

John Witte, Jr.
Michael Welker
Stephen Pickard
(Eds.)

THE IMPACT of the **FAMILY**

on Character Formation, Ethical Education,
and the Communication of Values
in Late Modern Pluralistic Societies



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Preface to the Series

Five hundred years ago, Protestant reformer Martin Luther argued that “three estates” (*drei Stände*) lie at the foundation of a just and orderly society – marital families, religious communities, and political authorities. Parents in the home; pastors in the church; magistrates in the state – these, said Luther, are the three authorities whom God appointed to represent divine justice and mercy in the world, to protect peace and liberty in earthly life. Household, church, and state – these are the three institutional pillars on which to build social systems of education and schooling, charity and social welfare, economy and architecture, art and publication. Family, faith, and freedom – these are the three things that people will die for.

In the half millennium since Luther, historians have uncovered various classical and Christian antecedents to these early Protestant views. Numerous later theorists have propounded all manner of variations and applications of this three-estates theory, many increasingly abstracted from Luther’s overtly Christian worldview. Early modern covenant theologians, both Christian and Jewish, described the marital, confessional, and political covenants that God calls human beings to form, each directed to interrelated personal and public ends. Social-contract theorists differentiated the three contracts that humans enter as they move from the state of nature to an organized society protective of their natural rights – the marital contract of husband and wife; the government contract of rulers and citizens; and, for some, the religious contracts of preachers and parishioners. Early anthropologists posited three stages of development of civilization – from family-based tribes and clans, to priest-run theocracies, to fully organized states that embraced all three institutions. Sociologists distinguished three main forms of authority in an organized community – “traditional” authority that begins in the home, “charismatic” authority that is exemplified in the church, and “legal” authority that is rooted in the state. Legal historians outlined three stages of development of legal norms – from the habits and rules of the family, to the customs and canons of religion, to the statutes and codes of the state.

Already a century ago, however, scholars in different fields began to flatten out this hierarchical theory of social institutions and to emphasize the foundational role of other social institutions alongside the family, church, and state in shaping private and public life and character. Sociologists like Max Weber and Talcott Parsons emphasized the shaping powers of “technical rationality” exemplified especially in new industry, scientific education, and market economies. Legal scholars like Otto von Gierke and F. W. Maitland emphasized the critical roles of nonstate legal associations (*Genossenschaften*) in maintaining a just social, political, and legal order historically and today. Catholic subsidiarity theories of Popes Leo XIII and Pius XI emphasized the essential task of mediating social units between the individual and the state to cater to the full range of needs, interests, rights, and duties of individuals. Protestant theories of sphere sovereignty, inspired by Abraham Kuyper, argued that not only churches, states, and families but also the social spheres of art, labor, education, economics, agriculture, recreation, and more should enjoy a level of independence from others, especially an overreaching church or state. Various theories of social or structural pluralism, civil society, voluntary associations, the independent sector, multiculturalism, multinormativity, and other such labels have now come to the fore in the ensuing decades – both liberal and conservative, religious and secular, and featuring all manner of methods and logics.

Pluralism of all sorts is now a commonplace of late modern societies. At minimum, this means a multitude of free and equal individuals and a multitude of groups and institutions, each with very different political, moral, religious, and professional interests and orientations. It includes the sundry associations, interest groups, parties, lobbies, and social movements that often rapidly flourish and fade around a common cause, especially when aided by modern technology and various social media. Some see in this texture of plurality an enormous potential for colorful and creative development and a robust expression of human and cultural freedom. Others see a chaotic individualism and radical relativism that endanger normative education, moral character formation, and effective cultivation of enduring values or virtues.

Pluralism viewed as vague plurality, however, focuses on only one aspect of late modern societies – the equality of individuals, and their almost unlimited freedom to participate peaceably at any time as a respected voice in the moral reasoning and civil interactions of a society. But this view does not adequately recognize that, beneath the shifting cacophony of social forms and norms that constitute modernity, pluralistic societies have heavy normative codes that shape their individual and collective values, morals, preferences, and prejudices.

The sources of much of this normative coding and moral education in late modern pluralistic societies are the deep and powerful social systems that are the pillars of every advanced culture. The most powerful and pervasive of these are the social systems of law, religion, politics, science/academy, market, media, family, education, medicine, and national defense. The actual empirical forms of each

of these powerful social systems can and do vary greatly, even in the relatively homogeneous societies of the late modern West. But these deeper social systems in one form or another are structurally essential and often normatively decisive in individual and communal lives.

