethic of perpetual reconciliation of husband and wife coursed through the Ordinance, with ministers, magistrates, and members of the broader community all called to foster this end.

The presumption of permanent marriage was not irrebuttable, however. In instances of serious marital impediments or individual fault, a party could sue for annulment or divorce. The Ordinance rendered the process of marital dissolution as open and communal as it had rendered the process of marital formation. The drafters were as eager to safeguard against the prior canon-law practice of private dissolutions as against the traditional canon-law toleration of secret marriages.

A judgment of *annulment* required proof that a putative marriage was void from the start by reason of some defect (called an impediment) present at the time of the wedding but unknown to either of the marital parties. Either party could sue on discovery of a blood or familial relationship between them that violated biblical commands.⁵¹ Upon annulment each party was free to remarry.

⁵¹The statute prohibited betrothal and marriage for parties related by these degrees of consanguinity: (1) father and daughter, mother and son, “and all other descendents in sequence, inasmuch as this contravenes the propriety of nature and is forbidden both by the law and God and by the civil laws”; (2) uncle and niece or great-niece, aunt and her nephew or great-nephew, and so in sequence, “inasmuch as the uncle represents the father and the aunt is in the place of the mother”; (3) brother and sister or half brother and half sister; and (4) first cousins, saying that “while marriage is forbidden neither by the law of God nor by the civil law of the Romans, nevertheless for the avoidance of scandal (since for a long time it has not been customary), and for fear lest the Word of God should be blasphemed by the ignorant, marriage should not be contracted between first cousins until such time as we give a different ruling. There shall be no impediment to the other degrees.”

The statute further prohibited betrothal and marriage between parties related by these degrees of affinity: (1) a man with his son’s or grandson’s widow, or a woman with her daughter’s or granddaughter’s husband, “and so on with other relations in a direct line”; (2) a man with his wife’s daughter or granddaughter; (3) a woman with her husband’s son or grandson; (4) a man with the divorced wife of his nephew or great-nephew, or a woman with her niece or great-niece’s husband; and (5) a man with the widow of his brother and no woman with the widower of her sister. Moreover, the statute concludes: “When it comes to notice that a man has committed adultery with another man’s wife he may not take her in marriage because of the scandal and the dangers connected with it.”

A husband could sue if he discovered that his wife lacked presumed virginity, was incurably diseased, or refused to correct a “defect of her body” that prevented intercourse—again, leaving both parties free to remarry. A wife could sue on grounds of the impotence or incurable disease of her husband—leaving her free to remarry but him “forbidden to misuse any woman again.” In all such cases, the parties were expected to prepare a register of their individual and collective properties and, with appropriate judicial supervision, reach an “amicable” parting of property and person.⁵²

A judgment of *divorce* required proof in open court that a marriage, though properly contracted, was now broken by reason of the adultery or desertion of one of the parties. In cases of adultery, husband and wife were accorded an equal right to sue—a deliberate innovation to “ancient practice” in Geneva that the drafters grounded in St. Paul’s teaching that husband and wife have a “mutual and reciprocal obligation” in “matters of intercourse of the bed.” Only an entirely innocent plaintiff could bring such a suit; any evidence of mutual fault, fraud, or collusion in the adultery was fatal to the case. Failure to bring suit in a timely manner was taken as a sign of forgiveness and cut off the suit for divorce. After bringing suit, the plaintiff was urged to reconcile with the wayward spouse—and doubtless told that such reconciliation would likely exonerate the latter from criminal punishment. But the plaintiff could insist on the divorce, which the Council would order on referral from the consistory. The innocent party was free to remarry thereafter. The adulterer faced criminal punishment—imprisonment in the usual case, banishment or execution by drowning in an egregious case.⁵³

Parties could also sue for divorce on grounds of desertion. These divorce cases were procedurally more complicated and substantively less egalitarian in their treatment of husband and wife. In cases where the husband left home for a legitimate reason (like business or military service), but inexplicably did not return and could not be found, the wife had to wait ten years before he could be presumed dead and she permitted to remarry. In cases where the husband left “through debauchery or some other evil disposition,” the wife was to find him and to request his return. If she could not find him, she would have to wait one year before proceeding further. If she did find him and he refused to

⁵²Calvin elaborated on this issue of property division at some length. What survives of his effort is in *Fragment d’un projet d’ordonnance en matière matrimoniale*, in CO 10:143-44 and *Deuxième fragment d’un projet d’ordonnance sur la procédure civile*, in CO 10:139, 141. On Calvin’s views of property, see Bohatec, *Calvin und das Recht*, 231-58.

⁵³For a study of this criminal law in action, see E. William Monter, “Crime and Punishment in Calvin’s Geneva, 1562,” *Archiv für Reformationsgeschichte* 64 (1973): 281. Monter reports that an “almost complete and consecutively numbered list of all criminal arrests and trials, from February, 1562 to February, 1563,” includes 197 criminal cases. Forty-one of these cases dealt with extramarital sex (adultery, rape, fornication, and sodomy). Of these, three defendants were convicted and executed for raping children; three convicted adulterers and six fornicators were banished; two convicted homosexuals were executed.

return—or the year of waiting had expired—she was to request three biweekly announcements of his desertion, both by the minister in the church and by the lieutenant of the city council. If he still failed to respond, she was to summon two or three of his relatives or close friends to try to find him and urge his return. If that proved futile, she could appear before the consistory to state her case, and with their approval, petition the magistrate for an order of *ex parte* divorce. The return of the husband anytime before such an order would end the proceedings. The husband would be admonished for his desertion. The wife would be compelled to welcome him back to bed and board. If the husband repeated his desertion, he faced prison. If he deserted habitually, the wife could sue for divorce *ex parte* with no further notification requirements.

A husband who brought suit for his wife's desertion followed the same procedures but with three simplifications. First, cases of intentional desertion and legitimate departure by the wife were treated alike. Second, husbands had no obligation to wait for one year (let alone ten) if he could not locate his wife; the public announcements of her departure and petitions for divorce could commence immediately. Third, even if a wife returned, her husband could reject her if he had "suspicion that she has misconducted herself." The consistory would urge their reconciliation, but if he insisted, they would investigate her conduct while away. If they found no evidence of misconduct, he would be compelled to accept her. If they reached "a very emphatic presumption that she committed adultery or kept bad and suspect company and did not conduct herself honorably as a good woman," the Ordinance reads, "the husband's petition shall be heard, and he shall be granted what reason dictates."

Marriage Litigation

The 1545 Marriage Ordinance provided generous guidance for the governance of marriage and family life in Geneva. It was left to the consistory and the Small Council to put these rules into action: "All matrimonial causes concerning personal relationships and not goods shall receive attention in the first instance in the consistory where an amicable solution, if one can be found, shall be effected in the name of God," the Ordinance concludes. "If it is necessary to pronounce some judicial sentence, the parties shall be sent to the Council with a statement of the decision of the consistory so that the definitive sentence may be given."

A vivid picture of the Marriage Ordinance in action can be seen in the case law of 1546, the year after the first draft was issued.⁵⁴ A dozen cases on point are

⁵⁴Collected in *Registres du Consistoire de Genève*, vol. 2, with a few cases also reported in *Registres de la Compagnie des pasteurs de Genève*, the clerical bench of the consistory. A microfilm of the original twenty-one-volume *Registres du Consistoire de Genève* is available at the Meeter Center for Calvin Studies at Calvin College. The register has been transcribed in (thankfully readable!) French by Robert M. Kingdon and others, and the volumes are scheduled for publication by Droz in Geneva. The cases discussed hereafter are drawn from the transcript of volume 2, not yet published, prepared by Professor Kingdon and Jeffrey R. Watt.

reported in the consistory register for that year, touching many aspects of the marriage process, and implicating many rules of the new draft ordinance. All but one of the cases ended in the consistory—with guilty parties simply admonished and open questions left for later resolution or for action by one of the consistory members. This picture of the Marriage Ordinance in action is rendered all the more colorful in that John Calvin participated in all these cases as Moderator of the Company of Pastors, the clerical “bench” of the consistory.

Four cases reported in 1546 dealt with challenges to betrothal. A man, who testified that his fiancée was “corrupt” and wanted to be “separated” from him was released from his betrothal provided that his fiancée would come to the consistory to corroborate his story.⁵⁵ A young couple who became engaged while the girl was tippling was ordered to reappear before the consistory with their parents “in order for the parents to declare that the promise of marriage was frivolous, and to be admonished to take better care of their children.”⁵⁶ Another young couple, who had married without the consent of the woman’s parents, was deemed “not properly contracted” and was ordered to return to the consistory for further counsel.⁵⁷ A Genevan woman, whose engagement with a man from Gex was challenged by a woman in the city of Berne, was given an extension on her engagement and permission to join with her fiancée in order to answer the objection.⁵⁸

Three cases dealt with spousal desertion, discord, and neglect. A maid, deserted by her husband for twelve years, came to inquire about a rumor that her husband was involved in a case in the town of Guyon. The consistory court’s decision was that “Calvin should write to the consistory of Guyon” and ask for information about the case.⁵⁹ A widower was hailed into court apparently on suspicion that he had grossly neglected his wife before she died. Though the record is cryptic, the notary reports: “The decision is that it will be a scandal to open the door to many to kill their wives, when it appears that this woman was

The consistory record of 1542-1545 has only a few cases on marriage, family, and sexuality. See, e.g., 1:11 (inquires into care for illegitimate child); 1:15 (reprimands husband for spiritual delinquency of wife); 1:19 (refers question of legitimacy of Catholic wedding ceremony to the law of the magistrate); 1:192 (approves use of aunt’s consent in place of parent’s consent to marriage); 2:2 (mediates conflict between abandoned wife and her son over use of property left by deserter); 2:12-13 (hears character testimony in a divorce case that was later approved).

⁵⁵Case of Francois Bastard, November 18, 1546,” in *Registres du Consistoire de Genève*, 2:92

⁵⁶Case of the Servants of Girad Perlet, December 16, 1546,” in *Registres du Consistoire de Genève*, 2:98

⁵⁷Case of Pierre Dolen, October 28, 1546,” in *Registres du Consistoire de Genève*, 2:86.

⁵⁸Case of Jehanne, Daughter of Pierre Beyard, November 18, 1546,” in *Registres du Consistoire de Genève*, 2:92

⁵⁹Case of Jehanne, Maid of Lady Batezarde, January 7, 1546,” in *Registres du Consistoire de Genève*, 2:24.

complaining futilely [of her ailment] and died in sadness.⁶⁰ A disaffected married couple was summoned to the consistory for investigation. The husband complained of his perennial unhappiness and of his wife's "horrible" conduct. The wife complained of his apostasy and disaffection despite her best efforts to indulge and cajole him. She threatened to leave for another city if she was forced to endure him. He refused to describe her "horrible conduct," which would allow the consistory to determine the appropriate remedy. Exasperated, the consistory referred the case to Calvin to give pastoral guidance and reproof.⁶¹ The couple did not appear before the consistory again.

Four cases of improper sexual behavior fell to the consistory to resolve. A young man was admonished for frequenting a dance hall, for, as Calvin warned him on behalf of the consistory, "dancing leads to debauchery."⁶² Another man, suspected of fornication, was admonished for "hugging his maid lustfully in an open street," and not accepting his own pastor's reproof for such conduct.⁶³ A woman was reprimanded for becoming pregnant and for failing to disclose her condition in time for the consistory to intervene. Her testimony that she had extracted a marriage promise from her lover did not seem to impress the consistory, given its new charge to outlaw secret betrothals.⁶⁴ A young man was admonished for fathering an illegitimate child in a nearby town. When he denied the charge "with many words," he learned that the woman's own local consistory had reported the case to the Geneva consistory, that Calvin had been dispatched to investigate, and that his findings were that the woman "wears makeup" and is reputed to be "sexually promiscuous." This evidence was suffi-

⁶⁰"Case of Don Lergier Joly, November 18, 1546," in *Registres du Consistoire de Genève*, 2:92.

⁶¹"Case of Jehanne Fontanna and His Wife, June 24, 1546," in *Registres du Consistoire de Genève*, 2:68

⁶²"Case of Jacques Gruent, April 20, 1546," in *Registres du Consistoire de Genève*, 2:51. Gruent compounded his problems by "slandering Sir Calvin for saying in his sermons that dancers are debauchers. Sir Calvin answered him that he has said it differently in his sermons—that dancing leads to debauchery." Moreover, the notary notes, Gruent was found "drunk that evening and caused scandal."

⁶³"Case of Ayme Ploncon, June 24, 1546," in *Registres du Consistoire de Genève*, 2:67. Ploncon did not take kindly to these charges and got himself into a debate with Calvin, the Moderator. The notary reports that Ploncon:

first answered that concerning his maid, he knows that she is a good girl and then demanded to face his accusers. He was admonished that there is a rumor that the old maid housekeeper is a maquerelle of the young. [Ploncon] answered Sir Calvin, saying that Sir Calvin is the one who calls her a maquerelle. He was admonished concerning his rebellious words against Master Raymond who was criticizing his conduct. He replied that there was nothing wrong with hugging girls, and denies that he was following her in the street. He admitted that he will not stop what he is doing and was not at all afraid of the pastor. He was admonished by Sir Calvin who told him that he was to let God take care of [his] judgment.

⁶⁴"Case of the Widow [Relaissè,] of Jehan Debeyre, June 17, 1546," in *Registres du Consistoire de Genève*, 2:66.

cient, despite the young man's denials, to yield the consistory's decision to "procure a written certificate" from the woman's home town—presumably a certificate for a "shotgun wedding" between the fornicating parties.⁶⁵

The consistory court dealt more fully and firmly with the marital conflicts and infidelities of an elderly Genevan aristocrat, Sir François Favre.⁶⁶ On February 18, 1546, the consistory hailed the elder Favre before it and demanded that he account for "scandalous rumors" that "there is conflict between him and his wife" and that "she has departed for an unknown reason"—perhaps because "a maid was pregnant before she left the house." According to the notary, "Favre responded that he is old, and would just like to have someone to take care of his house. Sir Calvin admonished him that this response was nonsense. The father of a household should account for his maid," Calvin insisted, pressing Favre for a better answer. Favre tried again, saying "he knows nothing [about the maid's pregnancy] and that his wife simply left with her property, under pressure by someone who wants to use that property." There was no marital conflict, Favre argued. "He did not beat her." His wife, he said, would corroborate his testimony on her return. Favre was "admonished, indeed well admonished," the notary reports. The Consistory decided to refer the matter to the city prosecutor to collect further information about Favre from the pregnant maid. They later decided to send a letter to the nearby consistory of Gex, asking them to summon Casper Favre, François' son, to Geneva to testify.

The case was reopened two years later when François Favre appeared voluntarily before the consistory court, now pleading for permission to divorce his wife *ex parte*. The notary reports as follows:

Favre demanded to be divorced from his wife because she had numerous lawsuits [against her], and her properties were situated in Morges where he was unable to attend to them. He had not taken her on this condition. Moreover, he confessed to having committed adultery, an action which his wife also condemned in agreeing to the action for divorce. After this [plea], Sir Calvin began to give his opinion. He affirmed that adultery is a sufficient cause for a woman to seek a divorce. For though the husband has preeminence over the wife, yet in this there is equality—[see] St. Paul, I Cor [in]thians] 7: "the husband has not power over his body," etc. However, here it is necessary [for the consistory] to consider when this fornication or adultery has taken place, whether it was before the marriage was contracted, and if it was during the marriage, whether the wife's consent to continue living with her husband after the adulterous act would cancel the fault. The members of the consistory were urged in addition to beware, lest there be collusion

⁶⁵Case of 'the Lacques,' January 28, 1546," in *Registres du Consistoire de Genève*, 2:28.

⁶⁶February 18, 1546," *Registres du Consistoire de Genève*, 2:34. On Favre's reputation and relationship with Calvin, see Kingdon, *Adultery and Divorce*, 181ff.; McNeill, *The History*, 169-71.

between the parties, which would open the door to the dissolution of many marriages. Finally, it was pointed out that the wife, who was an interested party in the case, had not brought an action, although she had [per his testimony] accused him of disgraceful conduct.⁶⁷

Favre's divorce case was thus dismissed. Shortly thereafter, Favre was again accused of fornicating with his maid servants, as well as perjuring himself before the consistory and resisting its spiritual discipline. On the recommendation of the consistory, the Geneva authorities imprisoned him and forced him into a lengthy public apology. Favre eventually left the city to spare himself further scrutiny and embarrassment.⁶⁸

These marital cases in 1546 were quite typical of the cases heard by the consistory in the 1540s and early 1550s. The consistory would hear one dozen to three dozen cases per year dealing with marriage, family, and sexuality. Virtually all these cases were of modest proportion—disputes over secret, conditional, or coerced betrothals, petitions for protection from parental or spousal coercion or neglect, inquiries into fornication or debauchery, reprimands for discord or abuse, and charges of spousal desertion or delinquency. Almost all these cases met with either stern spiritual admonition or with simple avuncular advice and action, and ended there.⁶⁹ Few cases during Calvin's tenure, let alone in the 1540s, rose to the level of the social intrigue and legal complexity evident in the Favre case.⁷⁰

Geneva's New Marriage Law in Comparative Perspective

The Marriage Ordinance of Geneva—on the books and in action—was a watershed in the evolution of Protestant marriage and family law. The Ordinance collected and combined the most enduring provisions of the old Catholic canon law and the most daring reforms of the new Protestant civil law. The Ordinance retained the canonists' distinctions of betrothal, marriage, and consummation. But it imported various Protestant rules to simplify, abbreviate, and police the process. The Ordinance repeated the canonists' requirement that the couple mutually consent to marriage. But it incorporated Protestant demands for the further consent of parents, parishioners, and citizens in the process. The Ordinance accepted the canonists' biblically based

⁶⁷"Divorce of François Favre, October 30, 1548," in Bergier and Kingdon, eds., *Registres de la Compagnie*, 1:41.

