Church, State, and Marriage: Three Reformation Models

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Someone once said that our appetite for history is a function of our security: “The less certain we are of our future, the more interested we become in our past.” The recent battles in church and state over the forms and norms of marriage bear out the wisdom of this aphorism. The long history of Christian marriage has rarely received such an avid reading, as proponents and opponents of marital change seek to prove the vintage and veracity of their arguments.

Among the new discoveries of the past decade has been a whole series of sixteenth-century Protestant teachings on marriage that have had, and can have, an enduring influence on Western churches and states alike. It is now well understood that the sixteenth-century Protestant Reformation was a watershed in the history of Western theology and the law of marriage—a moment and movement that gathered several streams of classical and Catholic legal ideas and institutions, re-mixed them and revised them in accordance with the new Protestant norms and forms of the day, and then redirected them in the governance and service of the Christian West.

MEDIEVAL CATHOLIC BACKGROUND

Prior to the sixteenth century, marriage was principally subject to the theol-
ogy and law of the Roman Catholic Church. The medieval church treated marriage and the family in a three-fold manner—at once as a natural, contractual, and sacramental unit. First, marriage was a natural association, created by God to enable man and woman to “be fruitful and multiply” and to raise children in the service and love of God. Since the fall into sin, marriage had also become a remedy for lust, a channel to direct one’s natural passion to the service of the community and the church. Second, marriage was a contractual unit, formed in its essence by the mutual consent of the parties. This contract prescribed for couples a lifelong relation of love, service, and devotion to each other and proscribed unwarranted breach or relaxation of their connubial and parental duties. Third, marriage, when properly contracted between Christians, rose to the dignity of a sacrament. The temporal union of body, soul, and mind within the marital estate symbolized the eternal union between Christ and his church and brought sanctifying grace to the couple, their children, and the church. This sacramental perspective helped to integrate the natural and the contractual dimensions of marriage and to render marriage a central concern of the church.

Though a sacrament and a sound way of Christian living, however, marriage was not considered to be particularly spiritually edifying. The medieval church regarded marriage more as a remedy for sin than a recipe for righteousness. Marital life was considered less commendable than celibate life, propagation less virtuous than contemplation. Clerics, monastics, and other servants of the church were thus to forgo marriage as a condition for ecclesiastical service. Those who could not forgo marriage were not worthy of the church’s holy orders and offices. Celibacy was something of a litmus test of spiritual discipline and social superiority.

From the twelfth century forward, the Catholic Church built upon this conceptual foundation a comprehensive canon law of marriage that was enforced by church courts throughout much of Western Christendom. Until the sixteenth century, the canon law of marriage was the law of the West. A civil law or a common law of marriage, where it existed, was generally considered supplemental and subordinate. Consistent with the naturalist perspective on marriage, the church’s canon law punished contraception and abortion as violations of the created marital functions of propagation and childrearing. It proscribed unnatural relations, such as incest and polygamy, and unnatural acts, such as bestiality, buggery, and sodomy. Consistent with the contractual perspective, the canon law ensured voluntary unions by dissolving marriages formed through mistake, duress, fraud, or coercion, and granting husband and wife alike equal rights to enforce conjugal debts that had been voluntarily assumed. Consistent with the sacramental perspective, the church protected the sanctity and sanctifying purpose of marriage by declaring
valid marital bonds to be indissoluble, and by dissolving invalid unions between Christians and non-Christians or between parties related by various legal, spiritual, blood, or familial ties. This canon law of marriage, grounded in a rich sacramental theology and ecclesiastical jurisprudence, was formalized and systematized by the Council of Trent in 1563.

**REFORMATION RESPONSE**

The Lutheran, Calvinist, and Anglican branches of the Reformation gave birth to three Protestant models of marriage. Like Catholics, Protestants retained the naturalist perspective of marriage as an association created for procreation of children and protection from sexual sin. They also retained the contractual perspective of marriage as a voluntary association 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 ecclesiastical service. It led too easily to concubinage and homosexuality and too often impeded the access and activities of the clerical office. Moreover, marriage was not a sacrament. It was instead an independent social institution ordained by God and equal in dignity and social responsibility with the church, state, and other social estates. Participation in marriage required no prerequisite faith or purity and conferred no sanctifying grace, as did the true sacraments of Holy Baptism and the Eucharist.

From this common critique, the Lutheran, Calvinist, and Anglican traditions constructed their own models of marriage. Each Protestant tradition provided a different theological formula for integrating the inherited contractual, natural, and spiritual perspectives on marriage. Lutherans emphasized the social dimensions of marriage, Calvinists the covenantal dimensions, Anglicans the commonwealth dimensions. Each Protestant tradition also assigned principal legal responsibility for marriage quite differently. Lutherans consigned legal authority mostly to the state, Calvinists to both state and church, Anglicans mostly to the church, subject to state oversight. These differences in emphasis and authority among early Protestants were based, in part, on differences among their theological models of marriage.