Every advanced society has a comprehensive legal system of justice and order, religious systems of ritual and doctrine, a family system of procreation and love, an economic system of trade and value, a media system of communication and dissemination of news and information, and an educational system of preservation, application, and creation of knowledge and scientific advance. Many advanced societies also have massive systems of science, technology, health care, and national defense with vast influence over and through all of these other social systems. These pervasive social systems lie at the foundation of modern advanced societies, and they anchor the vast pluralities of associations and social interactions that might happen to exist at any given time.

Each of these social systems has internal value systems, institutionalized rationalities, and normative expectations that together help to shape each individual's morality and character. Each of these social spheres, moreover, has its own professionals and experts who shape and implement its internal structures and processes. The normative network created by these social spheres is often harder to grasp today, since late modern pluralistic societies usually do not bring these different value systems to light under the dominance of just one organization, institution, and power. This normative network has also become more shifting and fragile, especially since traditional social systems like religion and the family have eroded in their durability and power, and other social systems like science, the market, health care, defense, and the media have become more powerful.

The aim of this project on "Character Formation and Moral Education in Late Modern Pluralistic Societies" is to identify the realities and potentials of these core social systems to provide moral orientation and character formation in our day. What can and should these social spheres, separately and together, do in shaping the moral character of late modern individuals who, by nature, culture, and constitutional norms, are free and equal in dignity and rights? What are and should be the core educational functions and moral responsibilities of each of these social spheres? How can we better understand and better influence the complex interactions among individualism, the normative binding powers of these social systems, and the creativity of civil groups and institutions? How can we map and measure the different hierarchies of values that govern each of these social systems, and that are also interwoven and interconnected in various ways in shaping late modern understandings of the common good? How do we negotiate the boundaries and conflicts between and among these social systems when one encroaches on the other, or imposes its values and rationalities on individuals at the cost of the other social spheres or of the common good? What and where are

the intrinsic strengths of each social sphere that should be made more overt in character formation, public education, and the shaping of minds and mentalities?

These are some of the guiding questions at work in this project and in this volume. Our project aims to provide a systematic account of the role of these powerful normative codes operating in the social spheres of law, religion, the family, the market, the media, science and technology, the academy, health care, and defense in the late modern liberal West. Our focus is on selected examples and case studies drawn from Western Europe, North America, South Africa, and Australia, which together provide just enough diversity to test out broader theories of character formation and moral education. Our scholars are drawn from across the academy, with representative voices from the humanities, social sciences, and natural sciences as well as the professions of theology, law, business, medicine, and more. While most of our scholars come from the Protestant and Catholic worlds, our endeavor is to offer comparative insights that will help scholars from any profession or confession. While our laboratory is principally Western liberal societies, the modern forces of globalization will soon make these issues of moral character formation a concern for every culture and region of the world – given the power of global social media, entertainment, and sports; the pervasiveness of global finance, business, trade, and law; and the perennial global worries over food, health care, environmental degradation, and natural disasters.

This volume focuses on the impact of *the family* on character formation, ethical education, and the communication of values in late modern pluralistic societies. The family is humanity's oldest and most basic social institution, but today it is fragile, fractured, and fraught in many liberal lands. In this volume scholars from sociology, psychology, history, religion, ethics, law, and medicine analyze the complex nature and place of the family in character formation and human flourishing. The chapters study the impact of catechesis, schooling, work, and discipline on the development of individual moral agency and responsibility. They document the critical roles of family love, trust, fidelity, and storytelling in shaping the moral character of all family members from infancy to old age. They describe effective strategies of resistance, resilience, and renewal for family members who face abuse, divorce, death, chauvinism, racism, and homophobia. And several chapters challenge modern arguments and policies that flatten or abolish the marital family, even while several authors call for family law reforms in their home countries of the United States, Germany, South Africa, Australia, and China. While the marital household may no longer be the "foundation of the polis," or the "cornerstone of civilization," it remains a unique and essential institution for character formation that church, state, economy, and society alike should support and strengthen.