⁶⁸See Kingdon, *Adultery and Divorce*, 182; id., "Anticlericalism in the Registers of the Geneva Consistory, 1542-1564," in *Anticlericalism in Late Medieval and Early Modern Europe*, ed. Peter A. Dykema and Heiko A. Oberman (Leiden: Brill, 1993), 617.

⁶⁹See *Registres du Consistoire de Genève*, vols. 3-7; also Frédéric-August Cramer, ed., *Notes extraites des registres du Consistoire de l'Eglise de Genève, 1541-1814* (Geneva, 1853), with a rapid-fire distillation of relevant cases from Cramer's collection in Köhler, *Genfer Konsistorium*, 2:580-82.

⁷⁰The most colorful such cases are captured in Kingdon, *Adultery and Divorce*.

impediments of consanguinity, affinity, and infirmity. But it rejected, in typical Protestant fashion, the many impediments rooted in Catholic sacramental theology. The Ordinance repeated the canonists' injunction that marriage is an indissoluble estate. Yet, it followed Protestant (and Roman law) views that adultery and desertion are themselves acts of marital dissolution, triggering rights for divorce and remarriage at least for the innocent party. The Ordinance adopted the canonical pattern of involving clergy in the governance of marriage. But it left to the Protestant magistrate both civil and criminal jurisdiction over marriage and family life.⁷¹

This Marriage Ordinance was more than a synthesis of earlier laws, however. Through this enactment, Calvin and his colleagues also introduced several innovations, or novel emphases, in prevailing Protestant marriage law that came to have a formidable influence on the Western legal tradition.⁷² A dozen such contributions deserve mention: (1) the strict prohibitions against frivolity, drunkenness, and conditionality in contracting betrothals; (2) the substantial protections of children from parental coercion into engagements; (3) the elevation of paternal over maternal consent in the process of betrothal; (4) the abbreviation and careful communal policing of the interim between betrothal and marriage; (5) the absolute impediments of impotence and contagion to betrothal and marriage; (6) the mandatory publication of banns by both magistrates and ministers; (7) the dual requirements of state registration and church consecration to constitute marriage; (8) the deprecation of the right of separation from bed and board and the strong emphasis on reconciliation between husband and wife; (9) the equal standing for women to sue for annulment on grounds of impotence and for divorce on grounds of adultery; (10) the disparate treatment of husbands and wives in suits for desertion; (11) the stern prohibition against wife abuse; and (12) the establishment of a mixed clerical and lay consistory to serve as hearings court of first resort and a mediator of last resort in marital cases.

Taken together, these innovations of Genevan marriage law helped to render both mental consent and sexual ability indispensable features of marriage. They helped to render betrothal, marriage, and dissolution central concerns of church, state, and society alike. And they helped to promote what André Biéler once called a "differential equality"—such progressive gender equality on some issues that Geneva was named a "women's paradise," such regressive patriarchy

⁷¹See also Seeger, *Marriage*, 135-82.

⁷²See Köhler, *Genfer Konsistorium*, 2:642-45, who traces some of these Genevan "innovations" to the laws of Zürich (1525) and Basel (1529). These prototype laws are reprinted in Richter, *Die evangelischen Kirchenordnungen*, 1:21, 120 and analyzed in Köhler's first volume and in Thomas Max Safley, "Canon Law and Swiss Reform: Legal Theory and Practice in the Marital Courts of Zurich, Bern, Basel, and St. Gall," in Helmholz, *Canon Law in Protestant Lands*, 187.

on other issues that Geneva was described at the same time as “a woman’s abyss.”⁷³

The most surprising feature of the new marriage law of Geneva is its legalistic, even positivistic, character. Unlike other Protestant laws on marriage of the day, both the Marriage Ordinance of 1545 and the marriage cases of 1546 are almost silent on any sources of law beyond the command of the sovereign. A typical Protestant ordinance of the day would begin at least with a bit of homiletic throat-clearing if not a fuller recitation of its sources in the Bible, reason, conscience, tradition, and custom. An elaborate law, such as this one, would sometimes also provide a crisp distillation of the polity’s favorite theological doctrines supporting its basic provisions.⁷⁴ In a dozen reported cases on a heated religious topic such as marriage, one could expect to find a liberal peppering of citations to everyone from Moses to Martin Luther, particularly with someone of Calvin’s erudition in the room. But the new Geneva marriage law leaves its religious sources, and its theological rationale, almost completely hidden. First Corinthians 7 is mentioned twice in passing—but both times to make the quite unorthodox claim that, in cases of adultery, women and men should have equal rights to sue for divorce. For the rest, the rules are stated categorically and the decisions announced confidently, with very little by way of citation to religious authority and even less by way of theological explication.

The Marriage Ordinance mirrors Calvin’s method in this first phase of marital reformation in Geneva. Law came first in his early reform efforts, theology a distant second. “The purity of our families depends on the purity of our laws,” Calvin declared to the Geneva Small Council in urging their adoption of his Marriage Ordinance.⁷⁵ The purification of marriage law was thus his first ambition.

The Transformation of Marriage Theology

“Rules without canons will either harden or wither over time,” Lord Acton once said. “Whether hardened or withered, they come to little effect.” Calvin learned this lesson the hard way in his reformation of Genevan marriage law.

⁷³André, Biéler, *L’Homme et la femme dans la morale Calviniste* (Geneva: Labor et Fides, 1963), 36, with sources and discussion in E. William Monter, “Women in Calvinist Geneva (1550-1800),” *Signs: Journal of Women in Culture and Society* 6 (1980): 189; Roger Stauffenegger, “Le . . . Genève vers 1600,” *Mémoires de la société, pour l’histoire de droit et des institutions de anciens pays bourguignons, comtois et romands* 27 (1966): 317.

⁷⁴See, e.g., “Der Erbaren Stadt Brunswig Christliche Ordeninge (1528),” in Richter, *Die evangelischen Kirchenordnung*, 1:106, drafted by the Lutheran leader Johannes Bugenhagen and a model for some two dozen polities in Germany and Scandinavia; “Ordnung so ein Ersame Staat Basel (1529),” in *Die evangelischen Kirchenordnung*, 1:120, drafted by Ulrich Zwingli and a model for several Swiss cities; “Württembergische Eheordnung (1553),” in *Die evangelischen Kirchenordnung*, 2:128, drafted by Johannes Brenz and a model for southern German cities.

⁷⁵CO 17:238.

However refined his early legal formulations on marriage may have been, they did not admit of easy political adoption or popular acceptance. Genevan political officials dithered for nearly two decades before finally yielding to most of his legal reforms. Genevan parishioners and subjects resisted, with increasing contempt, the authority of Calvin and the consistory to deal with marital matters.

Popular Contempt

Two cases of popular contempt appear already in the consistory register of 1546, when the Marriage Ordinance was first circulating. In one case, a man charged Calvin with posturing as “the new pope” of marriage.⁷⁶ In another case, a man flatly asserted that the consistory “lacked the authority” to dissolve his sister’s betrothal, punctuating his remarks with a few insulting jabs at Calvin.⁷⁷ Such jurisdictional challenges become more pointed and frequent in subsequent years, as anticlericalism escalated in Geneva.⁷⁸ Why should the church consistory enjoy such authority over a civil estate such as marriage? Why should the city magistrates be swayed by the pastors’ teachings on sexuality and domesticity? Why should ministers have such powers to probe the intimacies of bed and board? Why should rights to participate in the sacrament of Eucharist turn on wrongs pertaining to the adiaphora of marriage? How was the magistrate or minister to parse and police the line between the pastoral functions of the consistory and the judicial functions of the council? Had not Calvin simply created a new church court under his authority, wielding much of the same power and prerogative as the former episcopal and inquisitorial courts of Catholicism—but now lacking any final appeal to Rome? Dozens of litigants and pamphleteers voiced such criticisms in the later 1540s and 1550s.⁷⁹ Calvin had no ready answers.

⁷⁶“Case of Phillibert of Beaulieux, May 20, 1546,” in *Registres du Consistoire*, 2:55.

⁷⁷“Entry on December 16, 1546,” in *Die evangelischen Kirchenordnung*, 2:98.

⁷⁸See generally Kingdon, “Anticlericalism,” 617-23.

⁷⁹*Ibid.* For an example of such scorn and contempt, see, e.g., “Case of Lady Grante, March 22, 1548,” in *Registres du Consistoire*, 4:11. Lady Granbte apparently had already appeared a few times before the consistory for various moral and marital offenses. In this instance, the notary reports that the “woman told the ministers that she did not like to come to the Consistory, even if it was required by the church.” When Calvin told her of the new charges, and that her behavior before the consistory that day was contemptuous, “she retorted that he was not telling the truth. All the assistants were shocked at her audacity, and even though everybody tried to reprimand her, she continued to say outrageous things against Calvin—that he came to Geneva to bring trouble and war, and since he had come there was neither good nor peace. When she was reprimanded [by Calvin] that what she said was wrong, she responded . . . that he does not practice what he preaches, nor is there any love in him, only hatred, nor has word of consolation ever come from his mouth.” The woman’s audacity, the notary reports, resulted in her ban from the Lord’s Supper.

Not only the jurisdiction, but also the substance of the new marriage law came under increasing challenge. Calvin may well have ingeniously cut and pasted what he considered to be the best of Catholic and Protestant laws on marriage, suitably amended with his own favorite norms. But why should these laws be binding on Geneva? Why could Geneva not adopt some of the more liberal rules of a Zürich or a Strasbourg, or the more conservative laws of a Rome or a Paris? What was to prevent piecemeal or wholesale reform or rejection of these new rules? What was to check the growing marital and sexual license in Geneva about which Calvin and other pastors complained bitterly: the sharp increases in adultery, desertion, and discord within the home, the escalation of fornication, harlotry, and sumptuousness outside the home, the rapid exploitation of the new rights to divorce and remarriage by the Genevan elite, the sharp increases in “ribaldry” of music and literature and “lewdness” of manner and speech among the youth—pathos that Calvin denounced with all the passion and prescience of any modern-day Jeremiah.⁸⁰

Such challenges sent Calvin scurrying to his library, pulpit, and letter desk to develop and defend a much more elaborate theology of marriage and family life than he had earlier offered. In a long series of biblical commentaries, sermons, and letters prepared in the last twelve years of his life, he provided a rich theological apologia both for his marriage-law system as a whole, and for many of the individual rules that he had prescribed.⁸¹ Calvin’s late-life ailments and early death in 1564 kept him from fully elaborating, let alone systematizing, these new theological sentiments. But even in its somewhat scattered form, Calvin’s new theology of marriage made an impressive and enduring contribution to the Western canon. Later reformed theologians and jurists, in Europe and America, elaborated many of the basic theological insights that he had adumbrated.

Such challenges also steeled Calvin and his consistory colleagues to enforce the new marriage laws of Geneva with greater rigor and vigor. Convinced of the biblical warrant for the new marriage law, the consistory of the 1550s and thereafter set out with new resolve to break the political and popular resistance to the new marriage-law regime. Using a blend of pastoral cajolery and spiritual coercion, they worked hard to translate the new marital law on the books into a

⁸⁰See, e.g., Comm. Levit. 20:10, 22:22-27; Serm. Deut. 5:18; 22:5-8, 13-25; Serm. Eph. 5:28-30, 31-33; *Contra Libertines*, in CO 7:212ff.

⁸¹For a chart of Calvin’s preaching schedule, see T. H. L. Parker, *The Oracles of God: An Introduction to the Preaching of John Calvin* (London: Lutterworth Press, 1947), 160-62, with sermons collected in CO and in *Supplementa Calvinia* (Neukirchen: Kreis Moers Neukirchener Verlag der Buchhandlung, 1961-). Calvin’s biblical commentaries, all written after 1547 (save for his *Commentary on Romans*, which has little discussion of marriage), are collected in CO, with translations in *Calvin’s Commentaries*, 47 vols (Edinburgh: Oliver & Boyd, 1843-1859). His letters are collected in CO and in Bonnet, ed., *Letters*. In what follows, I have used the CO and *Supplementa Calvinia* editions, unless otherwise noted.

new law of social action. The following two sections take up these theological and legal developments in turn.

Theology of Marriage

Calvin's early theology of marriage had been grounded in the Lutheran doctrine of the two kingdoms. Marriage, he had argued, was an institution of the earthly kingdom alone—"a good and holy ordinance of God, just like farming, building, cobbling, and barbering."⁸² Christians should participate in the institution—not to be justified or sanctified, but to keep themselves free from the sins of lust and incontinence. Church leaders should cooperate in the governance of marriage—not as spiritual lords of the Christian conscience but as pastoral aides to the Christian magistrate. This early theology may have allowed Calvin to counter Catholic claims that marriage is a sacrament subject to the Roman Catholic Church's jurisdiction. But it did not allow him to counter either the political laxness in marriage law or the popular license in marriage life that prevailed in midsixteenth-century Geneva.

Calvin's mature theology of marriage was grounded in the biblical doctrine of covenant. The idea of a divine covenant or agreement between God and humanity had long been taught in the Western Church. Theologians, at least since the time of Irenaeus in the second century, had discussed the interlocking biblical covenants: (1) the covenant of works whereby the chosen people of Israel, through obedience to God's law, are promised eternal salvation and blessing; and (2) the covenant of grace whereby the elect, through faith in Christ's incarnation and atonement, are promised eternal salvation and beatitude. The covenant of works was created in Abraham, confirmed in Moses, and consummated with the promulgation and acceptance of the Torah. The covenant of grace was created in Christ, confirmed in the Gospel, and consummated with the confession and conversion of the Christian.⁸³ These traditional teachings on the covenant were well known to the early Reformers, and Calvin had already used them to fortify his doctrines of sin and salvation, law and Gospel, man and God.⁸⁴

⁸²*Institutes* (1536), 5.68. But cf. *Institutes* (1559), 4.19.34 where Calvin repeats this language verbatim—and indeed the entire 1536 discussion of section on marriage as a "false sacrament." This language stood in considerable tension with that of his sermons and commentaries discussed below.

⁸³See sources and discussion in Daniel J. Elazar, *Covenant and Commonwealth: From Christian Separation through the Protestant Reformation* (New Brunswick, N.J.: Transaction Publishers, 1996), with summary in John Witte Jr., "Blest be the Ties That Bind: Covenant and Community in Puritan Thought," *Emory Law Journal* 36 (1987): 579.

⁸⁴See *Institutes* (1559), 2.10-11; 4.15-16. For the covenant doctrines of other early reformers, see J. Wayne Baker, *Heinrich Bullinger and the Covenant: The Other Reformed Tradition* (Athens: Ohio University Press, 1980), 1-26, 181-216; Kenneth Hagen, "From Testament to Covenant in the Early Sixteenth Century," *Sixteenth Century Journal* 3 (1972): 1-24.

In his later years, Calvin used the doctrine of covenant to describe not only the vertical relationships between God and man but also the horizontal relationships between husband and wife. Just as God draws the elect believer into a covenant relationship with Him, Calvin argued, so God draws husband and wife into a covenant relationship with each other. Just as God expects constant faith and good works in our relationship with Him, so he expects connubial faithfulness and sacrificial works in our relationships with our spouses.⁸⁵ “God is the founder of marriage,” Calvin wrote. “When a marriage takes place between a man and a woman, God presides and requires a mutual pledge from both. Hence Solomon, in Proverbs 2:17, calls marriage the covenant of God, for it is superior to all human contracts. So also Malachi [2:14] declares that God is as it were the stipulator [of marriage] who by his authority joins the man to the woman, and sanctions the alliance.”⁸⁶

God participates in the formation of the covenant of marriage through his chosen agents on earth, Calvin believed. The couple’s parents, as God’s “lieutenants” for children, instruct the young couple in the mores and morals of Christian marriage and give their consent to the union.⁸⁷ Two witnesses, as “God’s priests to their peers,” testify to the sincerity and solemnity of the couple’s promises and attest to the marriage event.⁸⁸ The minister, holding “God’s spiritual power of the Word,” blesses the union and admonishes the couple and the community of their respective biblical duties and rights.⁸⁹ The magistrate, holding “God’s temporal power of the sword,” registers the parties, ensures the legality of their union, and protects them in their conjoined persons and properties.⁹⁰ This involvement of parents, peers, ministers, and magistrates in the formation of marriage was not an idle or dispensable ceremony. These four parties represented different dimensions of God’s involvement in the marriage covenant, and they were thus essential to the legitimacy of the marriage itself. To omit any such party in the formation of the marriage was, in effect, to omit God from the marriage covenant.

⁸⁵See, e.g., Comm. Eph. 5:22.

⁸⁶Comm. Mal. 2:14. See also Sermon. Eph. 5:22-26 (“Marriage is not a thing ordained by men. We know that God is the author of it, and that it is solemnized in his name. The Scripture says that it is a holy covenant, and therefore calls it divine.”); Sermon. Deut. 5:18 (“[M]arriage is called a covenant with God . . . meaning that God presides over marriages.”)

⁸⁷Comm. Lev. 19:29; Sermon. Deut. 5:16; Comm. 1 Cor. 7:36, 38; Sermon. 1 Cor. 7:36-38; Comm. Eph. 6:1-3.

⁸⁸Comm. 1 Thess. 4:3; Comm. 1 Peter 2:9; *Institutes* (1559), 4.18:16-17.

⁸⁹Sermon. Eph. 5:31-33.

⁹⁰CO 45:529 and discussion in Seeger, *Marriage*, 94-95.

The Law of the Marriage Covenant

God participates in the maintenance of the covenant of marriage not only through the one-time actions of his human agents but also through the continuous revelation of his moral law. Calvin repeated his earlier definition of the moral law as: God's commandments, engraved on the conscience, elaborated in Scripture, and distilled in the Decalogue.⁹¹ He now used sundry terms to describe this moral law—"the voice of nature," "the law of nature," "the natural order," "the inner mind," "the rule of equity," "the natural sense," "the sense of divine judgment," "the testimony of the heart," "the inner voice"—terms and concepts that he did not adequately sift or synthesize.⁹² For our purposes, these can all be viewed as synonyms to describe the basic norms created by God, and confirmed in the covenant, for the right ordering of our marital and sexual lives.

