

The Rights of the Family

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IN WHAT FOLLOWS I am going to claim that the family is at the “heart of society.” By “heart” we usually mean the core and center of a thing. It is to be argued that the family stands at the heart of society in the sense that it is in the middle between the state and the individual, mediating both. This mediation is important to the functioning of human society. In its absence, society is in danger of drifting into either individualism or collectivism.¹ Worse yet, it may be more likely to end up a dysfunctional cooperation of both, a cooperation of Narcissus and Leviathan.²

My stronger and more fundamental claim is that families are not only useful for the proper functioning of society, but that they are bearers of fundamental rights that any state has to respect.³ We ought to

¹ One thinks of the socialist attack on the family and the hope that it might eventually “wither away”; in the Soviet Union, apartments were often intentionally designed with a space insufficient for family meals. Many children that grew up under these conditions live on the streets today; cf. Tobias Jersak, “Ein Schlupfwinkel für die Kinder der Straße,” *Kath.net/Katholische Nachrichten*, January 17, 2009, <http://www.kath.net/news/21859>.

² Cf. a suggestive piece published in a more popular venue by Anthony Esolen, “The Alliance of Narcissus and Leviathan,” *Catholic Answers Magazine*, <http://www.catholic.com/magazine/articles/the-alliance-of-narcissus-and-leviathan>. While Hobbes and Rousseau have different visions of the state, they fundamentally agree that the human person is asocial. And both attempt to eliminate intermediate societies such as the family. At the end, individuals relate only insofar as each submits to Leviathan, i.e., the state, which alone is constitutive of all human relationships.

³ While Aristotle saw the family as basic to society (*Ethics* VIII, ch. 12), and the *Uni-*

think not only of the rights of the individual or of the common good at large, but of the rights of families. These rights are *sui generis* and can be derived from neither the individual nor the state. Rather, family rights are based in a fundamental relationality⁴ of the human person, which cannot be understood apart from the biological relationships in which these rights are rooted.

I am going to establish this claim by arguing three successive points: (1) family rights are not reducible to individual rights, (2) family rights are not derivative from the common good, and (3) family rights are rooted in biological relationships.

1. Family Rights Are Not Reducible to Individual Rights

A notion of family rights would be superfluous, if these rights could be reduced to the rights of individuals or constructed out of their contractual relationships. Rights and duties would then be based on what two or more individuals have agreed upon, that is, they could be derived from the wills and rights of the individuals. If there are family rights at all, they would have to be understood on the model of the social contract—ultimately a form of individualism.

With regard to families, the suggestion might then be that family rights are rooted in the decision of two individuals to contract marriage. Marriage itself as a contract would appear to fit into social contract theories of human society.

However, neither is the relationship of the couple exhaustively explained by a contract, nor do the implied children enter this family by a contractual choice.

versal Declaration of Human Rights (art. 16/3) acknowledged its rights in principle, a formulation of family rights seems to be a recent development, emerging for the first time in Catholic thought, particularly a Synod of Bishops in 1980, John Paul II's *Familiaris Consortio* (1981), and a *Charter of the Rights of the Family* by the Holy See (1983), addressed to all nations Christian and non-Christian; and one might add Benedict XVI, *The Human Family: A Community of Peace* (Message for the Celebration of the World Day of Peace, January 1, 2008). What is lacking is a philosophical conceptualization of this notion. I have explored some aspects in more detail in "Are There Family Rights?" *Angelicum* 88 (2011): 201–29. I will continue to refer to Catholic documents as the most consistent available source in these matters. The argument itself, however, does not depend on the faith of the Catholic Church.

⁴ African and feminist thought has in other ways also emphasized relationality as contrasted with individual rights.

The Couple

For the couple itself, the decision to get married has implications that go beyond a mere contract. If it were a mere exchange of goods and services, then the notion of a contract might be sufficient. And indeed, this kind of exchange is certainly a part of the reality of marriage: shared bank accounts and merging of households and other goods, exchange of services (cooking, providing income, doing laundry and other chores, caring for and defending the other person)—all of these are part of what marriage is. But these elements are not the essence of marriage, for they might be found in other living arrangements among friends and caregivers as well.