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Part One:

The Place of the Family in Modern Society

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

*John Witte Jr.*¹

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

Today, however, the marital family has become more fragmented and fragile in liberal societies. Many states now offer several off-the-rack legal models of straight and same-sex marriage, civil union, and domestic partnership with

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

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

shrinking formal and functional distinctions between these domestic forms and simple nonmarital cohabitation. Strong privacy laws protect all manner of voluntary sexual interactions among consenting adults, and rapidly growing portions of the population are “drifting into sex and parenthood without marriage.”³ To be sure, some 90 percent of American citizens with college educations and sufficient means now form stable marital families and rear and form their children in intact homes – markedly stronger numbers than thirty years ago at the height of the sexual revolution and with its 50 percent divorce rate.⁴ But persons with fewer means and less education today “have all but given up on marriage,” June Carbone and Naomi Cahn report in a sobering comprehensive study. “For the majority of Americans who haven’t graduated from college, marriage rates are low, divorce rates are high, and a first child is more likely to be born to parents who are single than to parents who are married.”⁵ And the rates of nonmarital cohabitation and procreation are considerably higher in most parts of Western Europe, even while many European nations are losing the cultural cohesion, political will, and economic capital needed to maintain the modern welfare state that absorbed many of the responsibilities historically discharged by the church and family. As the late great Jonathan Sacks, chief rabbi of the United Kingdom, put it:

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

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

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

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

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

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

Part of this profamily movement, I submit, requires us to rethink the place and role of the marital family in late modern liberal societies and the interaction of the family with other powerful social systems. Perhaps the marital family is no longer the “foundation of the polis,” as Aristotle wrote, or “the cornerstone of Western civilization,” as the United States Supreme Court confidently pronounced.⁷ But the family remains an essential institution in late modern liberal societies that still does and should shape our public and private lives, characters, and value formation, even if it is now more interwoven with and newly dependent on other social institutions. This is the flip side of the traditional Western teaching that the stable family is the foundation of a well-ordered society: a well-ordered society is just as much the foundation of a stable family. Without strong social and institutional supports, the marital family is “pitifully vulnerable,” the late great sociologist Robert Bellah reminded us. Just as “it takes a village to raise a child, ... it takes a society to raise a family.”⁸

To make this claim, I present the modern marital family as a sphere, or a globe – with a natural pole on the bottom, a spiritual pole on top, and various social, economic, communicative, and contractual dimensions radiating between them. At the bottom of this sphere is (1) a *natural* pole that anchors the natural goods of marriage and the inherent human inclinations, appetites, capacities, and imperatives for sex, marriage, and family life. Radiating up from this natural pole are: (2) a *social* dimension that articulates the public communal functions and goods of marriage and the family, and that recognizes the complex groups of institutions and professions that support and interact with the domestic household and its members; (3) an *economic* dimension that reflects the union of properties, labor, and entitlements by marriage, the ongoing material rights and duties of spouses,

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

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

parents, and children during and after a marriage, and the channeling, expressive, and signaling functions of modern family law; (4) a *communicative* dimension, expressed in the public liturgies, celebrations, and symbols that mark the formation of a marriage and the birth or confirmation of a child as well as in the vital private daily communications among spouses, children, and household dependents concerning sex, finance, labor, nurture, formation, social responsibilities, and more; and (5) a *contractual* dimension, expressed in the complex formal promises and provisions that form a marriage and household, and the ongoing obligations that attach to the relationships of husband and wife, parent and child, family and society. At the top of the sphere is (6) a *spiritual* pole that helps binds together the natural, social, economic, communicative, and contractual dimensions of the marital family around sacramental, covenantal, or other transcendent ideals, and stipulates the spiritual inspirations and aspirations that marriage and family life provide for husbands and wives, parents and children, and broader communities.

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

This chapter draws on some of this literature to describe briefly the six dimensions of the marital family sphere as historically constructed and potentially reconstructed for our modern day – the natural, social, economic, communicative, contractual, and spiritual dimensions. This sphere metaphor is a heuristic device – a picture to describe the various modes of family life, the different disciplinary

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

perspectives on the family, and the range of institutions and professions in which the family is now embedded. But in stressing the multidimensionality of the marital family sphere, I am also pushing against theorists and trends that have sought to flatten the marital family into one or two dimensions, or to abolish it altogether as a distinct and necessary social institution.