The covenant of marriage is grounded "in the creation and commandments of God," and "in the order and law of nature," Calvin believed.⁹³ At creation, God ordained the structure of marriage to be a life-long heterosexual union between a fit man and a fit woman of the age of mature consent. God assigned to this marriage three interlocking purposes: (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 parties from sexual sin.⁹⁴ In nature, man and woman enjoy a "common dignity before God" and a common function of "completing" the life and love of the other.⁹⁵ In marriage, husband and wife are "joined together in one body and one soul," but then assigned "distinct duties" and "different authorities."⁹⁶ God has appointed the husband as the head of the wife. God has appointed the wife, "who is derived from and comes after the man," as his associate and companion—literally his "help meet."⁹⁷ "The divine mandate [in Paradise] was that the husband would look up in reverence to God, the woman would be a faithful assistant to him, and both with one consent would cultivate a holy, friendly, and peaceful intercourse."⁹⁸

⁹¹*Institutes* (1559), 2.7.1; 2.8.1; 4.20.15.

⁹²Among many other references, see *Institutes* (1559), 2.2.22; 2.7.3-4, 10; 2.8.1-2; 3.19.15-16; 4.20.3, 15, 16; Comm. Rom. 2:14-15; Sermon. Deut. 4:44-6:4, 19:14-15. See discussion in Bohatec, *Calvin und das Recht*, 1-93; I. John Hesselink, *Calvin's Concept of the Law* (Allison Park, Pa.: Pickwick, 1992), 18-24, 51-85.

⁹³Comm. Gen. 2:18; Comm. Deut. 24:1-4; Comm. Mal. 2:15; Comm. Matt. 19:3-9 and Mark 10:2-12; *Consilium*, in CO 10:239-41.

⁹⁴Comm. Gen. 1:27, 1:28, 2:18, 2:21, 2:22; Comm. 1 Cor. 9:11; Comm. Eph. 5:30-32; Sermon. Eph. 5:28-30.

⁹⁵Comm. Gen. 1:27.

⁹⁶Comm. Gen. 2:18, 22.

⁹⁷Comm. Gen. 2:18. See also Comm. 1 Cor. 9:8, 11:4-10.

⁹⁸Comm. Gen. 2:18.

This created subordination of the wife to the husband was exacerbated by the fall into sin, Calvin believed. “The woman had previously been subject to her husband, but that was a liberal and gentle subjection. Now she is cast into servitude to man”—consigned perennially to a life of childbearing and domestic service, while the husband presides over her material and spiritual welfare and that of their children.⁹⁹ Calvin reminded women of their God-given domestic roles many times—sometimes with a level of insult that warrants criticism, even when judged by sixteenth-century standards.¹⁰⁰ But Calvin also made clear that husbands were not to abuse their superior offices within the marital estate, on pain of spiritual and civil sanctions.¹⁰¹ He called marital couples repeatedly to the mutual love and nurture that God had prescribed for marriage.¹⁰² He insisted, more than once, that the domestic vocation is equal in status to all other vocations. He further insisted that, despite the headship of the man within the home, the woman must enjoy both connubial and parental equality.¹⁰³ “While in other things, husband and wife differ both as to duty and as to authority,” Calvin wrote, “with respect to their mutual obligations in bed . . . they are bound to mutual benevolence.”¹⁰⁴ And again: “[A]uthority is distributed as much to one parent as to the other. . . . God does not wish the father alone to rule the child; the mother must also have a share in the honor and the preeminence.”¹⁰⁵

Calvin used this understanding of the created structure and purposes of marriage to integrate a variety of biblical morals and mores for life within the covenant of marriage. In Calvin’s view, these biblical norms had different implications (1) for the believer versus the nonbeliever, and (2) for the married cou-

⁹⁹Comm. Gen. 2:22, 2:25, 3:16; Sermon. 1 Cor. 11:4-10; Comm. 1 Cor. 3:1-4, 6, 7:1, 9:10; Comm. Eph. 5:22-26, 28-30; Sermon. Eph. 5:31-33; Comm. 1 Tim. 2:13, 5:13, 14; Sermon. Tit. 2:3-5. For analysis, see Claude-Marie Baldwin, “John Calvin and the Ethics of Gender Relations,” *Calvin Theological Journal* 26 (1991): 133; Bohatec, *Calvins Lehre von Staat und Kirche*, 655-59; Bieler, *L’Homme et la Femme*, 35-42; Willis P. DeBoer, “Calvin on the Role of Women,” in *Exploring the Heritage of John Calvin*, ed. David E. Holwerda (Grand Rapids: Baker, 1976), 236-72.

¹⁰⁰See, e.g., Comm. 1 Tim. 2:9 (deprecating women’s vain apparel); Comm. Titus 2:3 (castigating women outside the home as “prattlers and rumormongers”); Sermon. Eph. 5:3-5, 22-26 (bemoaning the “audacity” of women’s dress, speech, and manner outside the home); Comm. 1 Peter 3:3 (same).

¹⁰¹Comm. Gen. 2:18; Sermon. Deut. 24:1-4; Lect. Ezek. 26:25, 26; Sermon. Eph. 5:28-30.

¹⁰²Comm. Gen. 2:18; Comm. Gen. 29:18; Comm. Lev. 20:10, 22:22-27; Comm. Dan. 11:38-39; Comm. 1 Cor. 7:3, 9:11.

¹⁰³Comm. Gen. 2:18 (arguing that this equality is implicit in the concept of Eve’s being “a help meet for Adam”). But cf. Comm. 1 Cor. 11:4 (“For in his home, the father of the family is like a king. Therefore he reflects the glory of God, because of the control which is in his hands.”); Sermon. Eph. 5:22-26 (arguing that “husbands are advanced to the honor of superiority on condition that they should not be cruel toward their wives”). See discussion in DeBoer, “The Role of Women,” 236-56.

¹⁰⁴Comm. 1 Cor. 7:3. See also Comm. Matt. 19:9; Sermon. 1 Cor. 7:3-5; Sermon. Deut. 24:5-6.

¹⁰⁵Sermon. Deut. 21:18-21; Comm. Gen. 2:18.

ple versus the unmarried party. Calvin spelled out these distinctions in some detail, for to him they were critical to resolving some of the tensions that might appear between and among biblical and natural norms for marriage.

Calvin explained the first distinction (the differential impact of biblical marital norms on believers and nonbelievers) in the context of his broader theory of the “uses” of the moral law.¹⁰⁶ Like other Protestant Reformers, Calvin believed that the moral law provides no pathway to salvation. Prior to the fall into sin, the moral law was a recipe for righteousness. But since the Fall, no person has been capable of perfectly abiding by the moral law and thereby earning salvation by good works alone. Salvation now comes through faith and grace, not by works and the law, said Calvin. Nonetheless, from God’s point of view, the moral law continues to be useful in this earthly life—to have uses. God uses both its basic norms known to all persons and its more refined norms known only to believers through the Bible to govern and guide humanity.¹⁰⁷

On the one hand, said Calvin, the moral law has a “civil use” of defining for all persons what is absolutely necessary to maintain a modicum of civil and domestic order. In this sense, God uses “the moral law as a halter to check the raging and otherwise limitlessly ranging lusts of the flesh. . . . Hindered by fright or shame, sinners dare neither execute what they have conceived in their minds, nor openly breathe forth the rage of their lust.”¹⁰⁸ The moral law thus imposes upon them a “constrained and coerced righteousness,” a “civil morality.”¹⁰⁹ Even the pagans, therefore, have always recognized the natural duties of sexual restraint, heterosexual monogamy, marital fidelity, procreation of children, bondage to kin, and the like, which are essential to the survival of marriage and the family.¹¹⁰

On the other hand, the moral law has a “spiritual use” of defining for believers what is aspirationally needed to attain a measure of holiness or sanctification. Even the most devout saints, Calvin wrote, still need the moral law “to

¹⁰⁶See sources and discussion in Witte, “Moderate Religious Liberty,” 377-82; Witte and Arthur, “The Three Uses,” 433.

¹⁰⁷Though Calvin had adumbrated this theory of the uses of the law already in the mid-1530s, his full elaboration came in his 1559 edition of the *Institutes*. There he distinguished a “civil use of the moral law” (that yielded civil morality through coercion), a “theological use” (condemning persons in their sin to repent), and an “educational use” (teaching those who have repented spiritual morality). See *Institutes* (1559), 2.7.6-13. The fullest exposition of the doctrine before 1559 came in his *Sermons on Deuteronomy* of the mid-1550s on Jewish laws on marriage, divorce, polygamy, adultery, and the like. See, e.g., Sermon Deut. 5:18, 21; 21:15-17; 22:25-30; 24:1-4. Here, Calvin generally distinguished only the civil use and educational use (he called it “spiritual” use), touching lightly on the “theological use” only in Sermon Deut. 5:21. What follows in the text therefore touches on the first two uses.

¹⁰⁸*Institutes* (1559), 2.7.10. See also Sermon Deut. 24:1-4.

¹⁰⁹Sermon Deut. 24:1-4. See also *Institutes* (1559), 4.20.3.

¹¹⁰*Institutes* (1559), 2.8.6-10; Sermon Deut. 5:18, 21, 21:15-17.

learn more thoroughly . . . the Lord's will [and] to be aroused to obedience."¹¹¹ In this sense, the moral law teaches them not only the "civil righteousness" that is common to nonbelievers but also the "spiritual righteousness" that is becoming of believers. The moral law not only coerces them against violence and violation but also cultivates in them charity and love. It not only punishes harmful acts of adultery and fornication but also prohibits evil thoughts of passion and lust.¹¹²

God's moral law for the covenant of marriage thus gives rise to two tracks of marital norms—civil norms, which are common to all persons, and spiritual norms, which are distinctly Christian. This moral law, in turn, gives 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.¹¹³ In Calvin's mind, commandments and counsels, musts and shouldsts, absolutes and adiaphoras for marriage can thereby be distinguished.

This two-track system of marital morality, Calvin believed, corresponded roughly to the division of marital responsibility between church and state in this earthly life. 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 fit rather neatly into the procedural divisions between the consistory and the Council in Calvin's Geneva. In marriage cases, the consistory would first call parties to their higher spiritual duties, backing their recommendations with (threats of) spiritual discipline. If such spiritual counsel failed, the parties were referred to the Council to compel them, using civil and criminal sanctions, to honor at least their basic civil duties for marriage.¹¹⁴

With this first distinction in mind, Calvin spelled out various biblical norms for unmarried and married parties—grounding and integrating many of these norms in the created structure and created purposes of marriage.

The Structure of the Marriage Covenant

Calvin grounded various biblical rules against illicit sexual unions in the created *structure* of marriage—a lifelong heterosexual union of a fit man and a fit woman. Citing Moses and Paul, he condemned as "monstrous vices" sodomy, buggery, bestiality, homosexuality, and other "unnatural" acts and alliances—

¹¹¹*Institutes* (1559), 2.7.12.

¹¹²*Ibid.*, 2.8.6.

¹¹³The terms are from Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1964). Calvin spoke of "civil morality" versus "spiritual morality." See *Institutes* (1559), 2.7.10; 4.20.3; Serm. Deut. 21:15-17.

¹¹⁴See *Institutes* (1559), 4.11.3-16; 4.20.1-2; see also Witte, "Moderate Religious Liberty," 383-99.

arguing cryptically that to “lust for our own kind” or “for brutes” was “repugnant to the modesty of nature itself.”¹¹⁵ He condemned as “incestuous,” marriages contracted between the blood and family relatives identified in Leviticus—arguing that God had prohibited such unions to avoid discord, abuse, rivalry, and exploitation among these relatives.¹¹⁶ This Levitical law against incest, said Calvin, “was not simply a civil law of Israel . . . nor one of those laws which can be repealed in accordance with the circumstances of time and place. It flows from the very font of nature, and is grounded in the general source of all laws, which is permanent and inviolate.”¹¹⁷ Thus “unfit relatives” who were innocently married and later discovered their Levitical impediment must have their marriages immediately annulled.¹¹⁸ Those who knowingly marry in violation of these Levitical prohibitions were to face not only annulment but also civil and spiritual sanctions.¹¹⁹

Calvin condemned, at greater length, the traditional Hebrew practice of polygamy, which had again become fashionable in a few quarters of Europe.¹²⁰ To allow polygamy, Calvin argued, is to ignore the creation story of “the one man and the one woman” whom God had created and joined together in Paradise.¹²¹ “God could have created two wives for Adam if he wanted to,” Calvin preached. “But God was content with one.”¹²² “Since this mutual union was consecrated by the Lord, the mixture of three or four persons is false and wicked” and “contrary to the order and law of nature.”¹²³ To hold up as normative the polygamous practice of Solomon, David, and other Old Testament figures, Calvin continued, is to elevate the customs of the Jews above the laws of

¹¹⁵Comm. Lev. 18:22; Serm. Deut. 22:13-24.

¹¹⁶Comm. Lev. 18 and 20 passim; Comm. Gen. 29:27; Serm. Deut. 22:25-30. See also *Consilium*, in CO 10:231-323 and *Consilium*, in CO 10:235-38 (regarding the right of a man to marry his dead brother’s widow in Lev. 18:18—by that point a cause célèbre occasioned by Henry VIII’s marriage to Katherine of Aragorn, the widow of Henry VII); *Consilium*, in CO 10:233-35 (on man marrying his deceased wife’s sister).

¹¹⁷*Consilium*, in CO 10:235-38. See also Serm. Deut. 22:25-30.

¹¹⁸Comm. Lev. 18:6-18; *Consilia*, in CO 10:231-32, 233-35, 235-38.

¹¹⁹Building on Calvin’s doctrine, Beza elaborated these Levitical impediments at length in his “De Repudiis et Divortis” (1563), reprinted in Theodore Beza, *Tractationum Theologicarum*, 2d ed. (Eusthatii Vignon, 1582), 50, 53-68.

¹²⁰See generally Paul Mikat, *Die Polygamiefrage in der frühen Neuzeit* (Düsseldorf: Westdeutscher Verlag, 1987); John Cairncross, *After Polygamy Was Made a Sin: The Social History of Christian Polygamy* (London: Routledge & Kegan Paul, 1974); John L. Thompson, “Patriarchs, Polygamy, and Private Resistance: John Calvin and Others on Breaking God’s Rules,” *Sixteenth Century Journal* 35, no. 1 (1994): 3, 7-15.

¹²¹Comm. Gen. 1:27, 29:27; Comm. Matt. 19:3-9 and Mark 10:2-12.

¹²²Serm. Deut. 21:15-17; Comm. Mal. 2:15.

¹²³Comm. Gen. 2:24.

Christ.¹²⁴ God had tolerated the practice of polygamy among the Jews to accommodate their waywardness and disbelief—but even then, the prophets had condemned the institution unequivocally.¹²⁵ “Today, this liberty accorded to the Jews [of entering into polygamy] is not permitted to us. For Jesus Christ has revealed himself in this world, and declared the will of God to us more fully.”¹²⁶ Christ and his apostles teach that the “two shall become one flesh.”¹²⁷ For Calvin, that was the end of the matter—and he left it to his Genevan colleague Theodore Beza to work out further details of his argument.¹²⁸ When Calvin encountered the institution again in a later biblical commentary, he dismissed the issue facetiously: “He that takes two wives is worthy to be cut down the middle, he that takes three to be cut in three pieces.”¹²⁹

The Special Case of Adultery

Calvin saved his greatest thunder for the sin of adultery outlawed in the Decalogue. He read the commandment, “Thou shalt not commit adultery,” expansively to outlaw various illicit alliances and actions, both inside and outside the marital estate.

Inside marriage, the obvious case of adultery, of course, is sexual intercourse or “any other form of lewd sexual act” with a party not one’s spouse.¹³⁰ Calvin regarded this form of adultery as “the worst abomination,” for in one act the adulterer violates his or her covenant bonds with spouse, God, and broader community.¹³¹ “It is not without cause that marriage is called a covenant with God,” Calvin thundered from his Geneva pulpit. “[W]henever a husband breaks his promise which he has made to his wife, he has not only perjured himself with respect to her, but also with respect to God. The same is true of the wife. She not only wrongs her husband, but the living God.”¹³² “She sets herself against His majesty.”¹³³ Other parties are also vicariously injured. When a

¹²⁴Comm. Gen. 1:27; Comm. Gen. 2:24. See, e.g. Comm. Gen. 29:27 (re: Jacob and Leah); Sermon 2 Sam. 3:1-11 (re: Abner’s polygamy); 5:13-21 (re: David’s polygamy); 11:11-5a (re: David’s adultery and polygamy with Bathsheeba).

¹²⁵Comm. Mal. 2:14-15; Sermon 1 Sam. 1:6-8; *Consilium*, in CO 10:231.

¹²⁶*Ibid.*; Sermon Deut. 21:15-17.

¹²⁷Comm. Matt. 19:3-9 and Mark 10:2-12. See also Comm. 1 Tim. 3:2 (condemning use of polygamy by bishops or other clergy); Comm. Mal. 2:16 (dismissing as “gross ignorance” traditional Catholic teachings that remarriage by widows or widowers was a form of “serial polygamy”).

¹²⁸See Theodore Beza, “De polygamia” (c. 1569), reprinted in Beza, *Tractatus Theologicarum*, 1-49.

¹²⁹Sermon Eph. 5:31-33.

¹³⁰*Institutes* (1559), 2.8.41.

¹³¹Comm. Lev. 20:10, 22:22-27.

¹³²Sermon Deut. 5:18. See also Sermon Deut. 22:25-30; Sermon 2 Sam. 5:13-21; Comm 1 Cor. 7:11.