The essential exchange here is not one of goods and services, but of persons.⁵ Such an exchange affects the very identity of the persons involved.

Personal identity is typically articulated in personal *names*. Now on the one hand, our names tend to locate us in a family tree, in a genealogy. In Western custom, the surname or family name identifies this place within the greater whole of a family and its relationships. If the point of reference were instead the larger collective—for example, the human species—then we probably would not *name* individuals, but *number* them; we would treat them as *specimens*.

On the other hand, a mere first name alone might fall into the same problem: a personal name like “John” or “Susie” is a first name that might single out an individual. Individualism therefore might put the emphasis on this first name (and certainly contemporary individualistic culture has shifted to a first name basis). Yet, if this name were all that we have, then our pure individuality would coincide with pure anonymity: *Which John? Which Susie?* How many Johns and Susies are there in the

⁵ This includes a decision over the rest, i.e., the whole of one’s life: “This conjugal communion sinks its roots in the natural complementarity that exists between man and woman, and is nurtured through the personal willingness of the spouses to share their entire life-project, what they have and what they are: for this reason such communion is the fruit and the sign of a profoundly human need” (*Familiaris Consortio*, no. 19). The entire person is given in marriage. For Kant, in the *Metaphysics of Morals*, only the right to dispose over the whole person can give one the right to dispose over a part (which is of course to be thought of as mutual)—not to take a person in its entirety is tantamount to an objectification of the person; C. Langewellpott, W. Mackenthum, W. Dreier, H. P. Schweizer, and J. Frese, “Familie/Ehe,” in *Historisches Wörterbuch der Philosophie*, vol. 2 (Basel: Schwabe, 1972), 899. This might also be one of the problems of cohabitation.

whole collective of society or humanity? Paradoxically, the part of our name which is *not* purely individual (our surname, shared with other family members) is precisely the name that allows us to identify John or Susie as more determinate individuals (albeit not infallibly) – as, say, John *Kowalski* or Susie *Morales*.⁶

In marriage, this surname typically changes, indicating a change of identity for the persons involved. For what happens in marriage is, again, not an exchange of goods and services, but of persons. If this exchange were one-sided, the result would be slavery; but if the exchange is mutual, then the result is to make the two persons one. Now this unity implies a change of identity for each of them. Their unity as well as the new identity is expressed in a common family name. The fact that today this frequently does not happen anymore might be more indicative of a problem than an argument to the contrary.

This change of identity is therefore also a change of location within a system of families. The change consequently affects not only two individuals, but the extended families as well, even beyond the nuclear family. Marriage extends family relationships beyond blood relationships: All the members of each family are now related to all the other members of the other family. They are “in-laws”—with, for example, responsibilities of care, and certain demands for exogamy that now extend to the other family as well.

While one might try to think of all these elements as merely agreed upon in a marriage contract, most of these family members were in fact not asked for their agreement. Nor do the two contracting individuals retain their previous identity purely and simply. They are no longer the ones that entered the contract; their new reality has transcended a mere contract into a different dimension of relationality that affects others as well. The new reality that emerges from their covenant, the new family, transcends mere contractual arrangements.

⁶ It is from these families that they receive even their first name, which is indeed their “*given* name”—given by their families even before they were conscious of their own existence. We know who we are only in identity and difference within genealogical family relationships. Characteristically, orphaned children and those begotten in (heterologous) artificial ways, have trouble answering this fundamental question. Cf. Paul W. McNellis, “The Family and the Analogy of Gratitude,” PhD diss., Boston College, 1993, 68.

Children Do Not Enter a Family by Contract

What has just been said can be further explicated by noting that this essential “exchange of persons” has an end *beyond itself*; marriage by its very own nature is not an end in itself.

