

RECOGNIZING THE ROOTS OF SOCIETY IN THE FAMILY, FOUNDATION OF JUSTICE

• David S. Crawford •

“My precise criticism of liberalism is that it remakes the person and the ‘family’ in the image of its voluntarist and procedural concept of justice and the basic anthropology this entails.”

*Honor your father and mother,
so that you might live out your days at length
in the land the Lord your God has given you*
—Exodus 20:12

I. Introduction: Posing the Question

1. The title given here¹ makes a claim: viz. that the family is or should be conceived as the “root” or “foundation” of society and justice. In doing so, it evokes the teaching of *Familiaris consortio* that “the family is ‘the first and vital cell of society’” (FC, 42).² Far from being an obscure reference, this teaching of the 1981 Apostolic Exhortation is echoed by numerous other references in the Church’s

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²Quoting *Apostolicam actuositatem*, 11: “*prima et vitalis cellula societatis*.”

magisterium to the idea that society is in some sense rooted in the family.³ The title also makes reference to the Fourth Commandment, “Honor your father and mother, that your days may be long in the land which the Lord your God gives you” (Ex 20:12). Of course this reference directs us to the question of the place of “honor” in the family and therefore its role in establishing the root or foundation of society and justice.

I suppose that most people would almost instinctively agree with the general statement that society is rooted in the family. However, what this affirmation means might involve greater difficulty. Setting aside for a moment the reference to justice, the claim that family is the foundation of society could indicate only that the procreative unity of the male-female couple is necessary for the perpetuation of the human race, and therefore of the broader society, from generation to generation. At first glance, this simple meaning would seem so obvious as to be almost pointless as a grand statement or teaching of the Church. There are, however, a host of challenges that seem to call even this most obvious meaning into question. These challenges range from the social and cultural destabilization of marriage and family to the advent of biotechnologies that would bypass the need for them altogether.

In addition, however, the claim could mean that the family offers the matrix not only for the physical beings but also the primary formation of their personalities and moral character. Here is where the question of justice might come in. The family is where justice (considered as a “virtue” in the classical sense, or considered as a “value” in the modern sense) is taught. But also the family is where we learn to love our neighbor. Here the family is seen as a paradigm for how people should view others in society and for the fact that we come from a common source in God and have a shared dignity.

Finally, the idea of family as root and foundation could mean that society owes something to the family, that the family is more *fundamentally* human than civil society, and that while there is a real mutuality of function and end, the family has priority over civil society, and that one of civil society’s roles is to provide the stability of conditions and resources necessary for the family to flourish. This

³E.g., *Letter to Families*, nos. 2, 4, 6, 7, 13, and 17; *Catechism of the Catholic Church*, 2207; *Compendium of the Social Doctrine of the Church* (Libreria Editrice Vaticana, 2004), 123.

last sense, of course, would find support in the Church's doctrine of subsidiarity.⁴

2. The given title, however, also suggests that the roots and foundation are in some fashion difficult to "recognize," that neither part of the opening claim—i.e., neither the "roots of society" nor the "foundation of justice"—is as simple to understand as we initially thought. In part this difficulty is made obvious by the advent of the biotechnologies and social and legal developments I mentioned above. These would seem to separate the elements of marriage, sexual differentiation, and procreation, disaggregating what had seemed to earlier generations to be the family's vital elements. But more fundamental than these and paving the way for them, it seems to me, is a conceptual problem. Once we move beyond abstractions and generalities, it appears, we have difficulty saying exactly what a family is. In modernity, we are reticent to declare that there is any inherent form to natural human communities such as marriage or the family. To do so seems to run contrary to human freedom and choice. It seems to impose something extrinsic that threatens a subtle oppression. Rather, we want to make whatever form emerges depend entirely on voluntary relations.

The question of justice complicates the issues further. In what sense is the family really a "foundation of justice"? Many thinkers in the past have worried that the family could be an obstacle to justice, rather than its foundation. Consider the ambivalence of thinkers as diverse as Plato⁵ on the one hand and Engels⁶ on the other. Likewise, many writers in our own times have argued that the family is merely a social construction, perpetuating various types of domination and power. And of course, if the family is opposed to justice, then it certainly should not be set at—or maintain its status as—the "root" of society. It is therefore not at all obvious that the family is a foundation of justice.

3. By comparison to these thinkers, the dominant liberal traditions of Europe and America seem to present a much friendlier attitude. And yet it is precisely within this liberal tradition that the

⁴Cf. John Paul II, *Centesimus annus*, 48 (1991); Pius XI, *Quadragesimo anno*, 79 (1931).

⁵Plato, *The Republic*, bk. V.

⁶Frederick Engels, *The Origin of the Family, Private Property and the State*, trans. Alick West (London: Lawrence and Wishart, 1972).

most persistent resistance occurs to the idea of a natural form to human relations. Hence, the idea of “foundation” tends to be reduced to a moral or educative role. The family is the foundation in the sense that it offers the moral formation necessary for the smooth and stable functioning of liberal institutions. If I cannot contain my appetites, how can I delay immediate satisfactions in favor of long-term economic or political goals? What is more, without some level of virtue, how can I know what those goals should be? Should I pursue pornography or fine art?⁷ The virtues are therefore necessary for these institutions to function in the “right” way, and it has always been the core task of the family to instill virtue in the young.