¹³³Sermon Eph. 5:22-26.

woman commits adultery, for example, “she injures her husband, exposes him to shame, despoils also the name of her family, despoils her unborn children, despoils those already born to her in lawful marriage.”¹³⁴

Given its disparate and devastating impact, adultery had to be counted among the worst offenses—“even graver” than idolatry, heresy, or impiety. For “one can be idolatrous, heretical, or impious, and still hold to matrimonial obligation. But to be both adulterer, and spouse, to be these two things at once, is impossible.”¹³⁵ In Calvin’s view, the moral law therefore “denounces capital punishment for adultery,” and he decried the modern-day habit of treating the offense more lightly. “The punishment of death was always awarded to adultery. Thus, it is all the more base and shameful that Christians do not emulate Gentiles at least in this. Adultery is punished no less severely by the Julian law [of Rome] than by the law of God. Yet, those who boastfully call themselves Christian are so tender and remiss that they punish this execrable offense only with a very light reproof.”¹³⁶

Though Calvin lamented this laxness of punishment, he addressed directly the consequences of adultery for the innocent spouse. Automatic execution of the adulterer would have left the innocent party with the stark but simple choice of remaining single or remarrying. Sparing the adulterer complicated matters. The fate of the marriage rests in the hands of the innocent spouse, Calvin believed.¹³⁷ The innocent spouse has power either to forgive the fault and restore the marriage or to condemn the fault and confirm its dissolution.

The innocent spouse’s confirmation of the dissolution of the marriage was to be expressed by filing for divorce on grounds of adultery. “Christ has allowed” the innocent spouse to seek divorce, and even remarry thereafter if so inclined, said Calvin.¹³⁸ But a true believer should reconcile with the wayward spouse—following the example of Joseph’s indulgence of the Virgin Mary when he first learned of her pregnancy.¹³⁹ God has instituted divorce as “a concession” to our sinfulness, “permitting it only within the common civil order, which serves to bridle men here below,” and not within the higher spiritual order “where the children of God ought to be reformed by the Holy Spirit. Though God does not punish those who divorce on reasonable and lawful grounds, He meant that marriage should always remain inviolable.”¹⁴⁰

¹³⁴Serm. Deut. 22:13-19.

¹³⁵Ibid. The quoted passage is from Beza, “De Repudiis et Divortiiis,” 100.

¹³⁶Comm. Lev. 20:10, 22-27.

¹³⁷Comm. Deut. 23:24-25, 24:1-4; Comm. Matt. 19:9. See also Beza, “De Repudiis et Divortiiis,” 89 (after adultery, “the bond of marriage, if it persists, is kept united by the will of the innocent spouse, and can be made strong again by the will of the innocent spouse”). See Biéler, *L’Homme et la Femme*, 69-73.

¹³⁸Comm. Matt. 19:3-9 and Mark 10:2-12.

¹³⁹Ibid. See also Beza, “De Repudiis et Divortiiis,” 90.

¹⁴⁰Serm. Deut. 24:1-4. See also Serm. Deut. 21:15-17.

Calvin was churlish about expanding the grounds for divorce beyond adultery but generous about entertaining divorce suits brought on this ground. Christ teaches that a proven case of adultery is the only “reasonable and lawful ground” for divorce, Calvin argued. To expand the grounds for divorce beyond adultery is both bad theology and bad policy. “Those who search for other grounds ought justly to be set at nought, for they choose to be wise above the heavenly teacher.”¹⁴¹ They also invite endless amendment to the moral law:

Some say that leprosy is a proper ground for divorce, because the contagion of the disease affects not only the husband but also the children. . . . Another man develops such a dislike of his wife that he cannot endure to keep company with her. Will [divorce or] polygamy cure this evil? Another man’s wife falls into palsy or apoplexy, or becomes afflicted with an incurable disease. May the husband reject her under the pretence of incontinence?¹⁴²

Obviously not, said Calvin, as he drew the line firmly at adultery alone as a legitimate ground for divorce.¹⁴³

When properly pled on grounds of adultery, Calvin believed, divorce actions had to be made equally available to husband and wife. “[T]he right to divorce belongs equally and mutually to both sides for both have a mutual and equal obligation to fidelity. Though in other matters the husband is superior [to the wife], in matters of the marriage bed, the wife has an equal right. For he is not the lord of his own body; and therefore, when, by committing adultery, he has dissolved the marriage, his wife is set at liberty.”¹⁴⁴ The same is true in reverse for the husband. Once at liberty, the innocent spouse is free to remarry, said Calvin, following conventional Protestant teaching.

Calvin went beyond Protestant convention, however, in his surprising solicitude for the parties after divorce. Both parties, he wrote, would be severely tempted to sexual sin, and both should be granted relief to avoid still greater sin. For the innocent party, Calvin countenanced remarriage—even, if necessary, before issuance of the magistrate’s final divorce decree: “[I]f adultery is proven, *even if no sentence is passed*, a Christian church may proceed to marry

¹⁴¹Comm. Matt. 19:3-9 and Mark 10:2-12. See also Comm. Gen. 2:24 (“Those who, for slight causes, rashly allow for divorces, violate, in one single particular, all the laws of nature and reduce them to nothing.”)

¹⁴²Ibid.

¹⁴³Calvin did, however, periodically recognize the legitimacy of divorce to avoid greater sins, such as incest and polygamy. Commenting on Laban’s manipulation of Jacob into marrying both Leah and Rachel, he writes: “in this truly he grievously sins, that he not only involves his nephew in polygamy, but pollutes both him and his own daughters by incestuous nuptials. . . . The Lord, through Malachi, pronounces divorce to be more tolerable than polygamy. Laban, blinded by avarice, so sets his daughters together, so that they spend their whole lives in mutual hostility. He also perverts all the laws of nature by casting two sisters into one marriage bed.” Comm. Gen. 29:27; see also Comm. Mal. 2:14; Serm. Deut. 24:1-4.

¹⁴⁴Ibid.

those who can produce such hearings.¹⁴⁵ Likewise, the wayward party should eventually be allowed to remarry. “Adultery has not been punished as severely as it should have been, and the lives of those who violate the marriage bond have been spared,” Calvin wrote glumly in a late-life letter. But then he turned quite pragmatic: “But it would be harsh to prohibit a man from marrying during his whole lifetime if his wife has divorced him for adultery, or to prohibit a woman who has been repudiated by her husband, especially if they have difficulty with being sexually continent; one indulgence necessarily brings the other along with it.” Calvin would not allow the guilty party “to fly off immediately to another marriage.” “The freedom to remarry should be put off for a time,” he insisted, “whether for a definite period of time or until the innocent party has remarried.”¹⁴⁶

Calvin considered various other acts within the marital estate—besides sexual intercourse with a third party—to be tantamount to adultery. On one extreme, he regarded sexual perversity with one’s own spouse as a violation of the spirit of the seventh commandment. “We know to what end marriage was ordained—that persons should live honestly together, and that there should be no beastly looseness and or coupling themselves together like dogs and bitches, or bulls and cows.” Married couples “should show that they do not bear God’s image in vain.”¹⁴⁷ And again: “If married couples recognize that their association is blessed by the Lord, they are thereby admonished not to pollute it with uncontrolled and dissolute lust. . . . For it is fitting that a marriage, once covenanted in the Lord, be called to moderation and modesty.”¹⁴⁸ Calvin saw this more as a spiritual law of sexual prudence than a civil law against marital prurience. But he did occasionally press the Genevan Council to reprimand couples who proved too sexually raucous, and he issued several stern admonitions on sexual modesty to parishioners and correspondents alike.

On the other extreme, Calvin regarded one spouse’s desertion of the other, or both spouses’ voluntary separation from each other, as virtual forms of adultery. Husband and wife, he said flatly, “must live together and stay together till death.”¹⁴⁹ Any undue separation from bed or board, beyond what was necessary for a spouse to carry out normal civic and vocational obligations, “is close to the appearance of adultery”—particularly “if it is prompted by capriciousness or sexual desire.”¹⁵⁰ Any abandonment of one’s spouse is doubly suspect—espe-

¹⁴⁵ *Letter by Charles d’Epeville* (a pseudonym for Calvin), in CO 10:255-58 (emphasis added). Beza, “De Repudiis et Divortiis,” 88-89 repeated this counsel, arguing that the divorce and remarriage of both parties could occur without any involvement of the magistrate.

¹⁴⁶ *Consilium*, in CO 10:231.

¹⁴⁷ *Serm. Deut. 22:13-19*.

¹⁴⁸ *Institutes (1559)*, 2.7.44.

¹⁴⁹ *Comm. 1 Cor. 7:11*. See also *Serm. Deut. 24:1-4*.

¹⁵⁰ *Consilium, December 30, 1561*, in CO, 10:242-44.

cially if done angrily or maliciously.¹⁵¹ Calvin pressed this logic not only for the simple reason that virile spouses, left on their own, might be tempted to adultery—in mind, if not in fact. He was also concerned that such separations violated God’s literal command that husband and wife be joined together permanently in soul, mind, and body. “[I]t is the law of marriage that when a man joins himself to a wife, he takes her to be a companion to live with her and die with her. If the nature of marriage is such . . . a married man is only half a person, and he can no more separate himself from his wife than cut himself into two pieces.”¹⁵²

Calvin thus stood opposed to the traditional canon law and civil-law remedy of separation from bed and board. He stood even more firmly opposed to the new social fashion of couples separating simply because “their manners were not congenial, or their appearance did not please, or some other [trivial] offense.”¹⁵³ Calvin advocated perpetual union of bed and board between husband and wife—by force of law and arms, if necessary.¹⁵⁴ He ordered separated couples to reconcile with each other, deserting spouses to return to their homes, abandoned spouses to forgive the desertion. Where reconciliation proved impossible, Calvin preferred to treat the marriage as dissolved by reason of the presumed adultery of one party, rather than perpetuated without the cohabitation of both parties.¹⁵⁵ This was consistent with his strict biblical reading that adultery is the sole ground for divorce granted by the moral law.

Calvin was not always consistent in his treatment of separation, however. As we saw in the opening story of the French noblewoman, where one party deviates from the faith and abuses the other, Calvin generally allowed only for separation by the innocent spouse, with no right of remarriage.¹⁵⁶ In cases of malicious desertion, he sometimes insisted that the innocent spouse bring proof of actual adultery before a divorce action could lie.¹⁵⁷ Calvin was aware that he thereby left the innocent party subject to sexual temptation. He offered only a vague homily in reply: “Would it not be inhuman to refuse [the innocent party] the remedy of [re]marriage when constantly burning with desire? My answer is that when we are prompted by the infirmity of our flesh, we must have recourse to the remedy; after which it is the Lord’s part to bridle and restrain

¹⁵¹Ibid., Comm. 1 Cor. 7:11.

¹⁵²Serm. Deut. 24:1-4. See also Comm. 1 Cor 9:11 (“if they be separated, they are like the mutilated members of the mangled body. Let them, therefore, be connected with each other by this tie of mutual aid and amicableness.”)

¹⁵³Comm. 1 Cor. 7:11; *Consilium*, in CO, 10:242-44.

¹⁵⁴Ibid.

¹⁵⁵Ibid. See also Comm. Matt. 19:9; Comm. 1 Cor. 7:11.

¹⁵⁶Comm. 1 Cor. 7:12.

¹⁵⁷See cases in Seeger, *Marriage*, 380-403.

our affections by his Spirit, though matters should not succeed according to our desires."¹⁵⁸

On this point, Theodore Beza was more insistent and consistent than Calvin in treating "desertion as adultery," and allowing divorce and remarriage to the innocent party. A party deserted "in soul," through a difference of religion, or "in body," through malicious abandonment, is like the innocent spouse in a case of adultery, said Beza. The innocent party has power either to forgive the fault and restore the marriage, or to condemn the fault and confirm its dissolution. The innocent party need wait for reconciliation with the wayward spouse "only so long as conscience allows." Thereafter, he or she can abandon the dissolved marriage by filing for divorce, and contract a new marriage if so desired.¹⁵⁹

For Calvin, the commandment against adultery was equally binding on the unmarried, and equally applicable to both illicit sexual activities per se and various acts leading to the same. Calvin condemned with particular vehemence the sin of fornication—sexual intercourse or other illicit acts of sexual touching by a nonmarried party.¹⁶⁰ He decried at length the widespread practice of casual sex, prostitution, concubinage, premarital sex, nonmarital cohabitation, and other forms of bedhopping that he encountered in modern-day Geneva as well as in ancient Bible stories. "Today it is not only the common man who flatters himself into thinking that fornication is not such a great and mortal sin. We even see high born persons making light of God by calling fornication a natural sin and a matter of little consequence. There are actually such shameless swine that talk that way."¹⁶¹ All these actions, Calvin believed, openly defied God's commandment against adultery, and God's commendation of chaste and holy marriage.¹⁶² Calvin had simple biblical counsel to offer against the "scourge of fornication": preach against it constantly, punish it severely by spiritual and criminal sanctions,¹⁶³ and portray everything from an individual case of syphilis to a community's encounter with pestilence as God's retribution for the offense.¹⁶⁴ He followed this counsel to the letter.

¹⁵⁸Comm. 1 Cor. 7:11.

¹⁵⁹Beza, "De Repudiis et Divortiiis," 95-99.

¹⁶⁰*Institutes* (1559), 2.8.41, 44; Comm. Lev. 20:10; 22:22-27.

¹⁶¹Serm. Deut. 5:18

¹⁶²*Contra Libertines*, in CO 7:212-14.

¹⁶³In 1563, Geneva adopted the rule that when fornicating couples appear at the church for their wedding ceremony, "the minister make public declaration of their fault, which they ought also to recognize to undo the scandal." *Les sources du droit du canton de Genève*, vol. 3, no. 1042. Four months later, the penalty against fornication was raised from six days to nine, plus a fine; recidivists had also to appear in church before the sermon and make public confession of their sin and reparation to the shamed parties and families. *Ibid.*, vol. 3, no. 1946.

¹⁶⁴Serm. Deut. 22:25-30, 28:25-29, 59-64; Comm. Lev. 20:10, 22:22-27; Lect. Ezek. 16:9, 20; Comm. 1 Cor. 6:18; Serm. Eph. 5:3-5.

Calvin stretched the reach of the commandment against adultery far beyond the sin of actual fornication. For believers abiding by the spiritual law, such an extension was natural, for as Christ taught in the Beatitudes: “continnence involved not only keeping the body free from fornication, but also keeping a chaste mind.”¹⁶⁵ But Calvin urged a comparable extension of the civil law of adultery. In his more exuberant moments, he tended to treat all manner of mildly sexual activities—lewdness, dancing, bawdy gaming, sexual innuendo, coarse humor, provocative primping, suggestive plays and literature, and much more—as forms of adultery, punishable by the state.¹⁶⁶ Calvin would not tie the sexy dresser and the swarthy whoremonger to the same stake for flogging or execution. He viewed these more attenuated forms of adultery as violations of milder criminal laws against sumptuousness, punishable by admonition and fines.¹⁶⁷ But he was insistent that even such attenuated sexual conduct was a form of adultery that deserved both spiritual reproof and criminal sanctions.

The Purpose of the Marriage Covenant

Starting with the created *structure* of the marriage covenant, Calvin was thus able to integrate various biblical and natural norms against bestiality, homosexuality, polygamy, adultery, desertion, and fornication and to smuggle in a tepid endorsement of divorce and firmer prohibition against separation. Turning to the created *purposes* of marriage—mutual love of husband and wife, mutual procreation of children, and mutual protection from lust—Calvin was able to integrate several other such norms.

Sexual dysfunction, Calvin insisted, was an absolute barrier to marriage, for it vitiated all three purposes of marriage. Thus, putative marriages of prepubescent children were null, even if the parties have reached sufficient maturity to consent to marry, for “the terms of the marriage cannot be carried out.”¹⁶⁸ Marriages of “the frigid and eunuches” were likewise null, for such unions “completely obviate the nature and purpose of marriage. For what is marriage except the joining of a male and female, and why was it instituted except to produce children and to remedy sexual incontinence?”¹⁶⁹ Calvin called for automatic annulment of any marriage of a permanently dysfunctional party—and called for penalties if the condition had been kept secret prior to the wedding.¹⁷⁰

¹⁶⁵Quoted and discussed in Georgia Harkness, *John Calvin: The Man and his Ethics* (New York: Henry Holt, 1931), 130.

¹⁶⁶Serm. Deut. 22:5-8, 25-30; Serm. Eph. 5:3-5; Comm. 1 Peter 3:3; Serm. Tit. 2:3-5.

¹⁶⁷See Biéler, *L'Homme et la Femme*, 124-26, 138-45; W. Fred Graham, *The Constructive Revolutionary: John Calvin and His Socio-Economic Impact* (Atlanta: John Knox, 1978), 110-15.

¹⁶⁸*Consilium*, in CO 10:231.

¹⁶⁹*Ibid.*

¹⁷⁰*Ibid.* See also Beza, “De repudiis et divortis,” 72-73, 109-10; Seeger, *Marriage*, 116-18

Calvin grounded a number of prudential norms for the *unmarried believer* in the created purposes of marriage. Citing both Moses and Paul, he counseled Christians against marrying unbelievers, for such unions would invariably jeopardize all three created functions of marriage. The unbeliever could not know the true meaning of love reflected in Christ, would not know how to raise children in the love of God, and might not resist the temptations to lust that marriage was supposed to remedy.¹⁷¹ Calvin did not regard differences in religion as an absolute bar to the contracting of marriage—let alone a ground for annulment or divorce, as we have seen.¹⁷² Instead, he wrote simply: “When a man is to marry, he should (so far as possible) choose a wife who will help him in the worship of God . . . who knows God and his word, and who is ready to give up all idolatry.” To do otherwise, said Calvin, was “spiritually unlawful,” though civilly permissible.¹⁷³

Citing Moses’ account of the evil world on the eve of the Flood—“the sons of men saw that the daughters of men were fair and took to wife such as them as they chose”—Calvin counseled against entering marriage with undue levity or lust.¹⁷⁴ “Marriage is a thing too sacred to allow that men should be induced to it by the lust of their eyes,” he wrote.¹⁷⁵ “Elegance of form” may certainly have a place in the calculus of marriage,¹⁷⁶ but we “profane the covenant of marriage” when “our appetite becomes brutal, when we are so ravished with the charms of beauty, that those things which are chief are not taken into account.”¹⁷⁷ Calvin laid out “those things which are chief” in his account of what he sought in his own wife: “I am none of those insane lovers who embrace also the vices of those they are in love with, where they are smitten at first sight with

¹⁷¹See, e.g., *Letter to Lelius Socinus* (c. 1549), in CO 13:307-11 (condemning marriage between a Reformed man and Catholic woman); *Letter to Lelius Socinus* (December 7, 1549), in CO 13:484-87 (condemning marriage between a Christian and Turk).

