

CHRISTIANITY AND FAMILY LAW

The Western tradition has always cherished the family as an essential foundation of a just and orderly society, and thus accorded it special legal and religious protection. Christianity embraced this teaching from the start, and many of the basics of Western family law were shaped by Christian theologies of nature, sacrament, and covenant. This volume introduces readers to the enduring and evolving Christian teachings on betrothals and weddings; marriage and divorce; women's and children's rights; marital property and inheritance; and human sexuality and intimate relationships. The chapters are authoritatively written but accessible to college and graduate students and scholars, as well as clergy and laity. While alert to the hot-button issues of sexual liberty today, the contributing authors let the historical figures speak for themselves about what Christianity has contributed and continues to offer to the protection and guidance of our most intimate association.

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For Eliza Ellison and Sara Haigh Hauk

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Preface

This volume is one of several fresh introductions commissioned for the Cambridge Law and Christianity Series. Before this book series was established, Cambridge University Press published two similar anthologies, coedited by John Witte, Jr. and Frank S. Alexander: *Christianity and Law: An Introduction* (2008) and *Christianity and Human Rights: An Introduction* (2010). Soon, Cambridge will publish Norman Doe's *Christianity and Natural Law: An Introduction*, and the press has commissioned additional introductory volumes on "Christianity and Constitutional Law," "Christianity and Criminal Law," "Christianity and Private Law," and "Christianity and Economic Law." Others titles will soon follow.

Each of these introductions offers fresh scholarship into historical, doctrinal, and comparative perspectives on Christian sources and dimensions of familiar legal topics. Although the chapters are written by leading experts, they are intended for nonspecialists in colleges and in graduate and professional schools, as well as for clergy, interested laity, and scholars from other fields. The aim is to illuminate what Christianity has contributed and continues to offer to the world of law, particularly in the West.

The volume in hand analyzes Christian influences on Western family law. The main legal topics include the formation, maintenance, and dissolution of marriage; relations between husbands and wives, parents and children, and siblings and kinsmen within and beyond the household; and important dimensions of human sexuality and intimacy. This volume also touches more lightly on related legal topics of marital property and inheritance; the structure of the household and its role in public and private life; and household order, including women's rights, children's rights, and master-servant relations. Christian theology and the church's canon law had a decisive influence on these topics of Western family law for nearly two millennia.

From the fourth to the nineteenth centuries, church and state cooperated in the governance of the marital family, and an established Christian culture shaped sexual ethics. Today the modern secular state has assumed jurisdiction over most family law questions, and Western culture has disestablished Christianity and liberalized sex, marriage, and family norms. Nonetheless, many churches in and beyond the West continue to maintain internal laws and procedures to govern the family lives of their members, and Christian leaders continue to influence family law policies and advocate for their reform.

To tell this complex story in a single volume, we focus on twenty-eight titans who helped to shape the theory and law of sex, marriage, and family life in the West from biblical times until today. We have selected illustrative figures whose contributions to this tradition were both distinct and enduring. We have sought to balance Catholics, Protestants, and a few Orthodox figures who had influence in the West, and have placed leading popes, emperors, and kings alongside influential jurists, theologians, and philosophers. What emerges is a running set of portraits chronologically arranged – Moses, Jesus, St. Paul, Emperor Constantine, St. Augustine of Hippo, St. John Chrysostom, Emperor Justinian, Theodore Balsamon, Gratian, Peter Lombard, Pope Alexander III, Pope Innocent III, Thomas Aquinas, Martin Luther, John Calvin, King Henry VIII, Thomas Sanchez, John Selden, Mary Wollstonecraft, Abraham Kuyper, Emil Brunner, Pope Leo XIII, Pope Pius XI, Pope Paul VI, Pope John Paul II, Paul Evdokimov, D. S. Bailey, and Jean Bethke Elshtain. Scores, if not hundreds, of others deserve a place in this gallery of leading Christian thinkers on the family, but this set of portraits provides a cursory yet thorough introduction and illustration of what Christianity has offered to the theory and law of Western family life.

Each chapter follows a common structure to facilitate its use as a classroom text and research guide. Beginning with a short biographical introduction to its subject, each chapter explains why that person is important to the development of Western family law, concisely analyzes the person's main contributions, and ends with a list of recommended readings. The editorial introduction sets these twenty-eight figures in context, distills the key family law teachings of the Western tradition, and identifies their main points of convergence and contestation.

This volume eschews strong normative and confessional claims, seeking to edify, rather than enflame, popular debates today about sex, marriage, and family life. The contributing authors have let the historical figures speak for themselves about a wide range of Christian teachings on sex, marriage, and family life. This volume also avoids strong methodological or disciplinary

biases. Instead, it incorporates law, theology, ethics, politics, history, women's studies, and LGBTQ studies to assess central topics of Christianity and family law.

We would be remiss if we did not express our deep appreciation to a number of people who have supported the production of this volume. We give special thanks to Mr. Cary Maguire, president of the Maguire Oil Company, who so kindly underwrote the costs of this volume and encouraged its preparation. It has been a joy to get to know Mr. Maguire in recent years, and for John Witte, Jr. to have the privilege of sitting in the Cary and Ann Maguire Chair in Ethics and American History at the Kluge Center in the Library of Congress to plan this and other volumes in the Cambridge Law and Christianity Series. We are indebted to John Berger, senior commissioning editor in law at Cambridge University Press, for masterminding the production and publication of the series. Amy Wheeler, in the Center for the Study of Law and Religion at Emory University, has earned our great gratitude for her skilled administrative support of all aspects of this volume. Finally, we express profound thanks to each of the authors of these chapters for distilling their immense learning into pithy and accessible essays that provide sharply etched portraits of a few of the great men and women who have shaped Western family law.

We two editors have enjoyed many years of friendship, both with each other and with our wonderful wives, Eliza Ellison and Sara Haigh Hauk, to whom we dedicate this volume.