

Draft

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Family

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Abstract

A brief overview of the enduring and shifting understanding of the marital family in the Western tradition in biblical, Graeco-Roman, Roman Catholic, Protestant, and modern liberal thought and law.

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In the Western Christian tradition, the term family describes a variety of overlapping associations. The nuclear family consists of a married couple [or widow(er) or divorc,e] together with their natural or adopted children. The blended family consists of a married couple, cohabiting with children born or adopted of prior unions, and now called step-children and step-siblings. The extended family consists of a nuclear or blended family plus any combination of a prior generation of parents, aunts, and uncles; a current generation of siblings as well as sons- and daughters-in law and their relatives; and a new generation of grandchildren and their eventual spouses. Historically, families of various types often included servants, slaves, students, sojourners, and other long-term household members. Historically, several families were often joined by marriage, treaty, or contract to form clans or sibs. All these family forms were well developed in the West before Christ, and have been part of the Christian Church's experience and teaching from the beginning.

Early Christian Norms. Marriage formed the core of the Western Christian family. The ideal structure of marriage was the life-long union of a fit man and a fit woman of the age of consent, and unrelated by the blood and family ties identified in the Mosaic law. The ideal purpose of marriage was to provide mutual love and support of husband and wife, mutual procreation and nurture of children and other dependents, and mutual protection of both parties from the temptations of sexual sin. These Christian ideals were based on the biblical teaching that "a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh" (Gen. 2:24; Mt. 19:5; Eph. 5:31; I Cor. 6:16). These ideals were further enforced by the teaching that marriage was a symbol of the enduring bond between Yahweh and His elect, Christ and His Church (Ezek. 16; Hos. 2; Eph. 5:32). Several biblical passages enjoined married couples to chaste love, sexual purity, and mutual respect for the sexual and physical needs of the other. These passages also spoke out against intermarriage with unbelievers, unwarranted divorce, and various sexual sins, particularly fornication, adultery, concubinage, prostitution, perversion, and immodest dress. These biblical norms on sex and marriage were amply elaborated in the constitutions of the early church and in the commentaries of the Church Fathers.

The paterfamilias stood at the head of the Western Christian family. The early Church idealized the patriarchal Graeco-Roman household, viewing it as something of a source and symbol of the structure of the Church itself. The ideal of a household with the husband, father, and master responsible for the care, education, welfare and discipline of his wife, children, servants, and other dependents came to normative expression in later written books of the New Testament and in the early church constitutions. These early norms have inspired the Church to develop sermons, household manuals, and catechism and confessional books to guide believers in their family relationships within the household and beyond.

These Christian ideals of sex, marriage, and the family, which were well developed by the end of the third century, have had a profound influence on the Western tradition. Three major waves of Christian influence can be distinguished, each transforming Western family law, lore, and life.

Roman Era. The first transformation came with the Christianization of the Roman Empire in the fourth century and thereafter. The Christian concept of marriage as a monogamous, heterosexual, life-long union came to dominate Roman and later Germanic law and life. Biblically-based concepts of marital consent and impediments to marriage, and of annulment and divorce for cause were increasingly prescribed. Traditional Roman and Germanic practices of polygamy, concubinage, incest, homosexuality, contraception, abortion, and infanticide were increasingly proscribed. The Christian construction of the patriarchal household was firmly entrenched in new laws of property and inheritance, and in new legal obligations of mutual care and nurture among parents, children, and siblings. Christian clergy and monastics were prohibited from participation in sex, marriage, and family life; virginity, chastity, and celibacy were celebrated as a high moral ideal of the Christian. This general pattern, with ample local variations, persisted throughout the Germanic era of the fifth to eleventh centuries.

High Middle Ages. The second transformation occurred in the twelfth and thirteenth centuries, when a systematic Roman Catholic theology and canon law of the family came to dominate the West. The main changes came in the lore and law of marriage. Marriage, the Church now taught, was at once a natural institution of creation, a contractual relationship between two parties, and a sacrament of the Church. First, the Church taught, marriage was instituted at creation to permit persons to beget and raise children and to direct their natural passion to the service of the community. Yet marriage was considered subordinate to celibacy, propagation less virtuous than contemplation. Second, marriage was a contract that prescribed an indissoluble relation of love, service, and devotion to one's spouse and children. Third, marriage was also raised to the dignity of a sacrament. It symbolized the indissoluble union between Christ and His Church and thereby conferred sanctifying grace upon the couple, their children, and the broader Christian community. Couples could perform the sacrament in private, provided they were capable of marriage and complied with rules for marriage formation.