¹⁷²See Comm. 1 Cor. 7:12, 14; *Anonymous Letter* (April 28, 1556), in CO 10:264-66.

¹⁷³Serm. Deut. 21:10-14. See also *Letter to Lelius Socinus*, in CO 13:487: “A Christian man must marry a woman on no other grounds than that she prove herself to be a help meet and companion to him in all the requirements of a pious life. Thus when there is even a slight deviation from this goal, I have no doubt but that the marriage is sinful.”

¹⁷⁴Comm. Gen. 6:2.

¹⁷⁵*Ibid.* See also Comm. 1 Thess. 4:3.

¹⁷⁶See Comm. Gen. 29:18, where Calvin writes that there is nothing wrong with Jacob’s loving Rachel more than Leah, because she was prettier. “For we see how naturally a secret affection produces mutual love. Only excess is to be guarded against, and so much the more diligently, because it is difficult so to restrain affections of this kind that they do prevail to the stifling of reason. Therefore he who shall be induced to choose a wife, because of the elegance of her form, will not necessarily sin, provided reason always maintains the ascendancy, and holds the wantonness of passion in subjection.”

¹⁷⁷Comm. Gen. 6:2. See also Biéler, *L’Homme et la Femme*, 81-88 on Calvin’s views of female beauty.

a fine figure. This only is the beauty which allures me, if she is chaste, if not too nice and fastidious, if economical, if patient, if there is hope that she will be interested about my health,” and if she could produce children.¹⁷⁸ Calvin could not have been surprised that this account did not bring an overwhelming response from eligible women. He did eventually find and marry Idelette de Bure, a pious widow of evangelical stock with two grown children. During their seven years of marriage, they had a son, who died in infancy—“a severe wound,” as Calvin put it.¹⁷⁹ His pain was doubled by Idelette’s premature death and his step-daughter Judith’s “lustful rush” into marriage and divorce a few years later on account of her adultery.¹⁸⁰

Calvin chose thereafter to remain a widower, and seemed to draw on this experience in advising other widows and widowers. Citing Paul, he urged widows and widowers to refrain from remarriage if they were beyond childbearing years and “altogether beyond the danger of incontinence.”¹⁸¹ For, in such instances, the marital purposes of procreation and perhaps even mutual love would be compromised, and “the inconveniences of mixed married life” might well not be worth it.¹⁸² “Women are no less at liberty than men to marry a second time upon becoming widows,” Calvin insisted—reiterating both his concern for gender equality in questions of sexuality and his condemnation of mandatory celibacy. But neither elderly widows nor elderly widowers should rush into marriage too easily.¹⁸³ Building on this same moral, Calvin discouraged marriages between young men and elderly women—arguing that such unions “were contrary to the order of nature” for they would not yield children, and “contrary to the law of conscience” for they would tempt the young husband to adultery.¹⁸⁴ He sometimes pressed this counsel in the obverse case as well—even to the point of condemning the late-life espousals of his dear friend and fellow reformer Guillaume Farel to a young maiden.¹⁸⁵

¹⁷⁸“Letter to Farel (May 19, 1539),” in Calvin, *Letters*, 1:139, 141.

¹⁷⁹McNeill, *The History and Character of Calvinism*, 156.

¹⁸⁰See Richard Stauffer, *L’humanité, des Calvin* (Neuchâtel: Delachaux et Niestlé, 1964), 19; Williston Walker, *John Calvin* (New York: Schocken Books, 1960), 357.

¹⁸¹Comm. 1 Tim. 5:11.

¹⁸²*Ibid.*; Comm. 1 Cor. 7:1.

¹⁸³Comm. 1 Cor. 7:9. See also Comm. 1 Cor. 7:36; Comm. 1 Tim. 5:14.

¹⁸⁴*Ibid.*

¹⁸⁵“Letter to Ministers of Neuchâtel (September 26, 1558),” in Calvin, *Letters*, 3:473 (writing that “poor Master William has been for once so ill-advised for his weakness” in wishing to contract marriage at sixty-eight years old); “Letter to Farel (September, 1558),” in Calvin, *Letters*, 3:475 (excusing himself from Farel’s wedding). In this instance, the consistory disagreed with Calvin and approved Farel’s wedding, much to Calvin’s chagrin. See CO 21:703 and Köhler, *Genfer Konsistorium*, 631.

Calvin also grounded several biblical norms for *married* parties in the created purposes of marriage. Most importantly, he urged that married couples retain a healthy sex life, even after their childbearing years. “Satan dazzles us . . . to imagine that we are polluted by intercourse,” said Calvin.¹⁸⁶ But “when the marital bed is dedicated to the name of the Lord, that is, when parties are joined together in his name, and live honorably, it is something of a holy estate.”¹⁸⁷ For “the mantle of marriage exists to sanctify what is defiled and profane; it serves to cleanse what used to be soiled and dirty in itself.”¹⁸⁸ Husband and wife should not, therefore, “withhold sex from the other.” Nor should they “neglect or reject” one another after intimacy or intercourse.¹⁸⁹ Couples may forgo their sexual obligations for a season, said Calvin echoing the traditional position on the “Pauline privilege.” But such abstinence should occur only by mutual consent and only for a finite period—lest one party be tempted to adultery by too long a wait.¹⁹⁰ The traditional option of maintaining a sexless “spiritual marriage” was anathema to Calvin.¹⁹¹

If a couple proved barren, Calvin urged them to accept this as God’s providential design. “We are fruitful or barren as God imparts his power,” he wrote. Those who are barren should adopt orphans or find other ways of serving the next generation.¹⁹² Calvin would hear nothing of concubinage or surrogate motherhood as a viable alternative to sterility, despite the example of Abraham and other Old Testament figures. In taking Hagar as his concubine, “Abraham took a liberty” that God had not countenanced, Calvin believed, and his reward was perpetual strife between Sarah and Hagar, Isaac and Ishmael, and among their many descendents. This, for Calvin, was proof enough that concubinage was no viable option for the modern day.¹⁹³ Calvin would also hear nothing of divorce on grounds of sterility. Procreation was only one created purpose of marriage, he counselled. Where it could not be achieved, a couple had to double their efforts to achieve the other purposes of mutual love and mutual protection from lust—“treating each other with chaste tenderness” even where God would not bless them with children.¹⁹⁴

¹⁸⁶Serm. Deut. 5:18.

¹⁸⁷Serm. Deut. 22:13-19.

¹⁸⁸Serm. Deut. 5:18. See also Comm. 1 Cor. 7:6 (“Marriage is a veil by which the fault of immoderate desire is covered over, so that it no longer appears in the sight of God.”)

¹⁸⁹Serm. Deut. 22:13-19, 24:5-6.

¹⁹⁰Comm. 1 Cor. 7:3, 7:5; Serm. Deut. 22:13-19; Comm. Matt. 19:3-9 and Mark 10:2-12.

¹⁹¹*Contra Libertines*, in CO 7:212. See also Beza, *De repudiis et divortiiis*,”82-83. For background, see Dyan Elliott, *Spiritual Marriage: Sexual Abstinence in Medieval Wedlock* (Princeton: Princeton University Press, 1993).

¹⁹²Comm. Gen. 1:28; Comm. Psalms 127:3, 128:3; Comm. 1 Tim. 5:14.

¹⁹³Comm. Gen. 16:1-6; Comm. Matt. 19:9. See also Beza, “De repudiis et divortiiis,” 108.

¹⁹⁴Comm. Gen. 16:1-6. See also Beza, “De repudiis et divortiiis,” 105-6.

If, after a time, one marital party became incapable of sexual performance because of frailty, impotence, or sickness, Calvin urged understanding and patience on the part of the other spouse. Here, too, he would hear nothing of concubinage, separation, or divorce as a remedy or a result of this later sexual incapacitation.¹⁹⁵ There was a blurry line between automatic annulment of a new marriage where one party proved permanently impotent or frigid and automatic perpetuation of a longstanding marriage where a spouse once capable of intercourse later became incapacitated. Calvin did little to clarify the line. Theodore Beza, and his colleagues on the Geneva consistory did, favoring perpetuation of any such marriage, and opting for annulment only if the sexually active party sought it within a few months of the wedding and (obviously) only if the couple lacked their own natural children.¹⁹⁶

If one party contracted leprosy, or some other form of contagious disease, Calvin again urged “Christian patience” by the healthy party and sexual restraint by the afflicted party. He again flatly prohibited concubinage, separation, or divorce as options.¹⁹⁷ In one extreme case, Calvin did allow for separation from bed and board where a husband had been afflicted with “elephantitis,” a disease that dramatically increased his sexual appetite but that was highly contagious and dangerous to the wife.¹⁹⁸ It would be “cruel,” said Calvin, “to obligate the woman to share a home and marriage bed with a husband who is forgetful of all the laws of nature. We feel that she must be allowed to live as a widow, after a legal investigation by judges has intervened. Meanwhile, she should continue to attend her husband and perform any duties she can, provided that he does not require of her anything virtually unnatural.”¹⁹⁹

Calvin's Covenant Theology of Marriage in Comparative Perspective

Calvin's covenant theology of marriage was neither very systematic nor entirely consistent. The foregoing account is no simple report from a chapter or two of Calvin's *Institutes* or other systematic works. It is a patchwork quilt, stitched together from many thin strands of argument strewn all over Calvin's

¹⁹⁵Comm. 1 Cor. 7:11. See also Comm. Malach 2:14: “He calls the wife of his youth because the more filthy is the lust when husbands cast away any conjugal love as to those wives whom they have married in their youth. The bond of marriage is, indeed, in all cases inviolable, even between the old, but it is a circumstance which increases the turpitude of the deed when anyone alienates himself from a wife whom he married when a girl and in the flower of her age: for youth conciliates love; and we also see that when a husband and wife have lived together for many years, mutual love prevails between them to extreme old age, because their hearts are united together in their youth.”

¹⁹⁶See Beza, “De repudiis et divortiiis,” 71-73; and cases summarized in Seeger, *Marriage*, 353-55.

¹⁹⁷Comm. Matt. 19:9.

¹⁹⁸*Consilium*, in CO 10:241-42. But cf. Comm. Matt. 19:9 (where Calvin argues that a husband should not touch a wife with leprosy, but “I do not pronounce him at liberty to divorce”).

¹⁹⁹CO 10:242.

late-life commentaries, sermons, letters, consilia, and legal fragments. And, even granting all of Calvin's close distinctions—between believers and nonbelievers, couples and singles, spiritual and civil laws, Old Testament customs and New Testament canons—this patchwork account is not free from anomaly. For example, Calvin harvested a thick sheaf of modern-day prescriptions for marriage from the creation story of Adam and Eve—often reading the Genesis passages inventively and with anticipation of New Testament teachings and customs. But he would take no modern lessons from the Bible's descriptions of Abel's incest, Abraham's concubinage, or Solomon's polygamy, condemning all such "unnatural" actions unequivocally. Calvin read into a few pastoral asides from Paul a very progressive understanding of equality of women in rights to marital sex, parentage, and divorce. But he squeezed out of the creation story a general principle of subordination of women in all other matters, even to the point of denying women a right to propose marriage to a prospective husband.²⁰⁰ Calvin insisted that any marital impediments of blood and family be grounded in a strict reading of the Bible, or be discarded. But he imported, rather casually, various impediments of crime, religion, and quality that had only shallow grounding in the Bible. Calvin read the term *adultery* in the seventh commandment expansively to include a fantastic range of illicit conduct—from a husband's torrid affairs with a third-party relative to a bit of suggestive sexual innuendo with one's own spouse. But when discussing Christ's permission to divorce on grounds of the same term *adultery*, he read it extremely narrowly to cover only cases of proven illicit intercourse by one's spouse and a third party. Calvin was remarkably solicitous for the sexual needs and temptations of divorcees—even suggesting that they could remarry before church authorities before the state issued a divorce decree. But he offered only bland injunctions to "Christian patience" to allay the sexual burning of both single and married persons for whom no natural sexual outlet was available. Even a sympathetic parsing of Calvin's opening distinctions, and a generous appreciation for his sixteenth-century rhetorical style, cannot explain away these and many other anomalies in his presentation.

Such anomalies were inevitable but not fatal. Given the loose literary forums and forms in which Calvin worked, it was inevitable that loose ends and loose

²⁰⁰See, e.g., "Letter of Msr. de Falais (May 1, 1547)," in Calvin, *Letters* 2:110-11 (where Calvin expressed great dismay that a woman asked a man for marriage "rather than wait to be asked," and expressed confidence that "a judge will soon put an end to the matter"). See also other instances where Calvin engaged in virtual bride-hunts for (the sons of) distinguished friends and parishioners—even to the point of brokering one such relationship between a couple sight unseen. See, e.g., "Letter to Monsieur de Falais (July 4, 1546)," in Calvin, *Letters*, 2:63; "Letters to Viret (July 13, 15, and 25, 1546)," *ibid.*, 2:65-69; "Letter to Monsieur de Falais (May 1, 1547)," *ibid.*, 2:110; "Letter to Msr. de Palais (July 17, 1548)," *ibid.*, 2:173; "Letter to Viret (September 1, 1548)," *ibid.*, 4:409. To be sure, in this, Calvin was following the customary practice of any well-meaning aristocrat or pastor of the day. But note that, for the sake of biblical truth, he was quite willing to break the custom and the common law on other issues of gender equality.

logic would remain undetected. This was doubly inevitable given the conditions during which Calvin wrote in his later life—rapidly deteriorating health, escalating demands for his pastoral and political counsel, burning controversies over the execution of Servetus, and a proliferation of other demands associated with subjects of reform that had nothing to do with marriage and family life.²⁰¹ In that context, it was remarkable that Calvin was able to rise to the level of refinement and comprehension that he did.

The profundity of Calvin's insights for marriage were not lost on his contemporaries or his followers. Even in prototypical form, Calvin's covenant theology of marriage proved to be a powerful Protestant model for marriage that exercised an enormous and enduring influence on the Western tradition.

Calvin's covenant model mediated both the sacramental and the contractual models of marriage that pressed for recognition in his day. On the one hand, this covenant model confirmed the sacred and sanctifying qualities of marriage—without ascribing to it sacramental functions. Calvin now held a far more exalted spiritual view of marriage than he had earlier espoused. He described marriage in sweeping spiritual terms as “a sacred bond,” “a holy fellowship,” a “divine partnership,” “a loving association,” “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.”²⁰² Conjugal love is “holy” when “husband and wife are joined in one body and one soul.”²⁰³ “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.”²⁰⁴ Calvin had come a long way from his earlier glum description of marriage as “a good ordinance, just like farming, building, cobbling, and barbing.”

With this more exalted spiritual view of marriage, Calvin also described more fully the biblical uses of marriage to symbolize the relationship of God and humanity. He analyzed at length the Old Testament image of Yahweh's covenant of marriage with Israel, and Israel's proclivity for “playing the harlot”—worshiping false gods and allying with Gentile neighbors, much as delinquent spouses abandon faith in God and faithfulness to each other.²⁰⁵ He

²⁰¹See, e.g., William J. Bouwsma, *John Calvin: A Sixteenth Century Portrait* (New York: Oxford University Press, 1988).

²⁰²Comm. Gen. 2:21, 2:24, 6:2; Serm. Deut. 21:10-14; Comm. Mal. 2:14, 16; Comm. Matt. 19:11; Comm. 1 Cor. 7:14, 9:11; *Contra Libertines*, in CO 7:212-14.

²⁰³Comm. Gen. 2:18. But cf. *Institutes* (1559), 4.19 (where Calvin criticizes sharply Catholic sacramental views that regarded “carnal copulation” as an indispensable part of the sacrament of marriage).

²⁰⁴Serm. 1 Tim. 5:11-15, CR 53:492.

²⁰⁵Lect. Ezekiel 16:44-47; Comm. Mal. 2:14-15; Lect. Hosea 2:2; Serm. Deut. 21:10-14.

returned repeatedly to the New Testament image of Christ's marriage to the Church—holding up Christ's faithfulness and sacrificial love toward us as a model to which spouses and parents should aspire.²⁰⁶ He went so far as to say that "marriage is the holiest bond that God has set among us," for it is "a figure of the Son of God and all the faithful," "a symbol of our divine covenant with our Father."²⁰⁷ But then, almost in self-chiding, Calvin reiterated his earlier position that marriage, though symbolic of God's relationship with persons, is not a sacrament for it does not confirm a divine promise. "Anyone who would classify such similitudes with the sacraments ought to be sent to a mental hospital."²⁰⁸

On the other hand, Calvin's covenant model confirmed the contractual and consensual qualities of marriage—without subjecting it to the personal preferences of the parties. "It is the mutual consent of the man and the woman that . . . constitutes marriage," Calvin insisted, echoing traditional views.²⁰⁹ Lack of true consent—by reason of immaturity, drunkenness, insincerity, conditionality, mistake, fraud, coercion, or similar impairment—perforce breaks the marriage contract, just as it breaks any other contract.²¹⁰

But marriage is more than a contract, and turns on more than the voluntary consent of the parties. God is a third party to every marriage, Calvin believed, and He has set its basic terms in the order and law of creation. "Other contracts depend on the mere inclination of men, and can be entered into and dissolved by that same inclination."²¹¹ Not so the covenant of marriage. Our "freedom of contract" in marriage is effectively limited to choosing which party to marry—from among the mature, unrelated, virile members of the opposite sex available to us. We have no freedom to forgo marriage—unless we have the rare gift of natural continence—or else we "spurn God's remedy for lust" and "tempt our nature" to sexual perversity.²¹² We also have no freedom to abandon marriage, "for otherwise the whole order of nature would be overthrown."²¹³

²⁰⁶Serm. Eph. 5:28-30, 31-33; Comm. Eph. 5:30-32.