But *Familiaris consortio*’s “first and vital cell” not only highlights a primacy or antecedence (“first”), it also draws on the analogy of an organism (“vital cell”) to characterize this relationship. Indeed, the passage goes on to speak of “vital and organic links to society.” It does of course speak of the role of generating new life for society and the task of education in the virtues. Yet the analogy of “organism” would seem to suggest that the relationship is rooted even more deeply. Thus, John Paul II’s *Letter to Families* tells us that the family is “organically linked” to the idea of a “civilization of love” (13). This organic sense is also expressed in various ways in other Church documents. For example, the *Compendium of the Social Doctrine of the Church* tells us that the family should serve as a model for society, since it avoids the extremes of both individualism and collectivism through its attention to the person.⁸ Elsewhere, the *Compendium* speaks of moving “beyond a contractualistic vision of justice, which is a reductionist vision, and [opening] up also for justice the new horizon of solidarity and love.”⁹ Continuing the theme of organism, *Letter to Families* points out that the state is both similar and dissimilar to the rest of society. It is less “family-like,” but nevertheless “has, in some sense, a soul of its own.” “Closely linked to this ‘soul’ is the family, which is connected with the state precisely by reason of the *principle of subsidiarity*” (17). The idea that the family offers the foundation of justice, that it is “closely linked”

⁷Cf., e.g., Mark Broski, “Know Thy Limits: The Noneconomics of Abundance,” *Journal of Markets and Morality* 4 (Fall 2001): 325–332.

⁸*Compendium of the Social Doctrine of the Church*, 125 (italics removed).

⁹*Ibid.*, 117.

to the “soul” of the state, suggests that the notion of justice taught by the family has an intrinsic relationship to the meaning of justice as it is embodied in the laws and civil institutions of the larger society. Indeed, it suggests that the notion of *what* justice is will finally and radically depend on our notion of *what* the family is. According to this understanding, then, the family in some way offers society not only the inculcation of justice, but also justice’s inner form.

I believe that it is at this point that liberal thinkers will have deep-seated problems with the notion of the family as “first and vital cell.” Liberalism’s rejection of comprehensive views of the good as a legitimate part of political discourse precludes any positive or definite statement about who the person is or what his nature is.¹⁰ But, as we will see more thoroughly later, it is precisely the goal of the term “organic” to convey the idea of the family as offering a definite answer to the question of who and what the person is, and it is this answer that should give shape to the meaning of society and its public institutions. As I will argue, the phrase “first and vital cell” can be said to describe the family’s antecedently organic relationship with society.

In the next section (II), we will discuss and criticize some of the core principles of liberalism as they relate to the family. In particular we will address and criticize the claim that marriage and family are fundamental on a factual basis that does not require the public acceptance of a definite anthropology or a comprehensive theory of the good. Then (III) we will contrast what I believe is the anthropology contained in *Familiaris consortio*’s notion of the family as “first and vital cell” with the anthropology presupposed by liberalism’s understanding of justice in primarily procedural terms. Specifically I will argue first that the family discloses the identity and nature of the person who is the subject of justice, and who should be presupposed by law and civil institutions. By contrast, I will argue, the effect of liberalism’s core principles is to offer a tacit but

¹⁰For a discussion of liberalism’s rejection of ontological views, see David L. Schindler, “The Significance of World and Culture for Moral Theology: *Veritatis Splendor* and the ‘Nuptial-Sacramental Nature of the Body,’” *Communio: International Catholic Review* 31 (Spring 2004): 111–142: “Characteristic of liberal societies—I am thinking here especially of Anglo-American societies—is the assumption that we as a (public) culture can avoid ontological views regarding the world, freedom, and culture” (135).

fragmentary anthropology that conceives the person in a fundamentally non-familial and indeed androgynous way. Thus, liberalism, even in its most benign forms, has the tendency to shift the culture in ways that displace the foundational importance of the family. Finally (IV), I will conclude by summarizing the implications of these contrasts.

II. Liberalisms

A. Procedural justice

1. In his important book, *Whose Justice? Which Rationality?*, Alasdair MacIntyre argues that different conceptions of practical rationality in different traditions have resulted in different conceptions of justice, which come into conflict in liberal societies today.¹¹ The result is that, whatever concept of justice one adopts, it will necessarily be mediated through this liberal framework. It can only be validated as a legitimate part of social dialogue insofar as it is radically qualified by the liberal context of the debate. The result tends to be that these traditions become assimilated into liberalism, generating a variety of interpretations. This observation of MacIntyre complicates our task, because it highlights the fact that there are various strands of liberalisms.

Nevertheless, we can at least point to what seem to be common or core principles. Perhaps the most fundamental of these, and one repeatedly articulated and expounded by liberalism's advocates, is a strong protection of individual liberty to develop and actualize preferences and conceptions of the good.¹² From this starting point come a variety of characteristic political, legal, social, and cultural implications and consequences, such as the emphasis on rights and personal autonomy, of mobility and change in all levels of society, of continuous economic expansion and technological progress, of constant turnover in fashion and taste, of a general reduction in the importance of cultural and religious traditions, and

¹¹Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: University of Notre Dame Press, 1988), chs. 17 and 20.

¹²Cf. *ibid.*, 344.

so forth.¹³ In order to effectuate this first principle, a second juridically oriented one is required: politics, laws, institutions, and actions in the public order must be “independent of any particular conception of the good,”¹⁴ that is to say, of ontological and moral positions concerning the “highest” or “comprehensive views” or ultimates. To put the question differently, the public order strives to maintain neutrality regarding set or definitive theological or philosophical anthropologies. A particularly striking expression of this principle may be found in the famous statement of the United States Supreme Court:

At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.¹⁵

In particular, however, we are interested in understanding the question of justice’s “foundation” in the family. While, as just mentioned, the various versions of liberalism are accompanied by various versions of justice—for example, justice as fairness,¹⁶ as entitlement,¹⁷ as merit or desert, and so forth¹⁸—our two core principles imply that each of these can only be instantiated as some

¹³Cf. Ronald Beiner, *What’s the Matter with Liberalism?* (Berkeley: University of California Press, 1995).