Human beings enter many kinds of relationships and contractual unions, based on love or other interests. What distinguishes marriage from all these specifically is not the presence of love, but the fact that it is the place where the next generation originates by an act of procreation. What this means is that marriage cannot be understood apart from children and therefore apart from *family*. Marriage is not for its own sake—just as little as the acorn is there for its own sake, but has its end or telos in the oak tree. Marriage can no more be understood without the family than the acorn without the oak tree. This is so not by the choice of the marrying individuals, but because of the biological facts pertaining to the origin of human life.⁷ The act by which marriage is consummated and that the couple desires is by its biological nature designed to produce offspring.⁸ While this might not be most immediately on the mind of those consummating their marriage, their experience will often be one that transcends their “twosomeness.” It might be articulated as being submerged in the larger forces of nature, which strives to propagate the species. Or it might be, as in the Catholic understanding, God’s presence as creative of a new human soul. In either case, the act of begetting is not an act of conscious fabrication, but rather a self-forgetful act, in which greater forces are at work. The child is the objective correlate of this subjective experience. Both objectively and subjectively, marriage is about more than just two persons. Marriage aims at the origin of other

⁷ This biological fact, insofar as it is normative (which will be discussed below), might put limits on the choices of both the parents (children not as a right, but as a gift emerging from this biological fact) and the government (a right of parents at non-interference against a government’s attempt at restricting their number of children, e.g., China’s one-child policy).

⁸ It is noteworthy that in this regard sexual acts of two persons of the same sex will necessarily be frustrated. This frustration is real, considering that proponents of “same-sex marriage” also claim a right to have children and family. They do understand that children are part of what a family is, yet their acts cannot achieve that telos, which aims at children resulting from their own desired union (two becoming one flesh in a child, merging their genomes). It is reasonable to suppose that no legalization of same-sex marriage will eliminate this frustration.

persons—persons that are the very image of the one-flesh union of the spouses. Children, in their own flesh, merge the genome of their parents, and parents will delight in this image of their union.

At the same time, as persons, children are also *more* than a delight for their parents, or an appendix of their relationship. Their existence is not a matter of their parents' wish fulfillment or satisfaction.⁹ Persons are, as Immanuel Kant emphasized, ends in themselves, not means to other ends. These persons, then, will have their own individual rights that put the parents under obligations.

Does this mean that we are now combining *three individual* rights? Are we now confronted with a contract of *three* persons, such that family rights are derivative from a contractual union of three persons? This does not seem to be the case, for children do not enter their families by contract. We no more choose our parents than they choose us.¹⁰ Contrary to an individualistic worldview—perhaps most radically expressed by Jean-Paul Sartre, for whom everything becomes a choice—most of our life is constituted by circumstances that we do not choose. Such circumstances are part of our finitude and will depend on our location in space and time. This location, however, is in turn determined by the family that we are born into. A short list of those things that we do not choose but that depend on our families of origin might illustrate this. We do not choose: our name, our religion, our race and skin color, our sex, our mother(!)-tongue or father(!)-land, our IQ, our health, our genetic code, our parents, our siblings or the absence thereof, our country and culture, our date of birth and the age we are born into, and our social location. Our family of origin even determines our very belonging to the human species with all its implications, that is, our fundamental biological constitution: our need for sleep or food and hydration, our mortality, even our inability to be everywhere at once, our temporality.

As a result, children are radically “dependent rational animals.” They are not contractual partners of their parents. Just as the identity of their

⁹ That is, there is no right to have children at any price or by any method—but this is a *moral* limitation, not a limitation by government—although the government might have the duty to make this moral limitation respected.

¹⁰ This, of course, does not exclude the necessity of consciously deciding for and affirming our childhood and vocation in the family; cf. Benedict XVI, *The Human Family*, no. 6.

parents has become dependent on the marriage they have entered, so the very identity of children depends on the parents from whom they are born.

All of this does not mean that the family trumps individual rights. In fact, with this radical dependence on the family come dangers of being profoundly damaged by family relationships. That is why in extreme cases the state can interfere with Child Protective Services. Child abuse does, of course, remain a violation of individual rights and so the larger collective is obligated to come to the aid of the individual. The institutions of the common good provide the necessary solidarity where subsidiarity fails.

The rights of individuals within families have not always been constant. The observation of historical and cultural changes need not imply relativism; some changes can be seen as progress, and any variation is at least subject to evaluation. We ourselves, after all, are not always consistent and as such subject to evaluation. Unlike the people of the ancient Roman society, we do not grant family fathers the right over life and death (the *ius necis*, considered a right of the *pater familias*)¹¹—yet in cases of abortion we today again seem willing to grant this right to mothers. While in archaic societies family members are often collectively punished for the misdeeds of their relatives, we would consider this an abuse of individual rights; yet, even today incarcerating a family father will often deprive the other individuals of a family of income and protection. Such variations and inconsistencies do not mean that the rights themselves cannot be made consistent, but precisely that we need to evaluate the various claims in the larger context of families.