²⁰⁷Serm. Eph. 5:28-30; Lect. Ezek. 16:9, 17; Lect. Hosea 2:2; Serm. Deut. 21:10-14.

²⁰⁸*Institutes* (1559), 4.19.34. This repeats verbatim what Calvin had written in *Institutes* (1536), 5.69.

²⁰⁹Comm. Gen. 29:27; see also Comm. Gen. 2:18; Serm. Eph. 5:22-26; *Consilium*, in CO, 10:231-32.

²¹⁰See Serm. Eph. 5, CO 51:763-65. For Calvin's general views of contract, such as they are, see his *Fragments des travaux de Calvin relatifs à la Législation civile et politique*, in CO 10:126, 130-32, 139, with brief discussion of commercial contracts in Bohatec, *Calvins Lehre von Staat und Kirche*, 687-700.

²¹¹Comm. 1 Cor. 7:11.

²¹²See *Institutes* (1559), 2.8.42; 4.19.34-37; Comm. Gen. 2:18, 2:22; Comm. Matt. 19:11 ("the choice to marry is not put in our own hands, as if we were to deliberate on the matter"); Comm. 1 Cor. 7:7-8, 25-28; Comm. 1 Tim. 5:13. See also correspondence in CO 5:330; 7:42, 670.

²¹³Serm. Deut. 22:25-30.

“Consider what will be left of safety in the world—of order, of loyalty, of honesty, of assurance—if marriage, which is the most sacred union, and ought to be most faithfully guarded, can thus be violated,” Calvin thundered.²¹⁴ “In truth, all contracts and all promises that we make ought to be faithfully upheld. But if we should make a comparison, it is not without cause that marriage is called a covenant with God,” for it cannot be broken.²¹⁵

Calvin’s covenantal model of marriage not only mediated the sacramental and contractual models of marriage that he encountered in Geneva, it also modified the social model of marriage that he inherited from Wittenberg. Using the two-kingdoms theory, Luther and his colleagues had treated marriage as a social estate of the earthly kingdom alone—an institution fundamentally secular in nature, social in function, and civil in governance.²¹⁶ Calvin echoed and endorsed these evangelical Lutheran teachings on marriage. But he also superimposed on this two-kingdoms framework a doctrine of marriage as covenant. The effect of this was to add a spiritual dimension to marital life in the earthly kingdom, a marital obligation to spiritual life in the heavenly kingdom, and complementary marital roles for both church and state in the governance of both kingdoms.

Marriage was an earthly order and obligation for all persons, said Calvin, echoing Luther. But it also had vital spiritual sources and sanctions for Christians. Marriage required the coercive power of the state to preserve its integrity. But it also required the spiritual counsel of the church to demonstrate its necessity. Marriage was grounded in the will and consent of the parties. But it was also founded in the creation and commandments of God. Marriage deterred sinful persons from the lust and incontinence of this earthly life. But it also symbolized for them the love and sacrifice of the heavenly life. Marriage served the social purpose of procreation as well as protection from sin. But it also served the divine purpose of sanctification and edification by grace. None of these sentiments was altogether original with Calvin, nor were they entirely unknown to Luther. But, using the doctrine of covenant, Calvin was able to cast these traditional teachings into a new ensemble, with new theological emphases and new legal implications.

Calvin’s covenantal model of marriage also helped to refine and rationalize many of the rules set out in the Geneva Marriage Ordinance of 1545 and its amendments. For example, the doctrine of covenant provided Calvin with a sturdy new rationale for the familiar Protestant requirement that the formation of marriages be intensely public affairs. Earlier Protestant Reformers (as well as later Catholic theologians at the Council of Trent) had grounded the involvement of various parties in the formation of marriage in discrete biblical pas-

²¹⁴*Contra Libertines*, in CO 7:212-14. See also Comm. Gen. 2:24.

²¹⁵Serm. Deut 5:18.

²¹⁶See Witte, *From Sacrament to Contract*, 44-73; id., “The Transformation of Marriage Law,” 57-98.

sages, with no general theory to integrate them. Parental consent was based on the fourth commandment of the Decalogue and Paul's admonitions to parents and children. Mandatory witnesses to betrothals and espousals was rooted in Peter's disquisitions on the priesthood of believers. Church consecration and celebration of the marriage was grounded in Christ's delegation of the power of the keys to Peter and the apostles. Civil registration and publication of marriage banns was based on Paul's general descriptions of state power in Romans 13.²¹⁷ Calvin repeated, and embellished, these familiar biblical rationales for the involvement of each party in the process of marriage formation.²¹⁸ But he also integrated these separate biblical rationales by treating all four of these parties as allied agents of God in the formation of the marital covenant. He thereby rebuffed the agitation in his day for the truncation of the public formalities and functionaries of marriage formation. He also helped to confirm the place of parents, peers, ministers, and magistrates in the marriage process for centuries to come. Subsequent generations of Reformed theologians and jurists—building on Calvin's work as well as that of his contemporary Heinrich Bullinger who espoused similar sentiments²¹⁹—elaborated at length this covenantal concept of a public marriage process.²²⁰

²¹⁷Ibid. See the formulations of the Council of Trent in "Doctrine of the Sacrament of Matrimony" [1563] in H. J. Schroeder, *Councils and Decrees of the Council of Trent* (St. Louis: Herder, 1941), 180-91; *Catechism of the Council of Trent for Parish Priests* [1566], trans. John A. McHugh and Charles J. Callan (Rockford, Ill.: Tan Books and Publishers, 1982), 338-55.

²¹⁸One such embellishment was that Calvin prioritized the father's consent over that of the mother, basing this on the headship of man to woman after the fall into sin. See, e.g., *Consilium*, in CO 10:231-32, 238-39; Serm. Eph. 5:3-5. The Marriage Ordinance of 1545 also gives priority to the consent of fathers or male guardians.

²¹⁹See esp. Heinrich Bullinger, *Der christlich Eestand* (Zurich, 1540), translated as *The Christen State of Matrimonye* (1541) (STC 4045), an eighty-page discussion that includes, inter alia, arguments for the combination of consent by the couple, parental consent, and church consecration (*Kirchengang*) in the formation of a legitimate Christian marriage. See esp. *ibid.* chap. 3 (on the public declaration of marriage); chap. 4, 9-10 (on the couple's consent); chap. 5-6, 21, 24 (on parental consent); and chap. 16 (on the wedding formalities). On Bullinger's marital efforts to effectuate these reforms in Zurich, see Baker, *Heinrich Bullinger and Covenant*, 123-29; for his influence in England, see Witte, *From Sacrament to Contract*, 146-49, 256-58. Though Calvin and Bullinger corresponded regularly, I have found no evidence that Calvin used Bullinger's marriage tract in formulating his theology of marriage, let alone that Calvin had any influence on Bullinger's formulations. It is evident that Uldaricus Zwingli, an important earlier reformer of marriage in Zurich, had at least adumbrated a comparable covenantal theology of marriage that both Bullinger and Calvin knew. See his "De vera et falsa religione commentarius (1525)," in *Huldreich Zwingli's Sämtliche Werke* 18 vols. (Zürich: Theologischer Verlag, 1982), 3:590, at 762-63 (brief section on marriage). See further Charles S. McCoy and J. Wayne Baker, *Foundation of Federalism: Heinrich Bullinger and the Covenantal Tradition* (Louisville: Westminster/John Knox, 1991).

²²⁰See generally, James Turner Johnson, *A Society Ordained by God: English Puritan Marriage Doctrine in the First Half of the Seventeenth Century* (Nashville: Abingdon, 1970); William and Malleville Haller, "The Puritan Art of Love," *Huntington Library Quarterly* 5 (1941): 235-72.

Similarly, the doctrine of covenant allowed Calvin to tighten the rules and standards for entering and exiting marriages. The 1545 Marriage Ordinance distinguished clearly between betrothal and marriage, annulment and divorce. At the same time, however, it conflated terms such as *rescission*, *dissolution*, *nullity*, *voidness*, and the like, leaving unclear the legal effect of a given defect, impediment, or illicit action.²²¹ Calvin's exposition on the moral law for the covenant of marriage made this somewhat clearer. Betrothals and marriages were automatically annulled if the parties breached Levitical impediments or involved a sexually dysfunctional party. Betrothals could be broken by either party, or at the instigation of a third party, for any number of reasons of Christian prudence—differences in religion or quality; and/or concerns for compatibility, maturity, security, and the like. Marriages once entered were virtually permanent. The rules of Christian prudence that could annul betrothals could not annul marriages. Separation from bed or board was not an option—save in the most dire case of danger to an innocent spouse's body and soul. Divorce could be granted on strict biblical grounds of adultery or on a fully proven case of malicious desertion that was tantamount to adultery.

Geneva's New Marriage Law in Action

This new covenant theology of marriage and family life did not remain confined to sermons, commentaries, and letters. In the course of the 1550s and thereafter, it also came to vivid legal application in the work of the Geneva consistory—led by Calvin, still serving as the Moderator of the Company of Pastors, who was eventually replaced in office by Theodore Beza. Newly convinced of the biblical value and validity of Geneva's statutory reforms of marriage, Calvin and his consistory colleagues set out to render this new law on the books a new law in action.

The Geneva Consistory

The consistory's stepped-up activities in the enforcement of Genevan marriage law was driven not only by new theological conviction but also by new political power. For more than a decade after his return to Geneva in 1541, Calvin and other new emigrés to the city had been caught up in an escalating battle of political wills with the local landed aristocracy. One gravamen of their dispute concerned the refugees' access to citizenship, suffrage, and attendant political and professional positions. (Calvin, despite his political prominence, did not gain Genevan citizenship until December 1559, within five years of his death.) The other issue was the degree of legal and religious control that could be exercised by the consistory and clergy of the new Reformed churches—an issue exacerbated by the controversial execution for heresy of Michael Servetus on October 27, 1553. Open riot over both these issues broke out in Geneva in

²²¹Seeger, *Marriage*, 97-101.

early 1555, and episodes of insurrectionary violence erupted several times thereafter. The party in favor of Calvin and his colleagues ultimately prevailed, leading to the removal of their more hardened opponents from prominent political positions—and indeed the withdrawal of several of them from Geneva altogether.²²²

A crucial new weapon won in this political battle was the consistory's unequivocal power to enforce its spiritual discipline by using the ban (preclusion from the Eucharist) and excommunication (exclusion from the church altogether). The consistory announced and defended this prize proudly in front of the assembly of Genevan officials. The notary reports:

John Calvin, in the name of the consistory, together with the ministers of the city who are present with him, most adequately refuted the arguments which had been advanced for the diminution, indeed the demolition, of the Consistory's authority. He showed, on the basis of passages in the Holy Bible and from the consistent practice of the pure [apostolic] church, what the true practice of excommunication was, and to whom was given the power to excommunicate or admit to communion. Despite every effort of Satan to overthrow so Godly and useful an order [as excommunication and the ban] . . . God has been victorious.²²³

This "Godly victory" helped to restore to the Geneva consistory a good deal of the authority of the traditional Catholic Church courts over questions of marital morality—but now on a new theological grounding. The Catholic Church had based its power to ban and excommunicate on the sacrament of penance. All baptized believers, the Church had taught, were required to confess their sins and to reconcile themselves to God, on pain of eternal punishment. The Church had claimed the authority to define the vices that required confession, to hear the sinner's confession, to absolve him or her from eternal punishment, and to prescribe virtuous works of purgation. Failure to adhere to the Church's moral regimen, for marriage and many other moral matters, could lead to the ban or, in extreme cases, to excommunication—a great peril to eternal life.²²⁴

The Reformed Church of Geneva based its authority over morality on the sacrament of the Eucharist (which they called Holy Communion or the Lord's Supper). Baptized believers, who sought to partake of communion, the Reformed Church taught, were required "to examine their hearts and confess

²²²See William G. Naphy, *Calvin and the Consolidation of the Genevan Reformation* (Manchester: Manchester University Press, 1994); Eugène Choisy, *La théocratie à Genève au temps de Calvin* (Geneva: 1897).

²²³"L'autoritatè, du Consistoire confirmee," in Bergier and Kingdon, *Registres de la Compagnie des Pasteurs*, 2:59.

²²⁴See generally, Pierre Anciaux, *The Sacrament of Penance* (New York: Sheed & Ward, 1962); Karl Rahner, *Theological Investigations*, trans. C. Ernest (Baltimore: Helicon Press, 1963), 2:135-37.

their sins,” lest they “profane and pollute” the sacrament and “eat and drink judgment upon themselves” and upon the whole congregation.²²⁵ To be banned from communion or excommunicated altogether was not necessarily threatening to eternal life. But in the small community of Geneva, it was a threat to civil life. Banned or excommunicated parties often faced various civil deprivations—the denial or cancellation of professional licenses, the loss of business clients, the suspension of voting rights, the denial of standing to press civil suits, the abridgement of criminal procedural protections—as well as many unofficial forms of social shunning.²²⁶ Thus, the addition of the ban and excommunication to its arsenal of spiritual weapons considerably enhanced the consistory’s power over questions of sexuality, marriage, and family life in Geneva.

A picture of the Geneva consistory’s enhanced involvement in marriage questions can be seen in the cases that came before it in the first nine months of 1557—the time before the harvest, when marital litigation was at its briskest. This was the first full season of hearings after the political tumult of Geneva had died down, when Calvin and his colleagues could set about their consistory work in earnest. In this nine-month period, the consistory heard some eighty cases on questions of marriage, family, and sexual conduct—up to seven cases per week. As in its cases of a decade before, the consistory still adhered closely to the rules of the Marriage Ordinance of 1545 and various complementary civil and criminal norms. But now the consistory often offered more by way of legal and theological rationale for its decisions. It made considerable use of the ban—though not excommunication—to enforce its discipline, particularly in cases of sexual misconduct or abuse. And it collaborated more closely and fully with the Council on cases involving difficult issues, recalcitrant parties, or disputed testimony. This was not only theologically commended but strategically wise. The Geneva Council held far broader powers of arrest and subpoena and had license to extract evidence from obstinate witnesses by force, even torture, if necessary.²²⁷

Disputed Betrothals and Marriages

Cases of disputed betrothals occupied a good deal of space on the consistory’s docket in 1557. A few of these cases were simple disputes between the betrothed parties. A woman was relieved of her engagement to a young man

²²⁵See *Institutes* (1559), 4.17.40. See discussion in H. Hoffmann, *Das Kirchenverfassung der niederländischen Reformierten bis zum Beginne der dordrechter Nationalsynode von 1618/1619*, 2d ed. (Tübingen: Mohr, 1907), and John Witte Jr., “The Catholic Origins and Calvinist Orientation of Dutch Reformed Church Law,” *Calvin Theological Journal* 28 (1993): 328, 338-49.

²²⁶Walter Köhler, *Genfer Konsistorium*, 2:504-6.

²²⁷See Seeger, 286-95 in general, and Kingdon, *Adultery and Divorce*, passim for several such examples. On the use of torture by judicial tribunals in this period, see generally John H. Langbein, *Torture and the Law of Proof* (Cambridge: Harvard University Press, 1974).

who had since their engagement contracted syphilis. In the consistory's view, the disease not only betrayed his unfaithfulness to her but to proceed to marriage would also endanger her health. The woman was freed from her engagement. The man was sent to the Council for punishment for his presumed fornication.²²⁸ Another woman "requested the consistory for the right not to marry [her fiancé] even though they were engaged." The notary reports no stated reason for her disaffection, though the record hints at his "lack of employment." Her fiancé testified that "it was by his own will and deliberation to have her as his wife." The consistory concluded that it "finds nothing to stop the marriage from having effect" and ordered the couple to marry after he had found employment.²²⁹ A man requested the consistory to permit him to marry on the strength of a prenuptial contract that he and his fiancé had executed some time earlier. The consistory ordered the man to prove that he had made appropriate arrangements with the woman's family, and that the contract was legitimate.²³⁰ The man was back the following week, accompanied by a lawyer, to corroborate the legitimacy of the contract and the arrangement. The consistory was convinced, and ordered the marriage to proceed with all due speed "according to God."²³¹

Most of the disputed betrothal cases heard in 1557 concerned the consent of parents or guardians to the pending nuptials. A young woman and her father were reprimanded for entering a prenuptial contract for marriage without procuring the consent of the future groom's father.²³² Another father was ordered to procure a letter of consent from the father of the minor groom, even though he lived in a distant foreign city and procurement of the letter could well delay the wedding unduly.²³³ A guardian was questioned closely about his delayed consent to his ward's betrothal; only when he had assured the consistory that he consented fully to the union, and was legitimately delayed, did the consistory allow the marriage to proceed.²³⁴ A bickering pair of parents was sent to the Council to sort out conflicting testimony over whether the father had in fact, consented to the marriage of his minor daughter.²³⁵ A young orphaned woman, who promised marriage to two gentlemen seriatim, was sent

²²⁸Reported in Köhler, *Genfer Konsistorium*, 2:631.

²²⁹"Case of Jeanne, Daughter of the Late Roz Favre of Avully (February 18, 1557)," in *Registres du Consistoire de Genève*, 12:5.

²³⁰"Case of Anthoine Gozet (March 4, 1557)," *ibid.*, 12:12.

²³¹*Ibid.*, 12:14.

²³²"Case of Pierre Clerc of Bonne (February 25, 1557)," *ibid.*, 12:8. See also "Case of Francoys Longey (August 30, 1557)," *ibid.*, 12:91 (father of a daughter reprimanded for not seeking consent to marriage of his future son-in-law's father).