¹⁴Ronald Dworkin, “Liberalism,” in *Public and Private Morality*, ed. S. Hampshire (Cambridge: 1978), 127. Or, as Martin Rhonheimer puts it, “questions and doctrines about the realization of the highest moral values, such as the attainment of happiness, religious truth and eternal salvation, are excluded from the realm of the political, so that their conflictive potential is neutralized” (“The Political Ethos of Constitutional Democracy and the Place of Natural Law in Public Reason: Rawls’s ‘Political Liberalism’ Revisited,” *The American Journal of Jurisprudence* 50 [2005]: 1–70, at 25).

¹⁵*Planned Parenthood v. Casey*, 112 S.Ct. 2803, 2807 (1992).

¹⁶John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971); *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 1993).

¹⁷Cf. Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974).

¹⁸Cf. Tom Campbell, *Justice*, 2nd ed. (New York: St. Martins Press, 2001).

version of procedural justice.¹⁹ Liberalism, by its very nature, attempts to mold state and political institutions that will operate neutrally with respect to set visions of the good life. Hence, its main task—pellucidly articulated by the above quotation from the Supreme Court—of enabling individual and factional realizations of privately held conceptions of the good (within the supposedly “pluralistic” atmosphere of modern Western societies) implies, in the final analysis, a purely procedural or formal arbitration between these competing conceptions, limiting the enactment of those conceptions only for the overall maximization of an indifferent or abstract freedom for self-invention.

Now, the question of marriage and family is the point at which the procedural neutrality of liberalism is especially challenged. This is because they seem to constitute in some fashion a “natural” and pre-political institution, an institution that entails both life-shaping conceptions of the good and innumerable social, cultural, civic, political, and legal implications. They entail not only the culmination or crystallization of life-determining preferences, but also a network of social benefits and duties. Liberalism then is faced with attempting to deal with the civil side of the ledger without overly determining the private side. As we are seeing today, the tendency has been toward a gradual privatization of marriage and family without the historical supports and definition of civil law.²⁰

Consider for example Sir Henry Sumner Maine’s famous dictum that the movement of legal and social history is one “from status to contract.” As legal historian John Witte has argued, Maine’s claim captures not only liberalism’s implications generally but also those for marriage and family—however much weight we would

¹⁹Cf. MacIntyre’s statement that “[t]he lawyers, and not the philosophers, are the clergy of liberalism” (*Whose Justice? Which Rationality?*, 344). Cf. also the discussion in Robert P. Hunt, “Moral Orthodoxy and the Procedural Republic,” in *John Courtney Murray and the American Civil Conversation*, ed. R. Hunt and K. Grasso (Grand Rapids: Eerdmans Publishing Co., 1992), 249–272. I would, however, differ from Hunt in my assessment as to whether Murray is able to escape proceduralism, via the distinction between state and society, for the very reason partially argued in this paper: viz. society and more broadly the culture are (in part) mediated by the state and its structures and institutions.

²⁰Cf. Carlo Cardinal Caffarra, “Famiglia e bene comune, Prolusione per l’Inaugurazione dell’Anno Accademico 2006/2007 del Pontificio Istituto Giovanni Paolo II per Studi su Matrimonio e Famiglia nel XXVI dalla Fondazione” (Vatican City: Pontificia Università Lateranense, 2006).

want to give his particular historical judgments.²¹ In particular it captures the movement from seeing marriage, and therefore also the family, as a given, pre-legal reality into which people are called and in which they live, to one increasingly based on a private, contractual relationship without a necessary and given form. It is a movement from seeing marriage and the family as offering a fundamental legal and social identity, to seeing marriage and family as accompanying and to a greater or lesser degree modifying an essentially individual legal and social identity rooted in independent preference and choice. The first emphasizes the legal and public support and recognition of a pre-legal and pre-political *form*, the second the legal and public support and recognition of a particular kind of life *choice*.

In conceiving marriage and family as a particular form, the first of these is able to say quite a lot about what marriage is. The second, emphasizing marriage and family as life choices, tends to be very modest in its willingness to say what the content of that choice is.

2. Perhaps because of this reticence to give content to autonomous choice, classical liberalism typically had little to say in a sustained or thematic way about the family.²² To some extent this tendency is shared by some of the most important works in more recent decades. For example, the hugely influential work of John Rawls, *A Theory of Justice* (1971), mentions the family only in passing as one of a number of pre-political “social unions.”²³ But this casual

²¹John Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (Louisville, Ky.: Westminster John Knox Press, 1997), 12–13.

²²Sometimes it is argued that classical liberals did not need to devote a lot of attention to the family because they could simply take its vitality and importance as a pre-political and natural institution for granted in a way that contemporary writers cannot (cf., for example, Jennifer Roback-Morse, *Love and Economics: Why the Laissez-Faire Family Doesn't Work* [Dallas: Spence Publishing, 2001], 58, 223). On the other hand, Stanley Hauerwas has claimed that for Adam Smith it was important “to show how the weakening of familial ties would increase the necessity of sympathy between strangers and result in cooperative forms of behavior that had not previously been realized” (“The Radical Hope in the Annunciation: Why Both Single and Married Christians Welcome Children,” in *The Hauerwas Reader*, ed. John Berkman and Michael Cartwright [Durham: Duke University Press, 2001], 505–518, 508).

²³Rawls, *A Theory of Justice*, 525.

treatment, as well as references in later works,²⁴ make it clear that Rawls considers the family to be a voluntary association, not essentially different from any other as far as a public doctrine of justice would go.