The Roman Catholic Church, after the twelfth century, built an intricate body of family law upon this theological foundation. Because marriage was a sacrament, the Church claimed exclusive jurisdiction over it, appropriating and expanding the laws of nature and Scripture as well as some of the rules in the early church constitutions and Christianized Roman law. Comprehensive new laws, called canon laws, were promulgated by the papacy and the Church councils and enforced by Church courts throughout Western Christendom.

Consistent with the naturalist perspective on marriage, the Church's canon law punished contraception, abortion, and child abuse as violations of the created functions of propagation and

childrearing. It also proscribed unnatural sexual acts, such as sodomy, buggery, and bestiality. Consistent with the contractual perspective, the canon law ensured free consensual unions by dissolving marriages contracted by mistake or under duress, fraud, or coercion. It also granted husband and wife alike equal rights to enforce conjugal debts that had been voluntarily assumed, and emphasized the importance of mutual love among the couple, their children, and their parents. Consistent with the sacramental perspective, the canon law protected the sanctity and sanctifying purpose of marriage by declaring valid marital bonds to be indissoluble, and by annulling invalid unions between Christians and non-Christians or between parties related by various legal, spiritual, blood, or family ties. It supported celibacy by annulling unconsummated vows of marriage if one party made a vow of chastity and by prohibiting clerics or monastics from marriage and concubinage.

Earlier Christianized Roman and Germanic laws governing the relationships between husband and wife, and parent and child, were liberally appropriated by the canonists, and now enforced in the Church courts as well as in the confessional. Traditional rules and customs of arranged marriages, patriarchal restrictions on the marital estate, male-dominated inheritance laws and primogeniture, protection of the status of the paterfamilias, and restrictions on the wife's capacities to sue or be sued, to enter into contracts, to give or receive property of her own, all remained firmly in place at canon law.

Reformation Era. The third transformation occurred during the Protestant Reformation of the sixteenth and seventeenth centuries. Like Catholics, Protestants treated marriage and the family as natural associations created for procreation, protection, and preservation. They also retained the traditional view of marriage as a contract formed by the mutual consent of the couple.

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

Calvinist Protestants emphasized that marriage was not a sacramental institution of the church, but a covenantal association of the entire community. A variety of parties played a part in the formation of the marriage covenant. The marital couple themselves swore their betrothals and espousals before each other and God -- rendering all marriages triparty agreements with God as party, witness, and judge. The couple's parents, as God's bishops for children, gave their consent to the union. Two witnesses, as God's priests to their peers, served as witnesses to the marriage. The minister, holding the spiritual power of the Word, blessed the couple and admonished them in their spiritual duties. The magistrate, holding the temporal power of the sword, registered the parties and their properties and ensured the legality of their union. This involvement of parents, peers, ministers, and magistrates in the formation of a marriage was not an idle ceremony. These four parties represented different dimensions of God's involvement in the marriage covenant, and were thus essential to the legitimacy of the marriage itself. To omit any of these parties was, in effect, to omit God from the marriage covenant.

As social estates, Protestants taught, marriage and the family were no longer subject to the church and its canon law, but to the state and its civil law. To be sure, church officials should continue to communicate biblical and moral principles on sex and marriage. Church consistories could serve as state agents to register marriages and to discipline infidelity and abuse within the household. All church members, as priests to their peers, should counsel those who seek marriage and divorce, and cultivate the moral and material welfare of baptized children, as their congregational baptismal vows required. But principal legal authority over marriage and the family, most Protestants taught, now lay with the state.

Despite the bitter invectives against the Catholic canon law by the early Reformers, Protestant magistrates and jurists appropriated a good deal of the traditional canon law of sex, marriage, and the family. Traditional canon law prohibitions against unnatural sexual relations and acts and against infringements of the procreative functions of marriage remained in effect. Canon law procedures treating wife and child abuse, paternal delinquency, child custody, inheritance, and intergenerational care continued largely unchanged, but now in civil law forms. Canon law impediments that protected free consent, that implemented Biblical prohibitions against marriage of relatives, and that governed the relations of husband and wife and parent and child within the household were largely retained. These and many other time-tested canon law rules and procedures were as consistent with Protestant theology as with Catholic theology, and were transplanted directly into the new state laws of Protestant Europe.