The Nature of the Marital Family

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

The Bible taught that God created humans as “male and female,” called them to join together as “two in one flesh,” and commanded them to “be fruitful and multiply” and to fill the earth.¹³ God created and inclined the first man and woman to find completion in each other: “This at last is bone of my bones, and flesh of my flesh,” Adam said on first meeting Eve.¹⁴ God endowed humans with the physical capacity to join together and beget children. The Judeo-Christian tradition taught that these natural qualities and duties continued after the fall into sin and the expulsion of humans from Paradise. But marriage also served as a remedy to allay sexual sin. Rather than allow sinful people to burn with lust, God provided the institution of marriage so that couples could direct their natural drives and desires toward the service of each other, their children, their kin, and their broader

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

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

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

¹³ Genesis 1:26–28.

¹⁴ Genesis 2:23–24.

communities. Scores of variations on these stories about the mythical or natural origins of the marital family have echoed in the history of Western thought.

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

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

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

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

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

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

It Takes a Society to Raise a Family

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

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

With the liberal reforms and gradual pluralization of Western societies over the past two centuries, most of these legal functions have gradually shifted from

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

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

the church to the state. Today the modern state dominates Western family law. The state sanctions marital formation and dissolution. State laws nudge, facilitate, and reward citizens for creating and maintaining stable marital households. State officials intervene in family disputes and, when necessary, help dissolve marital families, divide marital properties, and reassign parental responsibilities. State officials protect the rights of family members as well as the sexual liberties of the broader citizenry. State laws facilitate transmitting family property to the next generation and provide victims of sexual harm avenues of redress while punishing sexual criminals.

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

Beyond the church and the state, the Western tradition has long supported the marital family with many other associations and professionals. Long fundamental to the proper formation and functioning of marriage and the family have been the three classic professions of law, theology, and medicine. Legal professionals prepare the banns that churches announce and register the marriage certificates and marital properties of the new married couple. They help enforce, amend, and dis-

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

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

solve the contracts of marriage and marital property. They summon the legal resources to support and protect wives and children from neglect and abuse, and arrange for adoptions, guardianship, and other forms of institutional care and protection. They litigate marital and family disputes in state courts and sometimes church tribunals. They help probate the wills and administer the trusts that are vital to the transmission of the family name and property to the next generation. Religious professionals, both clerical and lay, provide premarital counseling for the courting couple and consecrate their wedding. They baptize, catechize, and confirm children and provide moral discipline for the household. They provide pastoral care and support for the family and orchestrate involvement of the broader religious community in guiding and nurturing the household and its members. Medical professionals teach new households the basics of nutrition and hygiene, fitness and aging, child care and development. They provide support, nurture, and care to families during pregnancy and childbirth, sickness or bereavement, abuse or divorce. Medical professionals help ease a person's pain and burdens in the final steps of life, and they certify death, with all the emotional, spiritual, and legal consequences that follow from this final declaration for the surviving family members.

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

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

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

down of families causes severe private and public harms that rapidly ripple throughout a community.

The Economics of the Family

Modern economists have measured the private and public harms of family breakdown and have stressed the utility and efficiency of stable marital families and family laws for social and economic life. These economists build on early modern household manualists like Richard Baxter and William Gouge who sketched the complex links between the marital household (the *oikos*) and economics (*oikonomia*). These manualists regarded the marital household as a vital economic unit in its own right, especially households with attendant shops, services, apprentices, and servants. They also considered the marital household as a vital source of virtue, discipline, skill, and vocational training central to the success of the broader economic system. Later economic theorists, such as Adam Smith and Jeremy Bentham, regarded the stable marital family as an essential institution for modern economic flourishing. For them, the historical development of the marital contract proved to be the most effective means to ensure the community of the mutual care and support of husband and wife and their mutual investment in the nurture and education of their children and kin. The marital family further provided essential security and provision for parents and kin when they became injured, sick, older, and more dependent. And the marital family was a vital conduit to transmit property to the next generation.²²

Indeed, in premodern Western societies, most marriage contracts were primarily marriage settlements that recorded agreements about transfers of marital property. Although such contracts usually noted the marital consent and familial obligations of the parties, they spent much more ink on the property settlement between the couple and their respective families. Both ancient Jewish law and Roman law had far more detailed laws governing family property and inheritance than any other dimensions of the marital family. Building on these precedents, the Western legal tradition developed an intricate body of law governing family property. This law included the customs, rules, and procedures governing the man's betrothal gift to his fiancée and her family. It included laws directing the woman and her family to deliver a dowry to the new household, while retaining rights to a "marital portion" of this dowry as well as a "dower" interest in her husband's estate on his death, divorce, or desertion. Traditional family law also involved complex and evolving rules of the use, encumbrance, and alienation of