The effect is to postpone consideration of marriage and family until after the conceptual framework of society and justice has been completed. As an important social unit, therefore, marriage and the family are treated fundamentally as *objects* of justice. They are among the many sets of voluntary relations or communities with which juridical and social structures must deal as a “factual” or “objective” part of society. They constitute one of any number of domains of possible governmental and social benefit or regulation. In short, the family is simply another social fact with which a theory of justice must deal, but which is not located organically inside that theory. Hence, society is not viewed as “rooted” in the family except from an essentially material or factual standpoint.

B. Liberalism and the family

1. As a result, while liberalism is always sold as a practical necessity in a pluralistic society,²⁵ liberalism itself generates its own pluralisms (and hence magnifies its own importance), as can be seen in its prolific but reductive generation of “alternative lifestyles” or “orientations,” in which authentic human difference, and therefore personal identity, is thought most especially to reside. As we shall see in a moment, however, at a deeper level liberalism produces an anthropological uniformity, against which the plurality of lifestyles is but the collection of alternative, yet fundamentally parallel,

²⁴“The Idea of Public Reason Revisited,” 5.2, in Rawls, *The Law of Peoples*, 158, cited in Martin Rhonheimer, “The Political Ethos of Constitutional Democracy and the Place of Natural Law in Public Reason: Rawls’s ‘Political Liberalism’ Revisited,” *The American Journal of Jurisprudence* 50 (2005): 1–70, at 27–28.

²⁵At the same time, it is also true that “pluralism” is sometimes treated not only as a practical fact with which a theory of justice must deal, but also as a kind of ideal for society and its civil institutions. Cf. e.g., Martin Rhonheimer, “Christian Secularity and the Culture of Human Rights,” given in the symposium “A Growing Gap—Living and Forgotten Christian Roots in Europe and the United States (Vienna, 26–29 April 2006), Addresses and Responses, 29–35 (http://www.usc.urbe.it/fil/p_rhonheimer/).

realizations or developments of that same anthropological univocity.²⁶

It is therefore not surprising that this procedural sense of justice, when applied to the family, has resulted in a variety of different, even opposed, but very influential conceptions of what civil regulation should treat as the fundamental core of family life. For example, one approach has been to center the idea of family on its care-giving role.²⁷ According to this view the procreative function of marriage has in reality nearly vanished. The result is that families and family-like situations are quickly separating from marriage, which in its turn has become primarily a relationship of sexual intimacy. If the essential link between marriage and procreation has been severed, there is no reason to formalize and codify what is now an essentially private sexual relation.²⁸ Rather, society should give juridical recognition and economic support—as a matter of justice—to relationships of dependency and care-giving of whatever type. Here the family as a social or legal category is shifted onto and redefined in terms of the one criterion of care-giving.

Alternatively, some proposals place the sexual and affective relationship at the center of public recognition.²⁹ According to this

²⁶Cf. David S. Crawford, “Liberal Androgyny: ‘Gay Marriage’ and the Meaning of Sexuality in Our Time,” *Communio: International Catholic Review* 33 (Summer 2006): 237–265.

²⁷Cf. Don Browning and Elizabeth Marquardt, “What About the Children? Liberal Cautions on Same-Sex Marriage,” in *The Meaning of Marriage: Family, State, Market, and Morals*, ed. R. George and J. B. Elshtain (Dallas: Spence Publishing, 2006), 29–52, at 47–48, citing and discussing the proposal of Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New York: The New Press, 2004).

²⁸The position that marriage should be privatized has also been argued from a conservative Catholic perspective by Paul Griffiths (“Legalize Same-Sex Marriage: Why Law and Morality Can Part Company,” *Commonweal* 130, no. 18 [24 October 2003]). Griffiths argues that secular culture’s concept of civil marriage has grown so estranged from the Catholic understanding that the two should be entirely dissociated so as to diminish the tendency to confuse them.

²⁹Jonathan Rauch, *Gay Marriage: Why it is Good for Gays, Good for Straights, and Good for America* (New York: Henry Holt and Co., 2004). Of course, Rauch’s position has effectively become official policy in a number of jurisdictions (e.g., *Goodridge v. Department of Public Health*, 798 N.E.2d 941, 965, 971 [Mass. 2003]). Again, see the discussion of Rauch’s and *Goodridge*’s arguments in Browning and Marquardt, “What About the Children?” 41–47.

view, it is important to bring as many sexual relationships—whether “same-” or “opposite-sex”—as possible under the normalizing and stabilizing effects of civil marriage. This has the benefit of integrating these relationships into broader networks of kin and friends. While children can be a part of this relationship, in this view there is no real intrinsic relationship between marriage and children. Indeed, same-sex couples are viewed as no different biologically speaking than a sterile male-female couple.

Finally, there is the tendency simply to abandon any set notion of the family. Thus, we frequently hear that “families take many forms,” or that “no single structure captures the heart of the family.” Of course none of these possibilities (including the last) is *entirely* formless; each proposes a certain idea of the family. But in each case the new “form” is fundamentally voluntarized and fragmented. None of them is founded on the idea of the fruitful love inherent in sexual difference. The sexually differentiated body is implicitly reduced to the “merely” biological. Nor do these alternatives credit the family with an intrinsic relationship to history, culture, and the generations. This is despite liberalism’s vaunted protection of pluralism, including cultural pluralism. This pluralism, in the end, is subordinated to individual choice.