This includes correlating family rights with individual rights. Rights of individuals can be violated if one thinks of families too much in collective terms. Still, the fact that in many cases individual rights (and obligations) do trump family rights does not mean that family rights are *derivative from* individual rights. It only means that individual rights constitute a negative boundary for family rights, which in turn are presupposed.

¹¹ The Christian *religio* seems to have trumped the Roman family *pietas* for the sake of the individual; cf. Lk 14:26. (NAB: “If any one comes to me without hating his father and mother, wife and children, brothers and sisters, and even his own life, he cannot be my disciple.”) This is emphasized by Rosemary Ruether, *Christianity and the Making of the Modern Family* (Boston: Beacon Press, 2000), 25ff. But obviously that does not make Christianity inimical to the family; rather, the Church’s own well-being “passes by way of the family” (*Charter*, L), which is an image of the Trinity (*Familia-ris Consortio*, no. 11).

2. Family Rights Are Not Derived from the Common Good

If family rights are not derivative from individual rights, but in many ways presupposed, are they perhaps derivative from the larger common good?

If so, then the state would be more fundamental than the family. The state would precede the family logically, even if not historically. Accordingly, the state would have the right to define what a family is. The state might then further have the right to assign family members to their families and regulate their relationship according to considerations of the common good.¹² In some cases the state appears to do so legitimately: by enforcing, for example, the incest taboo and the duty of exogamy, the state might require the family to remain open for the good of the larger community. However, this does not mean that the incest taboo is itself an invention of the state.

Other laws might even produce a genuine conflict with family rights, which could not be the case, if family rights were the product of the state to begin with. The historical record seems to show that the state finds itself *in conflict* with independently existing families and their rights rather than being *the ground for* their existence. For example, Sophocles's *Antigone* dramatizes how the universal law of the state violated the right of the family to bury its members. The latter right is not a matter of mere selfishness or unrightful particularism of the human family. In Sophocles's view it is a genuine right, and in fact even a duty of family members. While the state has its legitimate rights and claims, they are often difficult to harmonize with family rights. This would not be the case, if these were derived from the former. At times it can even be difficult to determine which of the two—state or family—is embodying a form of illegitimate particularism: The laws of the Greek *polis* tried to undermine the “international” family ties of its aristocratic members. Here we find the family being a threat to the state precisely because it had a *wider* reach, and was more universal than the state.

¹² This seems to be happening currently in a California bill (SB 1476) allowing children to have three legal parents to accommodate the biological impossibility of same-sex marriage (itself a redefinition of marriage and the family by courts as public institutions). Jennifer Roback Morse, “Why California’s Three-Parent Law Was Inevitable,” *Public Discourse*, September 10, 2012, <http://www.thepublicdiscourse.com/2012/09/6197/>.

Either way, the relationship has been one of conflict in the past, and remains so today.¹³

Might *adoption* indicate that the state is in charge of arranging family relationships? After all, here the state seems to arrange for family membership beyond blood relationships. It is a contract, into which at least the parents enter by choice, and it is a contract not with the child, but with the community at large. Parenthood appears to be delegated by and therefore derived from the state.

On the other hand, adoption is the exception that proves the norm, rather than being itself the norm. Why is it the exception? Because adoption itself cannot be understood without the background of biological families. The very existence of the child presupposes the biological background; it is not provided by adoptive procedures, but presupposed by them. Adoption is precisely the exception that is trying to remedy the situation in which the biological family is missing. If such a family is present and functioning, the state cannot take away the children for the sake of adoption. It seems evident that this would be a crime and a violation of family rights¹⁴—which would not be the case, if the family were derivative from the state. Indeed, the institution of adoption tries to restore orphans to families; that is, the assumption is that the family is a more natural place for children to be than a collective state-run orphanage.¹⁵

What about the right of the state to impose burdens, such as taxation, on families for the sake of the common good? Does not the common good trump the family in this case?