²² See various examples in Jürgen von Hagen et al., eds., *The Impact of the Market on Character Formation, Ethical Education, and the Communication of Values in Late Modern Pluralistic Societies* (Leipzig: Evangelische Verlagsanstalt, 2020).

marital property by husbands, wives, children, guardians, and trustees. It set out the rights and duties of material support that parents owe their children until their emancipation, and the complex system of child support, marital property division, and alimony in cases of divorce or annulment. And it included the obligation of children to provide nurture, care, and housing to their elderly parents and needy siblings, with the strong presumption that family members inherit the family property on the death of their loved ones. The economic dimension of marital families – as vital sites of production, consumption, education, welfare, charity, service, business, and property creation, accumulation, distribution, and transmission – has long been a critical feature of Western families and family law.²³

Rational-Choice Economics

Some of these earlier norms and forms of family economics still figure in the modern economic analysis of family life and law. One of the most famous formulations was by Nobel laureate Gary Becker in *A Treatise on the Family* (1981).²⁴ Becker offered a searching analysis of basic economic principles of production, labor, distribution, and decision-making at work in the marital household, viewed as an economic unit holding valuable “human capital.” The “rational choices” at work in human families, Becker argued, allow a person to fulfill a rather simple list of basic needs and desires, including “health, prestige, sensual pleasure, benevolence, or envy.”²⁵ The marital relations of husbands and wives efficiently and directly cater to those basic needs and desires, and rational adults thus choose this institution. When the marriage fails to deliver those goods, the parties divorce and remarry if they can. Moreover, Becker argued, a person’s care for his or her children and kin ultimately caters to the same basic needs and desires. For these acts

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

²⁴ Gary S. Becker, *A Treatise on the Family* (Cambridge, MA: Harvard University Press, 1981). See also Gary S. Becker and Kevin M. Murphy, “The Family and the State,” *Journal of Law and Economics* 31 no. 1 (1988): 1–18. I learned much about the economics of the family from the late dean of family studies, Don S. Browning. See esp. his *From Culture Wars to Common Ground: Religion and the American Family Debate*, 2nd ed. (Louisville, KY: Westminster John Knox Press, 2000), 247–70; Don S. Browning, *Reviving Christian Humanism: The New Conversation on Spirituality, Theology, and Psychology* (Minneapolis, MN: Fortress Press, 2010), 127–48.

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

are an indirect but valuable way of serving oneself and continuing one's own existence. Humans are by nature "invested" in the well-being of their offspring and blood kin, because those other family members carry their genes and thereby extend their own existence and influence. Rational humans thus choose to make varying degrees of self-sacrifice for their children and kin, especially when those choices are incentivized and reinforced by powerful cultural signals and legal rewards.²⁶

This argument for kin altruism is one of the familiar natural foundations and dimensions of the marital family going back to Aristotle and Aquinas and echoed by Enlightenment liberals and common lawyers. But Becker went beyond traditional teaching in assigning calculable economic value to these expressions of family love and kin altruism. He argued that various types of human behavior within the family – including the loving and altruistic behavior of husbands and wives, parents and children, siblings and relatives toward each other – could be understood as human capital that was highly valuable not only to family members themselves but also to society as a whole. Moreover, humans have discovered over time that the most efficient way to maximize human capital in the marital household was to divide the labor "between married women, who traditionally have devoted most of their time to childbearing and other domestic activities, and married men, who have hunted, soldiered, farmed, and engaged in other 'market' activities," Becker argued. "Women not only have a heavy biological commitment to the production and feeding of children," but they also "have been willing to spend much time and energy caring for their children because they want their heavy biological investment in [re]production to be worthwhile." By contrast, "men have been less biologically committed to the care of children, and have spent their time and energy on food, clothing, protection, and other market activities." The remedy for the resulting gender imbalance in household labor, Becker argued, was the eventual creation of the bilateral marital contract. This contract bound the man to his wife and children and gave women more reliable support for their children as well as protection "against abandonment and other adversities," especially during and after pregnancy. Over time, the long-term marital contract yielded maximum efficiency and value for men, women, children, and their communities.²⁷

Becker's economic defense of the intact marital family with a division of labor between stay-at-home moms and go-to-work dads clearly went in a very traditional direction. One of Becker's insights, however, proved critical for modern family-law reform. That was his call for a better economic valuation of domestic labor within the home. Domestic tasks were typically performed by wives and mothers

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

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

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

Behavioral Economics

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

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