2. It is also worthwhile to mention more radical thinkers, who themselves offer a critique of liberalism, and who also have had a very large influence on the way we understand and speak about marriage, family, and sexuality today. I have in mind thinkers such as Michel Foucault and Judith Butler. According to these thinkers, gender, sexuality, the ideas of “normal” and “abnormal” desires and persons, and the institutions such as marriage that flow out of them, are “constituted by a historically specific, institutionalized practice and ideology.”³⁰ Thus, thought patterns contained in these concepts do not simply describe and govern preexisting realities, they *produce* those “realities.” They generate human “subjects” (that is to say, “types” or “kinds” of persons), who are socially intelligible according to the standards of “normativity” contained in those concepts. Even those who fall outside of the norms are nevertheless “produced” as social subjects according to the norm, since “to fall outside of” a norm is nevertheless to be defined in relation to it. Hence, “[t]o be not quite masculine or not quite feminine is still to be

³⁰Jonathan Ned Katz, *The Invention of Heterosexuality* (Penguin, 1993), 172.

understood exclusively in terms of one's relationship to the 'quite masculine' and the 'quite feminine.'"³¹ In point of fact, the supposedly neutral institutions of liberal culture actually favor, for example, the man-woman relationship as foundational for society. Even laws prohibiting sexual harassment have the effect of perpetuating the idea of the dominant and assertive male pursuing the weaker and submissive female.³²

What is recognized by these writers is that liberalism's pretense of merely dealing with the family as a social fact in reality establishes institutions and social/juridical structures which normalize a certain vision of the human person. What seem to be freedom and choice, or neutral reason, are in fact forms of social determination. If freedom is to be realized, liberalism needs to be unmasked and these subjectivities and the institutions that generate them denaturalized. Here justice threatens to degenerate into a perpetual rebellion against the inevitable cultural "production" of natures and subjectivities. Justice, if it could be achieved, would be essentially a radical freedom of absolute self-invention.

3. Of course, there are more benign interpretations of liberalism. Numerous thinkers of a conservative stripe have attempted to demonstrate the centrality and importance of marriage and family to liberal society by augmenting it with natural law principles. They argue that classical liberalism possessed something like natural law in its conception of rights, and that, while many liberal thinkers today reject natural law as precisely the type of overarching view of the good liberalism seeks to remove from the public sphere, it is in fact necessary for liberalism to stay on course to achieve important goals, such as stability and continuance through history. They also claim that natural law, based on natural reason, can offer a common ground for the moral foundations of public discourse and reason.

An excellent example is Martin Rhonheimer's recent critical engagement and qualified appropriation of Rawls' notion of "public reason."³³ Rhonheimer is especially concerned with making a

³¹Judith Butler, "Gender Regulation," in *Undoing Gender* (Routledge, 2004), 40–56, at 42.

³²*Ibid.*, 54–55.

³³Rhonheimer, "The Political Ethos of Constitutional Democracy," 1 (hereinafter, page references to this work will be given parenthetically in the text).

distinction between the man-woman couple and same-sex couples regarding the question of marriage and family, and indeed a specific and explicit purpose of his correction of Rawls is to be able to establish from within liberal principles that the family is the foundation of society.

This makes his argument of particular interest to us. While Rhonheimer accepts the core principles precluding public adoption of “highest moral values” (25), “comprehensive doctrines” (43), or “genuinely ‘metaphysical’” stances (25), he nevertheless castigates Rawls’ reduction of pre-political social life to voluntary associations of individuals. He accuses Rawls of failing to take the social nature of human beings seriously, effectively reducing society to collections of “individual citizens as ‘free and equal’” along with “their interests.” While it is true that human beings are ontologically individual (29), their real, lived experience is that of sociality. Clearly, this also shapes the way we would conceive of justice. As he explains,

a publicly endorsed political conception of justice must refer to, and politics generally is called to deal with, human beings as they are in reality; that is, as fundamentally social beings which naturally are related to each other in very determined forms which are part of the nature of human society. (29)

Chief among these fundamental and “determined forms” of sociality “is the reproductive marital union of male and female, and with it the family springing from and founded on this union” (29). Indeed, marriage and family shape “what society basically is: an ordered multitude rooted in the reproductive union of male and female” (28). “The reproductive union of male and female and the family simply are the origin of society and their [sic] future; they belong to the very structure of it” (44). Certainly, then, Rhonheimer’s argument is calculated to offer precisely the sort of support necessary to secure the idea of family as “first and vital cell” or even the notion of its “antecedently organic” relationship with society.

Now, the pivotal terms in Rhonheimer’s argument are clearly phrases such as “fundamentally social beings,” “determined forms,” “origin,” and the variations on “nature,” all found in the above quotations. What content can we give them? What is their foundation? Again, Rhonheimer is quite clear that he is not “advocating a ‘comprehensive’ doctrine of the good or of moral

values” (30). Rather, it is a question of “*the nature of society* and, therefore, [of] what *naturally* makes human persons to be social beings; these are not genuinely ‘metaphysical’ but empirical questions” (25, emphasis original). Thus, marriage and family are “natural social facts” (31), or “basic empirical truths” (43), or “the basic facts of our existence as real human beings” (30), or “basic empirical facts about the reproductive nature of the marital union and about the family” (28). That the family is “foundation,” or that it is the source of nurture and education, or even the foundational experience of sociality we have from childhood on, is a matter of empirical verification. On this basis, it “has nothing to do with” (30) advocating a comprehensive doctrine or a “genuinely metaphysical position.” In that sense, it is a plain and quickly understood reality that can and should be accepted by liberals such as Rawls.

But is this position finally tenable? Is it really possible to arrive at a purely empirically based conception of the family as the foundation for society that does not in fact either rely on or tacitly import comprehensive or metaphysical views? These “facts” are, after all, precisely the kind that modernity and especially the strand of liberalism from which Rhonheimer is working have abstracted from metaphysical value and teleologies. Rhonheimer nevertheless argues that they must also be considered “goods” or “values” (26). Our question then becomes, in what sense are these “empirical facts” also “goods”?