It does not, for such burdens require justification (just as the taxation or expropriation of individuals does). Indeed, the common good itself, which requires such burdens, arguably cannot be defined without

¹³ Another instance of family relationships reaching beyond state boundaries are families of emigrant workers. Cf. the *Charter*, art. 12: “(b) Emigrant workers have the right to see their family united as soon as possible. c) Refugees have the right to the assistance of public authorities and International Organizations in facilitating the reunion of their families.” On the other hand, families have obligations beyond themselves, for the larger common good, e.g., for the poor (similarly, *Familiaris Consortio*, no. 47).

¹⁴ The Soviet Union considered children as belonging to the state or party; McNellis, “The Family and the Analogy of Gratitude,” 55.

¹⁵ The same would of course be true for orphanages run by religious sisters or other private institutions. Cf. also *ibid.*, 82ff.

reference to the families. Families largely constitute this common good; they spell out its meaning.¹⁶ The common good defined apart from family structures remains exceedingly abstract. It will be based only on basic needs, not on a form of life.¹⁷ It will refer to asocial individuals and their satisfaction, while ignoring the fact that the human person is essentially relational. Relationality implies needs that cannot be provided for by either the individual itself (which would not be relational) or by the state (which is impersonal). We all have a need for some deeper relationships with other particular persons—some by choice (friendship), others by familial affinity. It seems likely that the kind of intimacy and affectivity that is needed and normal in families would be experienced as disgusting and intrusive, if it were to be provided by the larger society.

The family, on the other hand, provides in its relationality an irreplaceable training ground for selfless¹⁸ and responsible behavior.¹⁹ It is important to notice that this does not exclude a kind of favoritism that

¹⁶ E.g., schools are to support families and the economy is for the family, not vice versa. *The Charter of the Rights of the Family* emphasizes that the family is not only a unique place for transmission of life, but also that it is uniquely suited to teach and transmit cultural, ethical, social, spiritual, and religious values; *Charter*, letters D and E; cf. *Familiaris Consortio*, no. 28. All of these are crucial elements of the common good, which becomes concrete in the life of the family. MacIntyre would see the family as too small; cf. Alasdair MacIntyre, *Dependent Rational Animals* (Chicago: Open Court, 2001), 133–34. Still, local communities could very well be conceived as networks of families, or “family associations” (*Charter*, art. 8).

¹⁷ This would leave us with the bare juxtaposition of hedonism and administration: “It is as if the heart of man had fallen out, leaving only brains and belly.” Esolen, “The Alliance of Narcissus and Leviathan.” In application to our topic, the government is the brain, the bare physiological needs and wants are the belly—while the family is the heart of society.

¹⁸ “The mark of any society is concern for the common good, and where better than in the family do I learn that I have goods that are not simply *mine* but *ours*? Parents and children, each with their private goods, must give precedence to the shared or common good of the family if it, and they, are to flourish.” Ralph McInerny, “The Marrying Animal,” *Catholic Thing*, June 2, 2009, <http://www.thecatholicthing.org/content/view/1673/2>. This can require struggle and bargaining; *Charter*, letter F. Cf. Amartya Sen, “Gender Inequality and Theories of Justice,” in *Women, Culture and Development: A Study of Human Capabilities*, ed. Martha Nussbaum and Jonathan Glover (Oxford: Oxford University Press, 1995), 259–73, esp. 260ff.

¹⁹ In Europe, Otto von Habsburg suggested giving voting rights to families, because individuals without families cannot be expected to vote from a concern for the future common good (including the ecology), whereas concern for one’s children educates in such responsibility.

makes it legitimate to prefer family members in situations of triage.²⁰ Under normal circumstances and all things being equal, our obligation to family members is prior to our obligation to other people and to the state.

In this relationality, the family can fulfill functions that the state cannot, which illustrates the family's important subsidiary role in society itself.²¹ And, indeed, family rights are important for spelling out the importance of the principle of subsidiarity, by virtue of which the larger society should not assume responsibilities that can be fulfilled on the local level, including the family. At the same time one must not make the mistake of thinking that family rights are derived from the family's functionality, that is, from the family's practical and economic usefulness. All subsidiarity is based on who we are as human beings, not on considerations of utility.²² As embodied rational beings we are relational yet finite in whom we can relate to in an embodied and personal way. Our biological family is a first point of reference for such finite relations. Asking us to relate to all of humanity on the same level would be profoundly dehumanizing. Governments themselves take a similar stance when they (legitimately) ask us to consider national interests before those of other nations.