**Lutheranism**

The Lutheran tradition, from 1517 forward, developed a social model of marriage, grounded in Martin Luther’s doctrine of the heavenly and earthly kingdoms. Marriage, Luther and his colleagues taught, was a social estate of the earthly kingdom of creation, not a sacred estate of the heavenly kingdom of redemption. Though divinely ordained, marriage was directed primarily to human ends, to the fulfilling of civil and spiritual uses in the lives of the individual and of society. Marriage revealed to persons their sin and their need for God’s marital gift: this was its
theological use. Marriage restricted prostitution, promiscuity, and other public sexual sins: this was its civil use. Marriage taught love, restraint, and other public virtues: this was its pedagogical use.

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Any fit man or woman was free to enter such unions, clerical and lay alike. Indeed, all persons were encouraged to marry when they came of age, unless they had the rare gift of continence. To reject God’s gift of marriage was to court the sins of lust and to spurn the blessings of love. Marriage was an especially important calling for the Christian pastor: a pastor’s own marital experience could only enhance his pastoral ministry to the married, and his marital parsonage would serve as a model for proper Christian living in the community. Marriage was also an important calling for the widow and the widower: this newly single party, who had known the warmth and pleasures of sexual intimacy, would be doubly tempted to sexual sin in its sudden absence.

As part of the earthly kingdom, Lutheran reformers argued, marriage was subject to the civil law of the state, not to the canon law of the church. To be sure, marriage was still subject to God’s law, but this law was now to be administered by Christian magistrates who were God’s vice-regents in the earthly kingdom. Church officials were required to counsel the magistrate about God’s law and to cooperate with him in publicizing and disciplining marriage. All church members, as part of the priesthood of believers, were required to counsel those who contemplated marriage, to admonish those who sought annulment or divorce, and to aid in the rearing of all children as their collective baptismal vows prescribed. But principal legal authority over marriage and family life lay with the state, not with the church.

This new Lutheran social model of marriage was reflected in the transformation of marriage law in Germany and other Lutheran polities of Western Europe. Civil marriage courts replaced church courts. New civil marriage statutes replaced traditional canon law rules. Lutheran jurists published scores of treatises on marriage law, affirming and embellishing the new Lutheran theology of marriage. The new Lutheran marriage law, like the new Lutheran marriage theology, remained indebted to the Catholic canon law tradition. Traditional marriage laws, like prohibitions against unnatural sexual relations and against infringement of marital functions, remained in effect. Impediments that protected free consent, that implemented biblical prohibitions against marriage of relatives, and that governed the couple’s physical relations were largely retained. Such laws were as consistent with the Catholic sacramental model as with the Lutheran social model of marriage.

But changes in marriage theology also yielded changes in marriage law. Be-
cause the Lutheran reformers rejected the subordination of marriage to celibacy, they rejected laws that forbade clerical and monastic marriage, that denied remarriage to those who had married a cleric or monastic, and that permitted vows of chastity to annul promises of marriage. Because they rejected the sacramental nature of marriage, the reformers rejected impediments of crime and heresy and prohibitions against divorce in the modern sense. Marriage was for them the community of the couple in the present, not their sacramental union in the life to come. Where that community was broken, for one of a number of specific reasons (such as adultery or desertion), the couple could sue for divorce and the right to remarry. Because persons by their lustful nature were in need of God’s remedy of marriage, the reformers removed numerous impediments to marriage not countenanced by Scripture. Because of their emphasis on the godly responsibility of the prince, the pedagogical role of the church and the family, and the priestly calling of all believers, the reformers insisted that both marriage and divorce be public. The validity of marriage promises depended upon parental consent, witnesses, church consecration and registration, and priestly instruction. Couples who wished to divorce had to announce their intentions in the church and community and to petition a civil judge to dissolve the bond.

*Calvinism*

The Calvinist tradition, established in mid-sixteenth-century Geneva, set out a covenantal model of marriage. This model confirmed many of the Lutheran theological and legal reforms, but cast them in a new ensemble. Marriage, John Calvin and his followers taught, was not a sacramental institution of the church, but a covenantal association of the entire community. A variety of parties participated in the formation of this covenant. The marital parties themselves swore their betrothals and espousals before each other and God—rendering all marriages tri-party agreements, with God as third-party witness, participant, and judge. The couple’s parents, as God’s lieutenants for their children, gave their consent to the union. Two witnesses, as God’s priests to their peers, served as witnesses to the marriage. The minister, holding God’s spiritual power of the word, blessed the couple and admonished them in their spiritual duties. The magistrate, holding God’s temporal power of the sword, registered the couple and protected them in their person and property. Each of these parties was considered essential to the legitimacy of the marriage, for they each represented a different dimension of God’s involvement in the covenant. To omit any such party was, in effect, to omit God from the marriage covenant.
The covenant of marriage was grounded in the order of creation and governed by the law of God. At creation, God ordained the structure of marriage to be a lifelong union between a fit man and a fit woman of the age of consent. God assigned to this marriage the interlocking purposes of mutual love and support of husband and wife, mutual procreation and nurture of children, and mutual protection of both parties from sexual sin. Thereafter, God set forth in reason, conscience, and the Bible a whole series of commandments and counsels for proper adherence to this ideally created structure and purpose of marriage.