Clearly, as we have seen, liberalism offers an answer ready to hand. It would be possible from within liberal principles to found the goods and values of marriage and family in the aspirations of individual people to define and form their lives around a privately held conception of comprehensive good. But this solution defeats Rhonheimer’s purposes by reducing the good of marriage and family to pure choice abstracted from the concrete reality of society’s origins. It would therefore reduce marriage and family back to the model of voluntary associations of individuals, as in fact Rawls has done. Rather, Rhonheimer argues that marriage and family are part of the *common good*: “to deny that the existence of society as a cooperation of citizens *over time* is politically relevant” would be to deny the whole idea of society. Thus, he argues that marriage and family are goods of society, as surely they are. But the abstraction from deeper principles of the good means that the “empirical facts” are effectively considered “good” in a functional and productive way. “Good” or “value” are applied to the family insofar as the

family is “empirically” necessary for achieving society’s goal of “reproduction” (44) over time. But the value and sense of “reproduction” are not defined in any way other than as an internal goal of liberalism itself. They are not, for example, attached to any particular idea of human excellence or of personal flourishing, nor can they be from within liberal principles.

Now, as a very general matter, Rawls himself would be able to accept Rhonheimer’s line of reasoning. It is simply that his “factual” or “empirical” assessment is different from Rhonheimer’s. As Rhonheimer notes, Rawls states in his late work that “reproductive labor is socially necessary” and that the “family must ensure the nurturing and development of . . . citizens in appropriate numbers to maintain an enduring society.”³⁴ But for Rawls this leaves open the possibility that this “reproductive labor” could be carried out in any number of familial or family-like forms, according to individual preferences. So, for example, Rawls says that this basic requirement envisions “no particular form of family (monogamous, heterosexual, or otherwise).” For Rhonheimer, the non-specificity of Rawls’ phrase “reproductive labor,” with its openness to any number of forms, including homosexual parenting by means of adoption or biotechnology, amounts to an “absurdity” akin to not knowing the basic “facts of the origin of life” (45).

I agree that it is an absurdity, but we need an adequate foundation to understand why. Whatever new models are advanced, from contractualizing conception and birth through surrogacy arrangements to bypassing the sexual union of the man and woman through biotechnological means, and however prevalent these may become in liberal societies, the majority of children will no doubt be born to man-woman couples, in some sort of enduring relationship, and through natural sexual relations for the foreseeable future. But even if this is true, without some richer acceptance of natural law, one concretely rooted in an adequate anthropology, that fact alone does not rule out the “empirical” or “factual” possibility that the maintenance and continuation of society could, within the logic of liberalism’s public reason, be partly carried out in different ways according to different individual preferences. It could not in principle rule out, for example, understanding the basic pre-political

³⁴Rawls, “The Idea of Public Reason Revisited,” 157, quoted in Rhonheimer, “The Political Ethos of Constitutional Democracy,” 45.

social unit in terms that logically separate the idea of marriage from that of rearing children, as occurs in the reduction of the family to an abstraction such as “care-giving relationships.” Thus, it cannot in principle rule out the purely formal description of “reproductive labor” as being entirely apt for describing the “family” as a necessary social fact. From this perspective, the “factual” connection between the sexual differentiation of married parents and the raising of children does not appear to be a necessary one.

The surface sense of “good” Rhonheimer has in mind then is open to an infinite number of new “factual” situations *because what it fails to capture, and in principle cannot capture without leaving liberal principles behind, is a sense of the good of the person as such, that is to say of the good as perfective of the human person.* In short, what Rhonheimer’s argument requires is some comprehensive view of the good. Of course, Rhonheimer could respond that the alternative familial forms envisioned by Rawls are inhuman, or alienating, or entail a false understanding of the human being, or are immoral, or cannot in the long run lead to human or social flourishing. He could then argue that on one or more of these bases the alternative forms cannot be seen as the foundation of society in the way that the man-woman couple in marriage and its implied fruitfulness should be. However, in doing so he would reveal the comprehensive background to his assurance that the empirical reality of the relationship of family and society is a sufficient foundation for his argument, for concepts such as “inhuman” or “alienating” or “immoral” or “flourishing” are all necessarily “comprehensive” in scope.

It certainly cannot be gainsaid that in a significant way the procreative capacities of man and woman *are* for society, and of course laws and public institutions *are* directly concerned with the common good (48). But in order to arrive at an adequate sense of the common good we need to have a better sense of what constitutes the good of the human person as such.³⁵ It is furthermore only by beginning with this latter sense of the good that we can give an adequate account of the functional or useful good. Otherwise I do not think we will ever be able to recognize the “absurdity” of Rawls’ position. How else can we show that a phrase like “repro-

³⁵This conclusion would seem to be implicit in, for example, *Gaudium et spes*, 26, where the Council Fathers specify the concept of the common good entirely in terms of the person and his good.

ductive labor” is *inhuman* and *on that basis* opposed to the common good? In other words, we have to take into account that, *from a Rawlsian perspective*, the non-specificity of the phrase is *precisely* what opens the way for the emergence of the truly human, which is understood in terms of maximum indifferent liberty for self-invention. What we must demonstrate to those under Rawls’ sway is that his understanding of the human person itself entails a comprehensive view, a tacit but definitive anthropology, which is false and alienating.

Perhaps we can take a step back and see this in more global terms. Rhonheimer believes that natural law principles dictate the whole of personal morality, but that they can inform political morality, institutions, and laws to a very limited extent and on very few topics (30). Marriage and family are among these. The problem, however, is that his approach effectively views natural law from the perspective of and according to the conditioning and internal logic of the core liberal principles. As Rhonheimer puts it, “[t]o be apt for public justification, natural law reasons must first be converted into public reasons. They are becoming [sic] public reasons only insofar as they can be justified in terms of referring to the common good of political society” (48). But his conception of both “public reasons” and the “common good,” as well as the sense of justice that correlates to these concepts, is a liberal one. Thus, he takes St. Thomas’ ordination of human law to justice and to the maintenance of public order as being “surprisingly close to Mill’s harm principle” (47). Elsewhere, he defines justice as principally meaning “equality in freedom.”³⁶

It is true that Rhonheimer’s primary qualification of Rawls has to do with the deficiency of the latter’s concept of “reciprocity,”³⁷ which he argues remains empty and underdetermined, “reduce[ing] society to an aggregate of individuals who

³⁶Martin Rhonheimer, “Fundamental Rights, Moral Law, and the Legal Defense of Life in a Constitutional Democracy: A Constitutional Approach to the Encyclical *Evangelium Vitae*,” *American Journal of Jurisprudence* 43 (1998): 135–183, at 137.