This means, conversely, that the state does not have the primary responsibility and duty to provide for children (education, clothing, and feeding). This is the responsibility of the family. It is important to notice the danger that, if family structures were to be destroyed or missing, the state would have to assume this role by default. This can be illustrated in matters of education, particularly religious education. To educate children in a faith or to raise them as atheists or agnostics (itself a form of religious education) is the responsibility of parents, which they fulfill according to their conscience and best knowledge.²³ In the absence

²⁰ I.e., against the suggestion that we need a utilitarian calculus to decide whether we can save our own children before we save those of others. While Hume is sometimes quoted to the contrary—"Thus the relation of blood produces the strongest tie the mind is capable of in the love of parents to their children, and a lesser degree of the same affection, as the relation lessens"; David Hume, *A Treatise of Human Nature*, Book II, Part II, Sect. IV, *Of the Love of Relations*—it is not clear that this has normative implications for Hume; for him it is a fact, not a value.

²¹ Including economic and other support by extended families.

²² Cf. also Esolen, "The Alliance of Narcissus and Leviathan."

²³ The *Charter*, art. 5, sees the conferral of education in continuity with the conferral of

of family structures, *the state* would have to decide in which religion children are to be raised, or whether they should be deprived of any religious upbringing, as the “new atheists” demand. Neither choice is a neutral option, nor can a choice be avoided.²⁴ In other words, the state would be required to establish a state religion—such as Christian, Muslim, Mormon, or atheist.²⁵ Obviously, no one would want to give the state this kind of responsibility. But since children themselves are not in a position to decide for themselves, the only other option is to support families in their choice.²⁶

These considerations are all the more reason to hold that families do not derive their rights and existence from the state.

life itself by the parents. The right of parents to educate their children also includes a right for governmental protection of children “from the negative effects and misuse of the mass media.” Ibid.

²⁴ To wait until children are old enough to decide for themselves is already a decision to deprive them of something possibly important to their childhood. Considering the nature of the case, it might be similar to not teaching children a language until they are old enough to choose their mother language. The consequence would be that they would never learn any language.

²⁵ The awkwardness can be shown by an example, curiously mixed with that of adoption: the governments of Spain and Morocco agreed that Moroccan children adopted by Spanish families must be raised as Muslims; this obliges the Spanish government to establish a “control mechanism” that would enable Moroccan religious authorities to monitor the children until they reach the age of eighteen to ensure they have not converted to Christianity; cf. Soeren Kern, “The Islamization of Spanish Jurisprudence,” *Gatestone Institute*, February 20, 2013, <http://www.gatestoneinstitute.org/3595/spain-adoption-islam>.

²⁶ This might be generally true for the transmission of culture, language, and traditions. These, too, are not consciously and purposely created by the state (or any individual). For religious education, cf. *Dignitatis Humanae*, no. 5: “The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive. Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education, and the use of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the rights of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all.”

3. Family Rights Are Rooted in Biological Relationships

From what principle are family rights derived, then? As an alternative to the derivation of matters of justice from either the individual or the state, thinkers like Michael Sandel suggest the readmission of Aristotelian considerations of virtue and related teleological notions as an important contribution, even in matters of marriage and the family.²⁷ Taking an even stronger position on the underlying biology, Alisdair MacIntyre now accepts the “metaphysical biology” of “dependent rational animals.” Indeed, if we are *dependent* animals by virtue of our biological nature, then we are also for biological reasons relational. Our biology produces a reciprocal indebtedness with normative implications.²⁸ I would like to suggest that families are the locus in which these normative implications generate rights that are *sui generis*.

If membership in a family can be traced neither to the choice of parents and children nor to a decree of the state, then it can only be of biological origin. The question is whether biological facts can have normative implications. I claim that they do. Contrary to the modern assumption of a radical distinction between “fact” and “value,” “ought” and “is,” the facts of nature do have normative implications. For Hans Jonas, parental love is the paradigmatic moral response for an ethics based on responsibility—a responsibility that emerges from a fact; it is an obligation that one contracts, not by contract, but by biology.²⁹

We all assume the normative implications of biological facts when we say that someone “ought” to go to the doctor, or that we have a “right” to health care in order to restore the biological functioning of our human organism. The biological functions of our human organism do indeed imply moral claims and even human rights. Basic biological needs such as food or sleep are the basis for claims of social justice, health care, and other rights.