²³³"Case of Sir DuBoys (February 18, 1557)," *ibid.*, 12:5.

²³⁴"Case of Laurens Corbet and Pierrine Quitaine, (February 18, 1557)," *ibid.*, 12:5.

²³⁵"Case of Jean Tissier, et al. (August 12 and 19, 1557)," *ibid.*, 12:86, 89.

with her guardian and two prospective husbands to the Council for investigation and reproof.²³⁶ The Council decided to dissolve the first secret betrothal, which both the young woman and the guardian “did not like,” and to confirm the second betrothal, since this was the match that the guardian had suggested and approved.²³⁷

The consistory did reserve the right to second-guess parents suspected of acting in bad faith. It nullified the engagement of a handicapped fourteen-year-old girl, despite the father’s insistence on her marriage and the production of a fully executed prenuptial contract. The consistory considered the woman too young to be married and judged that her disabling “hump” would likely obstruct childbearing, perhaps even intercourse.²³⁸ It confirmed the engagement and marriage of another couple, despite the loud post hoc protests of the woman’s father. The father had consented to his daughter’s engagement. Thereafter, the couple had been properly married in a church but apparently without his knowledge. The father shortly thereafter withdrew his consent to the engagement and marriage and forcibly took his daughter back into his own custody. When questioned by the consistory, the father charged that his son-in-law had not tendered to him the full payment he had promised, causing the father to lose some properties he had intended to buy with the funds. The consistory tried to force the young man to make the payment, but the father said he would refuse it, if tendered, because he now believed the young man to be dishonest. The consistory decided to send the matter to the Council for final disposition, recommending that “such marriage should not be broken and may not be dissolved, for this would open the door to many others.”²³⁹ The Council, on investigation, concurred, and, through the consistory, ordered the father to return the woman to her husband, and for the marriage to continue, even without his consent.²⁴⁰

The consistory also periodically dissolved engagements that violated other rules of Christian prudence. The consistory applied rather literally Calvin’s recommendations against marriages between parties with sharp differences in age. It annulled the engagement of a twenty-five-year-old man to a woman “at least as old as his mother,” arguing that “women should not be married with men who are not close to them in age, and those who are no longer able to bear

²³⁶“Case of Philiberte, Daughter of the Late Guillaume the Chapuis (May 27, 1557),” *ibid.*, 12:52.

²³⁷*Ibid.*, 12:62.

²³⁸“Case of Francoys Chastellain (January 2, 1556),” *ibid.*, 10:81.

²³⁹“Case of Nycolas Millet (May 13 and 20, 1557),” *ibid.*, 12:45. The notary seems to have grouped the two days of proceedings together. Moreover, the first “supplication” by Nycolas and other documents are dated “July 27, 1559.” Either this case was backdated and interpolated to May, 1557, or Nycolas’s initial filing was misdated—by him or by the notary who transcribed it.

²⁴⁰“Consistory Order (May 20, 1557),” *ibid.*, 12:48.

children should not marry younger men.” Calvin and two colleagues were commissioned to report the matter to the Small Council so “as to avoid the consequences that even the pagans do not suffer” and “so that the order of nature would not be broken.”²⁴¹ The consistory ruled similarly in a case of a betrothal between a twenty-two-year-old man and a widow of forty, who reportedly already had more than twenty children. The consistory not only annulled the betrothal, but since the parties had already consummated their engagement, they also banned both parties from the Lord’s Supper and referred them to the Council for punishment of their fornication.²⁴²

The consistory pressed this same logic to order the annulment of “a marriage already contracted” between a widow over seventy years old, and a servant of hers, aged about twenty-seven or twenty-eight. The sole stated ground for the annulment was “too great an inequality of age” between the couple. There was no reported evidence of fraud or stratagem by the young man, though marriage between servants and their masters was much frowned upon in the day. The Council agreed with the consistory, holding that such marriages were “against the order of nature” and placed the young man in “sore temptation to adultery.”²⁴³ The consistory apparently rethought its position shortly thereafter—or, more likely, just applied it differently in the case of a distinguished widower—for it confirmed, despite Calvin’s sharp protestations, the engagement of the sixty-eight-year-old Geneva reformer Guillaume Farel and a young woman some four decades his junior.²⁴⁴

A few of these betrothal cases were considerably more involved and required protracted evidentiary hearings and considerable legal discernment from the consistory. In these cases, Calvin’s legal talents shone through. In one case, the consistory was asked to determine whether an engaged man and woman were bound by a longstanding, but now stale, betrothal. Three years before the man had procured the consent of the woman’s father for permission to marry, and had given an engagement ring to the woman. The woman had accepted his proposal for marriage but on condition that both her parents consent to their union and that the man make an additional dowry gift, of considerable value, to her family. The man apparently never made the additional gift, nor did he procure her mother’s consent. The parties, who had grown disenchanted with each other over the years, asked whether the marriage needed to go forward. Calvin undertook the consistory’s investigation, the notary reports, questioning at length the woman’s mother (without oath), as well as the parties and their siblings. An obvious ground for annulment of the betrothal was that the

²⁴¹“Case of Bartholmye and Ducreson (December 31, 1556),” *ibid.*, 11:93.

²⁴²“Case of Thomas Lambert and Jehanne Marie (April, 1557),” *ibid.* 12:38.

²⁴³“Case of the Widow of Jean Achard (January, 1557),” in *Registres de la Compagnie des Pasteurs*, 2:71, with further discussion in Köhler, *Genfer Konsistorium*, 2:631.

²⁴⁴*Ibid.* See also CO 21:703.

parties had strayed well beyond the statutory six-week window between betrothal and wedding. Without stating his grounds, Calvin eventually found that there was no real marriage, and the parties could “with a clear conscience be set free from any obligation” to marry.²⁴⁵

Another case of protracted betrothal raised more sinister facts. A father petitioned the consistory to determine the legitimacy of a betrothal between his minor daughter and a man of the age of consent. The father had approved the match more than two years before. The man had then deserted his fiancée inexplicably. He testified that he had been imprisoned in France for his adherence to the evangelical cause. He further testified that he and his fiancée had made up since his return, and that he had made appropriate arrangements with her family. The consistory took the case under advisement and ordered him to reappear with corroborating witnesses.²⁴⁶ Two weeks later, the same father was back before the consistory, now with witnesses who testified that the young man was fraudulently exploiting the one-year period that deserted maidens had to wait before being freed from their betrothals. The young man, they said, “did not want to take her for his wife, but he would return here every year to prevent the girl from getting married, and he would oppose any man who would like to marry her.” Calvin cross-examined the man at length, and discovered that he, in fact, had married someone else in France and had children. Moreover, rather than being imprisoned for his evangelical sentiments, he had, it seemed, voluntarily partaken of the Catholic Mass and Eucharist. Calvin, on behalf of the consistory, reprimanded the young man severely, ordered him to bring his wife and children to Geneva, banned him from the Lord’s Supper, and, later, ordered him to appear before the Council for criminal sanctions.²⁴⁷

The consistory was asked to determine the legitimacy of a betrothal between a young man and a young woman, both under the age of majority. The young man had apparently used ample gifts of liquor to induce her family to consent to the union and had, since receiving the same, fraternized rather freely with the woman, much to her family’s chagrin. On hearing these developments, the consistory ordered the young woman to remain in her parents’ home while the case was pending. It then ordered that the marriage could proceed only if both sets of parents would state their consent to the union.²⁴⁸ The young man’s parents appeared the following week to protest the marriage—loudly. Given the amount of putative sexual contact between the couple to date, the consistory

²⁴⁵“Case of Henri Clement, et al. (January 9, 1556),” in *Registres du Consistoire de Genève*, 10:83, (January 23, 1556), *ibid.*, 10:88, (March 5, 1556), *ibid.*, 11:7, (March 4, 1557), *ibid.*, 12:15.

²⁴⁶“Case of Jacques Regnault (March 4, 1557),” *ibid.*, 12:12. The consistory ruled similarly in the “Case of Claude Myerge (July 22, 1557),” *ibid.*, 12:77 when a fiancé, who had left the city, sought to return and have his engagement restored.

²⁴⁷“Case of Jacques Regnault (March 18, 1557),” *ibid.*, 12:18.

²⁴⁸“Case of Claude of the Crouse, et al. (March 4, 1557),” *ibid.*, 12:13.

removed the case to the Council, recommending dissolution of the betrothal, and a permanent prohibition against the parties' seeing each other again. The Council agreed.²⁴⁹

The consistory judged the legitimacy not only of these budding new unions but also of the existing marriages of couples newly arrived in Geneva. New emigrés were generally required to register with the city clerk and provide proof, *inter alia*, of their marital status. A sealed marriage certificate together with a letter of introduction from the syndic of the foreign city was generally adequate, and such cases were rubber-stamped if and when they came to the consistory for approval.²⁵⁰ Absent such proof, the consistory would review the evidence more closely. Three such cases in 1557 involved the secret marriages of former Catholic priests newly converted to the Protestant cause. In one case, the consistory investigated a couple who had moved to Geneva in order to experience "a true Reformation of the Gospel." The couple, and several witnesses, testified that they had been secretly married in the Catholic Church but, given the man's clerical status at the time, "without the promises required." They had lived faithfully in marriage ever since, and adduced several credible character witnesses. After considerable deliberation, the consistory decided simply to "confirm the marriage."²⁵¹ In another case, the consistory investigated the marriage of a former Catholic priest and his former maid. The man testified that he had secretly married the woman when he was a priest, and they had a daughter, now fully grown. Though they had no character witnesses, and though he had been delayed for some time before joining his wife in Geneva, the consistory seemed convinced of their sincerity. Their decision was that "the marriage should be done again in this city, and the judge should be asked to sign their banns" of marriage, which would then be announced from the church.²⁵² The consistory reached the same conclusion in the case of a former priest who said that "his marriage was not done according to God, and wants it to be confirmed and approved in the congregation of believers." He was referred to the Council for appropriate action.²⁵³

²⁴⁹"Case of Francoys Rosset and His Wife Mathèe (March 18, 1557)," *ibid.*, 12:17.

²⁵⁰"Case of Etienne DeFaye (May 6, 1557)," *ibid.*, 12:41 (approving as "true, good, and legitimate" the marriage of an aristocrat that was celebrated in "Christian church" in France, and certified in a sealed certificate); "Case of Claude of St. Mahet and Estienne of St. Mahet (August 30, 1557)," *ibid.*, 12:92 (a man, privately charged with being illegitimately married, was given three months to get his "marriage attestation"); "Case of Arnault Casaubon and Meugyne Rosseau (September 9, 1557)," *ibid.*, 12:96 (consistory confirms marriage on production of marriage attestation and testimony of the two corroborating witnesses); "Case of Estienne Claude Marie Legreste (September 9, 1557)," *ibid.*, 12:96 (same).

²⁵¹"Case of Bernard Martin and Pernette His Wife, (March 11, 1557)," *ibid.*, 12:12.

²⁵²"Case of Pierre DuBuisson (April 22, 1557)," *ibid.*, 12:36.

²⁵³"Case of Jehan Dosteus of Colombier (June 3, 1557)," *ibid.*, 12:62.

Sexual Offenses

The consistory's briskest business came in the enforcement of Geneva's expansive laws against fornication and adultery. The consistory dealt summarily with minor sexual offenses. A young man was reprimanded for kissing a young woman without the permission of her father or guardian, and ordered not to see her again.²⁵⁴ Another single man was admonished for regularly frequenting the house of a married woman while her husband was away and was forbidden from returning to her home on pain of spiritual punishment.²⁵⁵ A man was banned from the Lord's Supper, and recommended to the Council for dismissal from the position of city guard for allowing his betrothed daughter and fiancé secretly to celebrate and consummate their marriage in his own house.²⁵⁶ Another man was likewise banned for secretly and "with bad intentions" "putting his hand under a widow's apron and saying that they should have a drink." The woman was banned as well, for good measure, since "she should change her behavior."²⁵⁷ A group of raucous party goers was reprimanded and banned from the Lord's Supper for "singing bad songs"—presumably sexually ribald or blasphemous songs, given the severity of the punishment.²⁵⁸

Cases of fornication and premarital sex were quite common, and generally met first with stern spiritual sanctions aimed at extracting confessions from the parties. A young man was banned from the Lord's Supper for fornicating with a maiden and not confessing his sin.²⁵⁹ Another young man, who had excused himself from the Lord's Supper because of his fornication with a maid, successfully petitioned the consistory to forgive him and allow him at commu-

²⁵⁴"Case of André Peronnet (January 21, 1557)," *ibid.*, 11:100.

²⁵⁵"Case of the Wife of Jehan Piedmontoy (June 3, 1557)," *ibid.*, 12:60, (June 10, 1557), 12:62. See also "Case of Antoine Phillipin (December 31, 1556)," *ibid.*, 11:93 (single man caught drunk in a married woman's bedroom questioned about fornication but not charged); "Case of Mermet Foudral (July 29, 1557)," *ibid.*, 12:81 (man reprimanded for continuing to visit a married woman, in violation of the Council's order); "Case of Jehan Bron (September 2, 1557)," *ibid.*, 12:93 (man reinstated to communion after being banned for frequenting a married woman's house and "causing scandal for the neighbors").

²⁵⁶"Case of Jehan Pscart of Sollignier (April 15, 1557)," *ibid.*, 12:32. He was readmitted to communion a few months later after confessing his wrong and being admonished. "Case of Jehan Pascart of Sillingy [sic] (September 2, 1557)," *ibid.*, 12:92.

²⁵⁷"Case of Master Symon Thyven and Janne, Widow of Jehan Liborne (September 2, 1557)," *ibid.*, 12:93.

²⁵⁸"Case of Girault of Lespinasse, et al., (March 4, 1557)," *ibid.*, 12:8.

²⁵⁹"Case of Jehan Grangier of Laconex (April 22, 1557)," *ibid.*, 12:35. See also "Case of André Dominique (May 20, 1557)," *ibid.*, 12:48: Once banned from the Lord's Supper for alleged fornication, he asked for the ban to be lifted. "He was asked to confess his faults, but he did not like to do so. For that reason, he was asked not to come back to the consistory, since he did not like to repent."

nion.²⁶⁰ A fornicating couple was reprimanded, and when they failed to confess their sin were sent to the Council for punishment.²⁶¹ A secretly betrothed couple, now expecting a child, were banned from the Lord's Supper for their secret engagement, their fornication, and their earlier participation in the Lord's Supper while having their secret sins unconfessed.²⁶² An unmarried man, who had already confessed to fathering an illegitimate child, was questioned whether he was now having sex with his maid. He pled innocent, and offered to dismiss the maid if the consistory recommended. The consistory at first declined his offer and banned him from the Lord's Supper instead. But, on further deliberation, they reversed themselves, accepted his offer to dismiss the maid, and dismissed him with an admonition.²⁶³

The consistory generally insisted on "shotgun weddings" for parties whose sexual experimentation led to pregnancy. The consistory recommended to the Council to order such a wedding between a woman, newly with child, and her lover, who lived in the city of Berne.²⁶⁴ In another case, it ordered a local man to appear for spiritual reproof and marital instructions after he had seduced and impregnated a maid with promises of marriage. Both parties were banned from the Lord's Supper for fornication; the ban was lifted after they agreed to marry.²⁶⁵ In another case, the consistory subpoenaed an unmarried and pregnant maid to testify whether a suspected fellow servant was the father of her child. She admitted that the servant had fondled her but that she did not have sex with him. The father of the child, she said, was a Frenchman who had sojourned briefly at the house but was now beyond reach. The maid was spiritually admonished for her fornication. When it was discovered she had already secretly borne an illegitimate child, she was sent to the Council for punishment "so that the city may be purged."²⁶⁶

The consistory generally collaborated with the Council on cases involving more serious sexual misconduct or more recalcitrant parties. In one case, the consistory haled before it a whole battery of witnesses who testified to the purported adulterous affair of two married parties. The consistory heard enough hearsay testimony and circumstantial evidence of adultery to cause anyone to

²⁶⁰"Case of Jehanton des Boys (September 2, 1557)," *ibid.*, 12:93. See also "Case of Bernardine (September 2, 1557)," *ibid.*, 12:94 (woman reinstated to communion after confessing her adultery).

²⁶¹"Case of Claude, Daughter of Francoyse Bastard of Chastellaine (May 6, 1557)," *ibid.*, 12:41.

²⁶²"Case of Claude Blanchet and Claude, Daughter of Francoys Bastard of Chastellaine (May 20, 1557)," *ibid.*, 12:46.

²⁶³"Case of Michael Gilbert (March 25, 1557)," *ibid.*, 12:21 (the notary crossed out the following entry: "decided, first, that the Lord's Supper should be forbidden to him").

²⁶⁴"Case of Pernette, Daughter of Bernard Dentan of Meynier (March 25, 1557)," *ibid.*, 12:21.

²⁶⁵"Case of Jacquema, Sister of Audrey Quad (August 12 and 19, 1557)," *ibid.*, 12:85, 89.