³⁷Rhonheimer describes Rawls’ understanding of “reciprocity” as “the simple idea of reciprocal acknowledgment of ‘free and equal citizens’” (6–7), according to which, “by always leaving people to make their own choices, where there is a major disagreement such political positions do not enforce substantial values at the cost of other people’s autonomy” (34).

pursue their personal preferences, and public reason to a means of furthering such preferences, often at the expense of political common good and society” (40). However, as we have already seen, his qualification of Rawls’ purely empty or formal sense of “reciprocity” is limited to requiring a more complete account of society’s empirical conditions, sources, and needs. This further determination of reciprocity, in effect, is therefore only to have asked more thoroughly what would be empirically necessary for an authentic realization of what continues to be an essentially Rawlsian sense of reciprocity. It has retained substantially the same notions of procedural fairness, but it has introduced into the arbitration of what is in fact fair the further “empirical” evidence of the reproductive character of “heterosexual” versus the non-reproductive character of “homosexual” relations. Thus, “any violation of ‘reciprocity’ in this context would mean to contradict basic social, and socially relevant biological facts, which obtain in a Rawlsian original position” (41). It would therefore, according to Rhonheimer, be unreasonable for homosexuals “not to privilege in the framing of the principles of justice the heterosexual union,” since it is “reasonable for homosexual citizens to affirm that the marital union of male and female is the reproductive foundation of society” (41).

But this argument in fact only qualifies and furthers the thought patterns of procedural justice. It is in substance no different from the innumerable daily adjudications of the fair distribution of privileges and duties through the introduction of factual evidence concerning particular burdens borne or benefits realized or services offered in relation to the common good or the derivation and maintenance of social life. As we have seen, without further anthropological grounding, this approach is vulnerable to being parried by the introduction of further and countervailing “empirical” evidence, such as that homosexual couples also have families with children (by biotechnological means, for example), form households and so forth, and therefore also form part of the “reproductive,” nurturing, and educational “foundation of society” and, on that basis, deserve the legal formalization, benefits and duties of civil marriage.³⁸

³⁸Of course, this is precisely the argument of *Goodridge v. Department of Public Health*, 798 N.E.2d 941, 965, 971 (Mass. 2003).

The upshot is that, by the time natural law is sifted through the liberal sieve, there is very little content left to qualify the instantiation of those principles in social life. Much that the Church would recognize as part of or a structuring condition of the natural law is from the beginning precluded, such as its ontological and anthropological grounding in a set vision of the human person who concretely has his origin and destiny in triune love. In the case of Rhonheimer, the “good,” as manifested in the common good, is reduced to such a pale image of what the Church, for example in *Veritatis splendor*, believes it to be, that it is scarcely recognizable, and seems unlikely ever to perform the heavy task he has laid on its shoulders.³⁹ In order to defeat the easy equation of the fruitfulness of husband and wife with the bland and frankly androgynous phrase “reproductive labor,” it is necessary to employ a much more robust sense of the fully human good.

My concern, then, is that conservative liberalism—even when defended by a thinker as able as Rhonheimer—does not have the tools at hand to deal with the very issues it has to its credit attempted to address. Thus, what might be characterized as merely the excesses of “bad” liberalisms, as I outlined them earlier, are in fact tacitly implicated even in seemingly more benign versions.

C. *The inevitability of a tacit comprehensive view*

If we are effectively to appeal to the “natural” in identifying the “roots of society,” we must therefore give it a deeper basis. It is only in the light of a set anthropology and a “comprehensive view” of the good that the basic human realities of sexual difference, parenthood, and marriage can take on genuine human meaning and value. Otherwise, the “natural” remains fatally ambiguous. As we shall see in a moment, the result will be a tragic but inevitable drift toward a reduction and fragmentation of the marital relationship and the family that flows out of it. The “factual” will be drawn into the undertow of its cultural environment’s unstated anthropological and ethical presuppositions. In other words, it will be drawn into the undertow of some *unstated* comprehensive view.

³⁹Cf. *Veritatis splendor*, 98–101, read in light of the articulation of the good throughout the rest of the encyclical.

In fact, and as has been pointed out by a number of writers,⁴⁰ *liberalism itself constitutes such a comprehensive vision*, albeit tacitly. In particular, this vision rests on the presupposition that the good is in fact indifferent liberty⁴¹ itself, or as I said a moment ago, maximum indifferent liberty for self-invention. According to this comprehensive vision, the primordial “fact” of the family only has value, in the order of justice, based on what we voluntaristically make it to be. This means that the “basic empirical facts” will be at the mercy of the interminable tension endemic to liberalism between a positivistic understanding of law (hence, what a legislature or court makes them to be) and the self-positing of the individual through freedom understood as abstract choice (and hence, what that individual makes them to be). The solution will inevitably be a procedural ethics of choice limited only for the sake of maximizing further choice.⁴²

⁴⁰E.g., Schindler, “The Significance of World and Culture for Moral Theology,” 136; MacIntyre, *Whose Justice? Which Rationality?*, 345; Beiner, *What’s the Matter with Liberalism?*, 23; and, as indicated above, this point is also made by radical thinkers, such as Butler, in their own way.