The new Protestant theology of marriage and the family, however, also yielded critical changes in this new civil law. Because the reformers rejected the subordination of marriage to celibacy, they rejected laws that forbade clerical and monastic marriage and that permitted vows of chastity to annul vows of marriage. Because they rejected the sacramental concept of marriage as an eternal enduring bond, the reformers introduced divorce in the modern sense, on grounds of adultery, desertion, cruelty, or frigidity, with a subsequent right to remarry at least for the innocent party. Because persons by their lustful nature were in need of God's soothing remedy of marriage, the reformers rejected numerous canon law impediments to marriage not countenanced by Scripture. Because the family was such a vital social estate alongside the state and church, the reformers gave new power and incentive to the paterfamilias to educate, nurture, and discipline the members of his household.

Modern Era. From the later sixteenth to the early twentieth centuries, these Catholic and Protestant models lay at the heart of the Western family. The medieval Catholic model, confirmed and elaborated by the Council of Trent in 1563, flourished in southern Europe, Spain, Portugal, and France, and their many colonies in Latin and Central America, the American south and southwest, Quebec, and, eventually, in East and West Africa. A Protestant social model rooted in the Lutheran two kingdoms theory dominated portions of Germany, Austria, Switzerland, and Scandinavia together with their North American and later African colonies. A Protestant social model rooted in Calvinist covenant theology came to strong expression in Geneva, and in portions of Huguenot France, the Pietist Netherlands, Presbyterian Scotland, Puritan New England, and South Africa. A Protestant social model that treated marriage as a little commonwealth at the core of broader ecclesiastical and political commonwealths prevailed in Anglican England and its many colonies in North America and eventually in Africa and the Indian subcontinent as well.

These Catholic and Protestant models of marriage and the family were not static. Particularly in the later nineteenth and early twentieth centuries, libertarian movements within and beyond the Church brought substantial reforms to the Western family. Traditional family laws had been focussed on the contracting and dissolving of marriages; the governance of marriages once formed and families once dissolved was left

largely to the discretion of the parties and their spiritual superiors. Beginning in the 1850s, European and North American laws were dramatically reformed and expanded in order to govern much more precisely the relationship between husband and wife. Such reforms rendered marriages much easier to contract and much easier to dissolve. Wives received greater protections in their person and in their properties from their husbands, and greater freedoms in their relationships and activities outside the household. Children received greater protection from the abuses and neglect of their parents, and greater access to rights to education and welfare and freedom from oppressive rules respecting child labor and illegitimacy.

These reform movement from 1850 to 1950 sought to improve the traditional Western family more than to abandon them. Until 1950, most writers still accepted the traditional Western ideal of marriage as a permanent union of a fit man and fit woman of the age of consent. Most laws accepted the traditional definition of the nuclear, blended, and extended family, reflecting those views in a series of new family-specific social benefits, tax breaks, homestead exemptions, zoning protections, evidentiary privileges, insurance and inheritance rights, and probate priorities. The primary goal of these reforms was to purge the traditional household and community of its paternalism and patriarchy and thus render the ideals of family life a greater potential reality for all.

This traditional Western lore and law of the family, as reformed, is still taught by many Christian churches throughout the world today. It is also still enforced by both church and state authorities in many parts of Latin America as well as in Christianized areas of Asia and Africa -- often supplemented in these latter communities by indigenous norms and forms of clan, caste, tribe, and village.

In Europe and North America, however, this traditional lore and law of the family have come under increasing attack. Since the early 1970s, much of the West has seen the growing agitation for a purely private, contractual model of marriage, where each party has equal and reciprocal rights and duties and where two parties, of whatever sex or sexual preference, have full freedom and privacy to form, maintain, and dissolve their relationships as they see fit, without interference from the church, state, or other institutions.

Western states at the end of the twentieth century have responded to this agitation. Privately-negotiated prenuptial, marital, and separation contracts have become increasingly the norm. No-fault divorce statutes are in place in virtually every state. Legal requirements of parental consent and witnesses to marriage have become largely dead letters. The functional distinction between the rights of the married and the unmarried has been narrowed by a growing constitutional law of sexual autonomy and privacy. Homosexual, bisexual, and other intimate associations have gained increasing acceptance at large, albeit not always at law.

Although the modern Western state has largely withdrawn from intimate relationships between consenting adults, it has increased dramatically its protection of children. Abused minor children are plucked from their natural homes with increasing ease. State welfare agencies, and even adolescent children themselves, are suing delinquent or abusive parents and guardians with increasing alacrity and success. The principle of "the best interests of the child" now rivals traditional principles of paternal autonomy and preservation of blood relations. As traditional family forms and functions have eroded, the state's parental role has dramatically increased.

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