This is not different for family rights. As we have seen, a family starts with a conscious decision by a couple for marriage, that is, by two per-

²⁷ Michael J. Sandel, *Justice: What's the Right Thing to Do?* (New York: Farrar, Straus and Giroux, 2009), 253ff.

²⁸ MacIntyre, *Dependent Rational Animals*.

²⁹ Hans Jonas, *The Imperative of Responsibility* (Chicago: University of Chicago Press, 1985), 130.

sons who are not biologically related. But this is merely a starting point with consequences that transcend contractual decisions. From this starting point there is constituted a whole new reality with obligations that seem to have no other foundation than the biology of procreation.³⁰

Consider the fact that women become vulnerable physically and emotionally by the fact of childbearing, and that this seems to imply certain claims to protection and support, primarily from the husband. While this might be considered the right of an individual (the wife), the primary respondent is a family member.

With these procreational relationships comes a biologically rooted distribution of family roles. Much as this is called in doubt today, some biological and hormonal facts are so basic that they can be ignored only at the peril of committing an injustice against the vulnerability of women.³¹ Furthermore, the need of children for their mother is different from their need for their father. Children might therefore claim an intrafamilial right to the presence of both parents—a right that is rooted in the biological differentiation of the sexes.

Even more basic are the rights of children for food and clothing. The primary respondents of these rights are again the parents (who in turn have a right to wages that can sustain a family³²). The *parents* are responsible for the feeding and clothing of their children, not the next-door neighbors or anyone else. Only the parents are held accountable for neglect. There is no other reason for this than that these children are their biological offspring. Again, biology has normative consequences.

Parents also have the duty to educate their own children—but not

³⁰ This is true even for the emerging relationships to in-laws; for these respective families are themselves families only by virtue of procreational relationships.

³¹ Such claims are acknowledged by Sen, "Gender Inequality," 264ff. The lack of the same thing might turn out to be more crippling to one sex than to the other (e.g., different types of nutritional needs, especially for *pregnant* women; there might be also different psychological needs). Susan Wolf, "Commentary on Nussbaum," in *Women, Culture and Development: A Study of Human Capabilities*, ed. Martha Nussbaum and Jonathan Glover (Oxford: Oxford University Press, 1995), 105–15, esp. 114. The *Universal Declaration of Human Rights* (25/2) entitles motherhood and childhood to special care and assistance. Generally speaking, both the making of differences where there are none and treating people identically where there is no identity lead to injustice.

³² For the Catholic understanding, cf. *Pacem in Terris*, no. 19–22; the *Charter*, art. 10, acknowledges that a "family wage" should make it possible for the mother to stay home.

those of other parents.³³ Accordingly, they are held accountable for the mischief of their children. This implies in turn a duty of children to obey their parents (but not a duty to obey the parents of other children, except by expressed delegation from their own parents). Parents have a right to punish their children,³⁴ but they would surely protest, if their neighbors would try to do the same to their children. Even abortion advocates, while claiming the right to end the life of their children in the womb, would typically protest if other people would attempt to do the same in their place.

Rights and duties based on biological descent are not limited to the care of children. Indeed, caring for elderly parents is the primary responsibility of their own offspring, who thereby reciprocate the care given them as children.

Children are also the default persons to make end-of-life decisions for their parents. While the elderly might transfer this duty to others, in the absence of a spouse the children are the default respondents—and this not through designation by the state, but simply by biological relatedness.

Likewise, children are the default recipients of the inheritance of their parents. The state might tax this inheritance, but to take it away entirely would be a confiscation of family property that would constitute a violation of family rights. Inheritance rules are not an unjustified favoritism, but are meant to help guarantee the stability and survival of the family and its persistence over time.³⁵ Inheritance is therefore a right of the family as such, and is independent from the persistence of the individuals (whose death is, after all, precisely the cause of the inheritance case). The family has an identity that outlasts that of its constitutive individuals; it is a subject of rights that include the right of being sustained by the property that is passed on through the generations.