²⁶⁶"Case of the Maid of Pierre Mutin (May 20, 1557)," *ibid.*, 12:46.

blush, but the sole eyewitness was a young girl, whose testimony was not considered sufficient. When the consistory ordered the accused parties to confess their adultery, they both steadfastly maintained their innocence, despite threats of the ban. The consistory decided to refer the matter to the Council for further inquiry, sending along a thick file of collected testimony.²⁶⁷ In another case, after several witnesses testified, a man confessed to seducing a married woman. He then made light of his action, however, saying that “though he was a great sinner . . . the Lord was an even greater forgiver.” Perhaps so, but the consistory was not so forgiving. They banned him from the Lord’s Supper and sent him to the Council “in order to purge the city of such rabbles.”²⁶⁸

A man and a widow, newly engaged, were reprimanded for visiting and talking to each other “as husband and wife,” and enjoined from further such contact until their wedding day.²⁶⁹ When the Council later reported that the couple were continuing to see each other, the consistory came down hard on the couple: “They must be punished for being sexually immoral and disobedient” the consistory ordered. Moreover, the consistory decided to investigate their actions while the widow had still been married, and if there was any hint of adultery during their courtship “their marriage should be forbidden and broken.”²⁷⁰ The consistory was equally hard on a man alleged to have raped at least one of his maids and impregnated one or two others. A flock of witnesses testified against him. He denied the charges flatly. He was threatened with the ban and removal of the case to the Council for severe corporal punishment. He persisted in his denial. The consistory followed through on their threat, “leaving him to deal with his conscience.”²⁷¹

The consistory investigated at some length the adulterous pursuits of Jean Fabri, a fellow Geneva minister, and a married woman parishioner. According to the woman’s testimony, Fabri had frequented her home with some regularity, “coming into her garden and into her house.” He enticed her “many times, saying that her husband was too skinny, and that she should not have children with him.” Fabri also “enticed her into her bedroom and sought to kiss her and touch her.” The woman had reported these attempted seductions to her husband, who apparently had banished her from their home. When confronted by the consistory, Fabri confessed that “Satan has seduced him, and he has enticed her, having conceived bad thoughts . . . but he never wanted to kiss her or touch

²⁶⁷“Case of Ameyd Doctet and Pernette, Wife of Pierre Troiller (June 1, 1557),” *ibid.*, 12:52. See also “Case of Barbe, Wife of Robert Maillard (September 16, 1557),” *ibid.*, 12:96 (case involving detailed but conflicting testimony over her alleged adultery referred to Council for disposition).

²⁶⁸“Case of Michel Poincteau (September 23, 1557),” *ibid.*, 12:99.

²⁶⁹“Case of Jehan Griffon and Bernarde, Widow of Jaques Verdon (March 25, 1557),” *ibid.*, 12:21.

²⁷⁰(May 20, 1557), *ibid.*, 12:48.

²⁷¹“Case of Hudry Roiod (April 15, 1557),” *ibid.*, 12:29.

her." Speaking for the consistory, Calvin denounced the entire affair as "a great scandal." Fabri was eventually stripped of his office, and subjected to imprisonment and a severe flogging. The woman was referred to the Small Council for protection from her husband during her banishment.²⁷²

Only one other case of wife abuse is reported in the consistory record of 1557. A husband was reprimanded, and temporarily banned from the Lord's Supper, for beating his wife. He testified that "he would quit entirely and go to the Catholic Church if he could not beat his wife if she did displeasing things." Calvin, on behalf of the consistory, reprimanded him. After the man apologized for his actions and testimony, the ban was lifted, and he "was accepted to the Lord's Supper, so long as he set a good example for others."²⁷³

Annulment and Divorce

Disputed betrothals and marriages, as well as sexual misconduct by the unmarried and married, comprised the vast bulk of the consistory's business in 1557. Only a small handful of cases of marital dissolution came before it—though some such cases were also heard directly by the Small Council. Two consistory cases touched on questions of desertion. In one case, a woman requested a divorce on grounds of her husband's desertion. She introduced into evidence several letters from him attesting to his desertion. The consistory found the letters—which were apparently submitted only in translation and unsigned by the husband—"not sufficient enough to grant her a divorce at present," and ordered her to wait the prescribed one-year period.²⁷⁴ The woman's case does not appear in the record again. In a second case, the consistory investigated the propriety of an Italian man's rather aggressive courtship of a deserted wife in Geneva. The woman testified that she had been deserted for more than a year. Her suitor had brought her the news of her husband's death. She had consulted Calvin about the propriety of courting this new gentleman, and he had apparently concurred. The woman's sisters-in-law, however, testified that her husband was still alive and that her suitor was acting in bad faith. The consistory, on investigation, found that the gentleman suitor had indeed acted "fraudulently" in reporting her husband's death. They enjoined him from further courtship of the woman, and "advised the Italian prosecutor to be aware."²⁷⁵ A year later, the woman successfully brought an *ex parte* divorce action for desertion.

²⁷²"Case of Master Jean Fabri, Minister (March 5, 1556)," *ibid.*, 11:7.

²⁷³"Case of Jehan Favre (January 21, 1557)," 11:99.

²⁷⁴"Case of Jacqueline Obod (May 6, 1557)," *ibid.*, 12:41.

²⁷⁵"Case of Bernardine of Falcon, Italian, et al. (February 6, 1556)," *ibid.*, 10:89, and (September 9, 1557), *ibid.*, 12:101.

One case dealt with involuntary annulment of an “incestuous marriage.” Apparently, the parties had married with knowledge of their impediment, for, on discovery, the wife was whipped and banished from the city “to avoid scandal.” The husband was granted temporary domicile in the city to collect their property. Ironically, he was also told “if he wants to have her, he may go live with her,” provided they stay out of the city. If he returned to the city, the marriage would be deemed dissolved and the parties punished for their incest.²⁷⁶

The clear cause célèbre of 1557 was the divorce of John Calvin’s brother, Antoine from his socially prominent wife Anne Le Fert—a case recently brought to life by Robert Kingdon.²⁷⁷ Antoine and Anne lived with John, in the parsonage, throughout their married lives. The relationships between Antoine and Anne, and John and Anne were perennially testy, occasionally tempestuous. Already in 1548, John Calvin had, on his own initiative, called on the consistory to investigate his sister-in-law on “suspicion of adultery” with Jean Chantemps, the son of a local noble. Jean had been frequenting Calvin’s house regularly, particularly when the Calvin brothers were away. He had brought Anne a gift of a ring, and had eaten meals there several times. What had “greatly afflicted his heart,” Calvin reported, was that Jean had visited Anne under very suspicious circumstances one Sunday when John and Antoine were at church services. The following week, he had broken into her bedroom in the middle of the night. Jean admitted to “hugging” Anne lustfully, and behaving “indecently,” but said she had spurned him. The consistory (having recused Calvin) conducted its investigation and pressed the parties to confess their adultery. They refused, and were referred to the Small Council for imprisonment and further investigation. No charges were ultimately brought. The case was returned to the consistory, and Anne, Antoine, and John were called to “a ceremony of reconciliation,” in Kingdon’s apt phrase—featuring Anne’s public kneeling before Antoine and John and begging their forgiveness for her untoward behavior.²⁷⁸

Forgiveness for one sexual offense did not inoculate Anne against condemnation for another. John and Antoine Calvin were back before the consistory in early 1557, now asking that Antoine be “given the right to divorce his wife” on account of her second alleged act of adultery.²⁷⁹ Anne was now charged with

²⁷⁶“Case of Janne Cavette and Sir Jaques Marcelll (July 8, 1557),” *ibid.*, 12:72.

²⁷⁷Kingdon, *Adultery and Divorce*, 71-97. For earlier descriptions, see Köhler, *Genfer Konsistorium*, 2:628-30; Seeger, *Marriage*, 406-7.

²⁷⁸See “Case of Antoine Calvin (September 27, 1548),” in *Registres du Consistoire de Genève*, 4:62, with analysis of these and other proceedings in Kingdon, *Adultery and Divorce*, 74-78; Köhler, *Genfer Konsistorium*, 2:629-30.

²⁷⁹“Case of Antoine Calvin (January 7, 1557),” in *Registres du Consistoire de Genève*, 11:95. In a letter to Viret, sent the same day, Calvin again reported “great grief.” “For when that abandoned woman, who was then my brother’s wife, lived in my house, we discovered that she had committed adultery with the hunchbacked Peter. The only consolation that we have is that my brother will be freed from her by a divorce.” Calvin, *Letters*, 3:308. See also Calvin’s later reflections in CO 16:382.

fraternizing with one of her disabled servants—the “hunchbank” Pierre as he was called in the record. As Kingdon amply reports, both the consistory and the Council investigated the case at great length, summoning several rounds of witnesses, commissioning three expert opinions, and cross-examining Anne and “the hunchbank” repeatedly, sometimes together, sometimes separately. John Calvin, though again recused from the consistory’s deliberations, served actively as legal counsel to his brother and seems to have had a considerable hand in crafting his brother’s petition and influencing the Council’s activities. Anne and Pierre were imprisoned throughout the proceedings and, in later interrogations before the Council, Anne was twice tortured in an effort to extract a confession of adultery. Neither party confessed. The testimony of sundry witnesses and the circumstantial evidence of repeated meetings and suspicious conduct by the two were enough to convince the Council to grant the divorce on grounds of Anne’s adultery. She was permanently banished from Geneva—on twenty-four-hours notice—and ultimately remarried a few years later. Antoine was released from his marriage and remarried a few years later in Geneva.²⁸⁰

Patterns of Litigation

The pathbreaking work in the Genevan archives by Robert Kingdon, Cornelia Seeger, and Walter Köhler, among others, suggests that this case law of 1557 was quite typical of the Genevan law in action in the 1550s and thereafter.²⁸¹ The consistory had seized upon its new marital jurisdiction with alacrity in the aftermath of the 1555 riots in Geneva. They maintained a comparably full docket of cases for the next two decades, addressing many of the same issues as the consistory of 1557, with similar results.²⁸²

The consistory and Council heard numerous cases of disputed betrothals. They automatically annulled betrothals on the discovery of a Levitical impediment of a blood or family relationship between the parties, potential bigamy by one party, or obvious impotence or other sexual dysfunction of one party. Parties who sought to conceal these conditions before marriage were subject to rather severe spiritual and criminal sanctions. The consistory and Council generally annulled betrothals of minors who were immature, prepubescent, lacked parental consent, or were coerced or tricked into the betrothal—again, often sanctioning guilty parties in the process. They also generally annulled betrothals if one party contracted a contagious disease; was convicted for crime; or if the parties were separated by too great a difference of age, religion, qual-

²⁸⁰Kingdon, *Adultery and Divorce*, 79-93.

²⁸¹Ibid., passim; Köhler, *Genfer Konsistorium*, 2:626-645 (using cases in Cramer, *Notes extraites*, passim); Seeger, *Marriage*, 305-450.

²⁸²See generally E. William Monter, “The Consistory of Geneva: 1559-1569,” *Bibliothèque d’Humanisme et Renaissance* 38 (1976): 467-84.

ity, and, in a few instances, even social status. They rarely annulled betrothals if parties failed to have their banns published; delayed their wedding unduly; cohabited or experimented sexually; were delinquent in dower payments; or disputed among themselves over jobs, property, or living arrangements. In most such instances, the consistory preferred not to subject the parties to spiritual or civil sanctions but to compel them to get married. Malicious desertion of a betrothed generally broke the engagement and exposed the deserter to spiritual and civil sanctions. But a mere change of heart by either party was often not a sufficient ground for annulment of a betrothal, particularly if prenuptial contracts were executed and dower payments had been made.²⁸³

While betrothals were relatively easy to annul, consummated marriages were not. The consistory and Council did annul marriages on the stated statutory grounds of consanguinity, affinity, bigamy, or impotence. They would also generally dissolve marriages where, shortly after the wedding, the husband discovered the wife taken to be a virgin was not so. They also lent a sympathetic ear to parties who, shortly after the wedding, complained that the spouse had become fiercely antagonistic and abusive, contracted a contagious disease, or was charged with a serious crime committed before the wedding. Most other pleas for annulment, even those brought by disheartened parents who learned of their minor children's marriage after the fact, were not successful—though the children could face serious spiritual and criminal sanctions for their disobedience and had little legal recourse if their parents chose to retaliate by disinheriting them.²⁸⁴

The consistory and Council were even more churlish about granting divorces of consummated marriages. The only stated statutory grounds for divorce were proven adultery and malicious desertion, and the reported cases did nothing to create new grounds. The burden of proof on the innocent party was quite high—"absurdly high" for women petitioners, according to Cornelia Seeger.²⁸⁵ Petitioners had to walk a tightrope between the consistory's spiritual counsel to be reconciled and the council's evidentiary demands to prove both their spouse's wrongdoing and their own innocence at the same time. The vast majority of parties could not meet this burden of proof. Fewer than forty divorces were granted during Calvin's Geneva tenure from 1541-1564, almost all with male petitioners, and most on grounds of adultery.²⁸⁶ This was a very low rate of divorce, which persisted for the next two centuries; divorce rates at

²⁸³Seeger, *Marriage*, 305-31.

²⁸⁴*Ibid.*, 332-74.

²⁸⁵*Ibid.*, 464-65.

²⁸⁶*Ibid.*, 417; Kingdon, *Adultery and Divorce*, 176.

the *opening* of the twentieth century were one-hundred times higher.²⁸⁷ A cause and consequence of such low divorce rates was that the Geneva Council and consistory reinstated the traditional halfway remedy of separation from bed and board, despite Calvin's strong protestations against it. In cases of severe wife or child abuse, perennial fighting by couples, habitual desertion, contagious disease, habitual frigidity, and the like, the consistory and council would separate the parties if all efforts at reconciliation failed.²⁸⁸

The Calvinist Heritage

The reformation of marriage introduced in sixteenth-century Geneva did not die with John Calvin in 1564. Calvin and his followers had worked hard to preserve the new theology and law of marriage in a variety of media. The Geneva Bible included suggestive notes on marriage in the margin of the relevant texts of the Gospels and Paul. The Geneva Catechism and student handbooks of the Geneva Academy included ample discussions of marriage, divorce, and sexual conduct. The 1559 and 1561 editions of Calvin's *Institutes*, and a growing number of published letters, sermons, opinions, and biblical commentaries by Calvin and Beza placed before the reader a large caché of learned theological discussions of marriage. The Geneva Ecclesiastical Ordinance of 1561 incorporated Calvin's Marriage Ordinance of 1545, amply amended and emended with further norms suggested by the intervening years of litigation. "Change nothing!" was Calvin's famous death-bed instruction to his followers who had gathered to hear his final advice. On marriage matters, at least, his immediate followers obliged him.

This rich literary preservation of Calvin's reformation work not only ensured its survival in Geneva and surrounding rural communities in subsequent generations, it also helped in the colonization of Calvinist communities in various parts of Europe and, eventually, overseas to America. A host of new communities, inspired by the writings of Calvin, Beza, and their Genevan colleagues, sprung up in the later sixteenth century and thereafter—French Huguenots, Dutch Pietists, Scottish Presbyterians, English and New England Puritans, and various smaller communities in the German Palatinate, Poland, Czechoslovakia, Hungary, and eventually South Africa.²⁸⁹ Many of the first

²⁸⁷Ibid. See also R. Stauffenegger, "Le à Genève vers 1600," *Mémoires de la Société pour l'Histoire du Droit* 27 (1966): 317; P. Bels, "La formation du lien de dans l'glise protestante française (XVie et XVIe siècle)," *Mémoires de la Société pour l'Histoire du Droit* 27 (1966): 331; Jeffrey R. Watt, "The Control of Marriage in Reformed Switzerland, 1550-1800," in *Sixteenth Century Essays and Studies—Later Calvinism: International Perspectives* ed. W. Fred Graham (Kirksville, Mo.: Sixteenth Century Journal Publishers, 1994), 29; Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990).

²⁸⁸Seeger, *Marriage*.

²⁸⁹See McNeill, *History and Character of Calvinism*, 237-39.; Menna Priest, ed., *International Calvinism* (Oxford: Clarendon, 1985).

leaders of these communities were educated in the Geneva Academy. Many later leaders were weaned on the rich corpus of Calvin's writings that came available to them, often in local translations.

These far-flung Calvinist communities were not replicas of Geneva. Their leaders did not simply repeat in every particular the theological formulations of John Calvin and his colleagues. Indeed, while Lutheran communities in Germany and Scandinavia tended to settle into common routinized patterns by the seventeenth century, contemporaneous Calvinist communities tended to pluralize into a number of national and regional variations on Genevan themes. The nature of these variations turned in part on the temperament of their leaders, in part on the historical and theological contexts in which the local reformations occurred.

One of the hallmarks of these later Calvinist communities was both their preservation and their pluralization of Calvin's theology and law of marriage. Covenantal theologies of marriage sprung forth in greater varieties in these early modern Calvinist communities. Genevan civil laws governing marriage formation, maintenance, and dissolution gave rise to a variety of local legal progeny. This later Calvinist legacy for marriage had a substantial influence on the civil and common laws of Protestant Europe and the colonies of North America. Dutch authorities appropriated a great deal of the Calvinist learning in their provincial and national laws on marriage, divorce, inheritance, and comparable subjects—and came to influence a number of colonists who passed through Holland on their way to North America.²⁹⁰ Calvinist covenantal ideas of marriage eventually transformed Anglican marital theology and English ecclesiastical law in later Tudor and Stuart England²⁹¹ and shaped even more directly the marriage laws of the Puritan and Anglican colonies along the Atlantic seaboard.²⁹²

²⁹⁰See L. van Apeldoorn, *Geschiedenis van het nederlandse huwelijksrecht voor de invoering van de franse wetsgeving* (Amsterdam: Uitgeversmaatschappij, 1925), 84-122, 126-70, 180-88, 195-98; H. F. W. D. Fischer, "De gemengde huwelijken tussen Katholiken en Protestanten in de Nederlanden van de XVIe tot de XVIe eeuw," *Tijdschrift voor Rechtsgeschiedenis/Revue d'Histoire du Droit* 31 (1963): 463-85; Els Kloek, "Seksualiteit, huwelijk en gezinsleven tijdens de lange zestiende eeuw, 1450-1650, in *Familie, huwelijk en gezin in West-Europa. Van Middeleeuwen tot moderne tijd*, ed. Ton Zwaan (Amsterdam, Boom/Open Universiteit, 1993), 107-38.

²⁹¹See, e.g., Johnson, *A Society Ordained by God*; Edmund Leites, *The Puritan Conscience and Modern Sexuality* (New Haven: Yale University Press, 1986).

²⁹²See John Howard, *A History of Matrimonial Institutions* (Chicago: University of Chicago Press, 1904), 2:121-26, 328-66; Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth Century New England* (New York: Harper & Row, 1966); John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (New York: Oxford University Press, 1970).