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

This Calvinist covenantal model mediated both sacramental and contractual understandings of marriage. On the one hand, this covenant model confirmed the sacred and sanctifying qualities of marriage, yet without ascribing to it sacramental functions. Marriage was regarded as a holy and loving fellowship, a compelling image of the bond between Yahweh and his elect, Christ and his church. But marriage was no sacrament, for it confirmed no divine promise. On the other hand, this covenant model confirmed the contractual and consensual qualities of marriage, yet without subjecting it to the personal preferences of the parties. Marriage depended for its validity and utility on the voluntary consent of the parties. But marriage was more than a mere contract, for God was a third party to every marriage covenant, and God set its basic terms in the order and law of creation. Freedom of contract in marriage was thus effectively limited to choosing maturely which party to marry—with no real choice about the form, forum, or function of marriage once a fit spouse was chosen.

This new Calvinist model of marriage was reflected in a long series of new statutes that Calvin and his colleagues helped to craft in sixteenth-century Geneva. These, in turn, were exported to or emulated in diaspora Calvinist communities throughout the European continent, England, and Scotland. These statutes governed in copious detail marital formation, maintenance, and dissolution, child care, custody, and control, spousal rights, responsibilities, and remedies—often in-
geniously combining Catholic canon law and Lutheran civil law with legal innovations by Calvin and his successor Theodore Beza.

**Anglicanism**

The Anglican tradition of the sixteenth and seventeenth centuries brought forth a commonwealth model of marriage. This model embraced the sacramental, social, and covenantal models inherited from the Continent but went beyond them. Marriage was at once a gracious symbol of the divine, a social unit of the earthly kingdom, and a solemn covenant with one’s spouse. But the essential cause, condition, and calling of the family was that it served and symbolized the common good of the couple, the children, the church, and the state, all at once. Marriage was appointed by God as “a little commonwealth” to foster the mutual love, service, and security of husband and wife, parent and child. It was likewise appointed by God as a “seedbed and seminary” of the broader commonwealth to teach church, state, and society the essential Christian and political norms and habits.

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At first, this commonwealth model served to rationalize the traditional hierarchies of husband over wife, parent over child, church over household, state over church. After decades of experimentation, England in the mid-sixteenth century had formally rejected most Protestant legal reforms of marriage introduced on the Continent. It returned to much of the medieval canon law of marriage administered by the church, but now under the supreme headship of the English crown. To call the marital household “a little commonwealth” was to signal its subordinate place within the new hierarchy of social institutions that comprised “the great commonwealth” of England. It was also to call the household to an internal hierarchy of offices that matched the royal and episcopal offices of the great commonwealth. The commonwealth model was thus used to integrate a whole network of parallel domestic and political duties rooted in the Bible and English tradition. Anglican divines and moralists expounded at great length the reciprocal duties of husband and wife, parent and child, master and servant that would produce a well-ordered little commonwealth. And, in keeping with the tradition of stability of the great political commonwealth of England, these same Anglican writers prohibited the dissolution of this little domestic commonwealth of the family by divorce.

As the political concept of the English commonwealth was revolutionized and democratized in the seventeenth century, however, so was the English commonwealth model of marriage. The traditional hierarchies of husband over wife, parent over child, and church over family were challenged with a revolutionary
new principle of equality. The biblical duties of husband and wife and of parent and child were recast as the natural rights of each household member against the other. The traditional idea of a created natural order of marriage, society, and state met with a new idea of marriage, society, and state formed voluntarily by contracts by individuals in the state of nature. Just as the English commonwealth could be rent asunder by force of arms when it abused the people’s natural rights, so the family commonwealth could be put asunder by suits at law when it abused the couple’s marital rights. Just as the king could be beheaded for abuses in the commonwealth, so the paterfamilias could be removed from the head of the little commonwealth for abuses in the household. This revolutionary construction of the commonwealth model provided the rationale for the incremental liberalization of English marriage law in the course of the next two centuries. It also provided a stepping-stone for the development of a more overtly contractarian model of marriage slowly developed by Enlightenment reformers in the eighteenth and nineteenth centuries.

LEGACY

From the later sixteenth to the early nineteenth centuries, these Catholic and Protestant models lay at the heart of Western marriage and family life, lore, and law. The medieval Catholic model, confirmed and reformed by the Council of Trent in 1563, flourished in southern Europe, Spain, Portugal, and France, and their many colonies in Latin and Central America, in the American South and Southwest, in Quebec and the Canadian Maritimes, and, eventually, in parts of 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.

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