Finally, the emotional bonds and the mutual trust that are generated by biological relatedness also constitute rights and obligations. A

³³ Teachers have this right to educate by delegation from the parents only. According to the *Charter*, art. 5, parents have the right to freely choose a school and remove their children from classes conflicting with their moral and religious conviction.

³⁴ This punishment is not retributive, but educational and therefore limited; as mentioned above, it does not include the death penalty. Teachers have a right to punishment by delegation from the parents only.

³⁵ *Charter*, art. 9.

first indication of this fact is that family members do not have to testify against each other in court, because this would violate the fundamental and important bonds of trust in the family.³⁶ Also, detainees have a right to remain in contact with their families (and care has to be taken that the family is adequately sustained during the time of detention).³⁷

Also, while emotional bonds cannot be generated on demand, they are important for the healthy development of children. The family is the irreplaceable source for such bonding and in this the most fundamental school and “language of peace.”³⁸ In this sense, too, “man does not live by bread alone,” and merely feeding children in large anonymous communities (as perhaps Plato envisioned) is not enough. Again, this constitutes a right of children to the presence of both parents, without which they might never develop the necessary and basic human dispositions.³⁹ For example, without the love of their parents and the trust developing from it they will typically become incapable of any other learning required from them in later life. For any learning requires a minimum of trust in those from whom one is to learn. Not having had the opportunity to learn this trust as a child will lead to a lack in this basic human disposition. Children cannot become “*independent* reasoners” (MacIntyre) unless they have been *dependent* reasoners first.

But such emotional bonds are not only important for children. Children in turn are themselves a source of human development for their parents, such as requiring responsible action from their side. Forgiveness and gratitude in both directions are arguably learned primarily in family relationships. At one stage or another, the generations will be dependent on each other, parents on their children, and children on their parents. Family membership constitutes asymmetrical, chronolog-

³⁶ A Chinese policy demanding public denunciation of family members is a clear violation of such a right. McNellis, “The Family and the Analogy of Gratitude,” 56.

³⁷ *Charter*, art. 9d; likewise, neither immigration nor deportation must be allowed to separate families permanently.

³⁸ Benedict XVI, *The Human Family*, no. 3.

³⁹ If this implies a right to know one’s parents, then Plato’s suggestion that children should not know their father is a clear violation thereof. Children conceived by heterologous IVF are typically in search of their father—often with good reason, because unintentional incest has become possible. Further thought might be given to the duty of the state in these matters.

ically structured relationships of indebtedness that are fundamental to human existence.

Apart from other considerations, this should also play a role in divorce laws. Here the rights of children might too often be neglected. According to Allan Bloom, divorce is worse for children than the death of their parents, because unlike death, divorce is voluntary. Children's experience is that, if human relations can be dissolved in this voluntary manner, then why could they not be dissolved similarly between parents and children? The threat of abandonment and the impossibility of trust seem implied, even where divorce does not actually take place. This threat affects children not merely emotionally, but on the level of their very self-understanding. The philosopher Robert Spaemann points out that children have to think of their father and mother as a unit in order to understand their very own identity. They literally are the one flesh union of their parents by combining their genetic material. And this confirms once more that family relationships are irreducible; they even constitute the basic identity of their individual members.

In conclusion, family rights are not derivative, but *sui generis*. The family is a "society in its own original right."⁴⁰ Families are constituted not by contractual but by biological relationships of their members. Children do not choose their parents any more than parents choose their children. Families are not founded for the pursuit of a common interest. They are a communion of persons who do not share a common goal, but one another.

Families mediate between the state and the individual, and cannot be deduced from either of these opposites. While the state and the individual cannot be deduced from the family either, the family can in turn make both state and individual more intelligible than they would be in themselves. Families display the fundamental human nature in its biological and relational roots—roots without which humanity would be crippled. The family might be the prime analogate for what human community is, mediating individual and state, yet irreducible even to this mediating function. One cannot derive the family from any other principle. One has to have seen and lived family life before one can know it.



⁴⁰ *Familiaris Consortio*, no. 45, quoting *Dignitatis Humanae*, no. 5.