⁴¹Cf. Servais Pinckaers, *The Sources of Christian Ethics*, trans. Sr. Mary Thomas Noble (Washington, D.C.: The Catholic University of America Press, 1995), 242ff.; Schindler, “The Significance of World and Culture for Moral Theology,” 129ff.

⁴²We can touch on a final consideration only very briefly. While the general thrust of liberalism has been to replace virtue with procedure in guaranteeing the peaceful and stable functioning of society, a number of conservative liberals have attempted as I mentioned above to ground the family’s centrality within a liberal framework by highlighting its important role in moral formation. According to this view, the family instills the virtues necessary for the smooth and stable functioning of liberal institutions, such as democracy or capitalism (cf., e.g., Francis Woerhling, “Christian Economics,” *Journal of Markets and Morality* 4 [Fall 2001]: 199–216; and Michael Novak, *The Spirit of Democratic Capitalism* [New York: Madison Books, 1982], 80). The virtues are therefore necessary for these institutions to function in the “right” way. Accordingly they are variously listed as “hard work, diligence, discipline, attention to detail, frugality, and the systematic (not sporadic) cultivation of willpower” (Vigen Guroian, *Ethics After Christendom: Toward an Ecclesial Christian Ethic* [Grand Rapids: Eerdmans Publishing Co., 1994], 172) or “industry, savings, the acquisition of wealth, upward mobility, and economic rationality” (Novak, *The Spirit of Democratic Capitalism*, 152). The problem would seem to be that the virtues have been effectively instrumentalized to liberal values. The result is that the meaning of “excellence” has in fact been transformed (cf. *ibid.*, 339) according to categories such as achievement, efficiency, and autonomy. The most fundamental point is not that this transformation as such is bad (although I think it is), but simply that it *is* a transformation. That “excellence” should be effectively

But how can we more concretely characterize this tacit comprehensive view that is buried in liberalism? And in what ways is it in contrast with the anthropological presuppositions of *Familiaris consortio*'s notion of family as "first and vital cell"? Addressing these questions will be the goal of the remainder of this paper.

III. Contrasting Anthropologies

A. The familial person

1. In order to sketch out what *Familiaris consortio* means by "first and vital cell," we need to discuss the family in its interior relations and implications for the person and his good in all of their anthropological depth. Again, my claim is that "first and vital cell" refers to an "antecedently organic" relationship of the family to society. Thus, the family cannot simply be seen as one of many possible objects of justice. Nor is the relationship one in which the family merely offers proper training in a justice that is already conceived in abstraction from it.

On the other hand, to refer to the relationship as "organic" cannot mean that the laws and institutions of civil society can or should themselves be "familial" (or "ecclesial") in the sense that they would be thought of as "family writ large." The laws and institutions of society have an integrity and particularity of their own. Their functions, roles, structures, and ends are necessarily different from those of the family. Civil society and the state entail relationships that are different from those of family life, and vice versa. They must promote an autonomy that would be entirely inappropriate within what we hope are the warm and nurturing folds of the family home. (In fact, as we shall see more thoroughly in a moment, my precise criticism of liberalism is that it *fails* to maintain this basic distinction, since it remakes the person and the "family" in the image of its voluntarist and procedural concept of justice and the basic anthropology this entails.)

redefined along liberal lines suggests our foundational issue, viz. liberalism is not simply a procedural means of neutralizing social conflict, maximizing economic development, generating the conditions for civility, avoiding civil war as the *summum malum*, and so forth. Rather, it constitutes its own interpretation of the human person, remaking him according in its own image.

Rather, my claim is that the family reveals the identity and nature of the person who is the subject and doer of justice. The family is an ordering principle of justice, then, in the sense that it is inscribed in the identity and structure of the human person, who precisely as *corpore et anima unus* is the “subject” of moral action and virtue (VS, 48). It is on this basis that the family is an ordering principle of political and legal institutions that codify and instantiate legal justice. If juridical forms and civil institutions are not to be alienating and fragmenting, they need to anticipate and support the concrete person as he really is, rather than a hypothetical and de-natured person. As such, the juridical forms and civil institutions embodying legal justice must presuppose in their structure, meaning, and ends, the familial person and the human justice he or she represents and aspires to. The family is the “foundation of justice” and is antecedently organic to society, in the sense that it informs the nature of the person who is or should be presupposed by those institutions. It is also this concrete person who constitutes the anthropological background that informs what John Paul means when, following Paul VI, he tells us in *Letter to Families* that the family is to generate a “civilization of love” or a “culture of love” (LF, 13).

2. Of course, the concept of “first and vital cell” is rooted in the specifically theological anthropology contained in the whole document as well as John Paul’s other teachings. Characteristically, John Paul begins by placing the family in the light of creation’s movement from and back to the triune God through the mediation of Christ’s yes to the Father. As he tells us at the beginning of *Letter to Families*, “[i]f in fact Christ ‘fully discloses man to himself,’ he does so beginning with the family in which he chose to be born and to grow up” (2).⁴³

At the beginning of the third part of *Familiaris consortio*, John Paul exhorts the family to become what it is (FC, 17), that is to say, a community of life and love, a reality that he tells us will only be entirely fulfilled eschatologically (FC, 17). This seemingly paradoxical call indicates both that the family possesses an inherent nature and ordination and that it is alienated and fragmented in various ways. This alienation and fragmentation presumably occurs both in terms of the particular failures of individual families and in cultural and

⁴³Quoting *Gaudium et spes*, 22.

social terms, as well. Here we touch on the idea of “structures of sin,”⁴⁴ according to which cultural and social patterns of thought, based on the collective personal sin of numerous individuals, generates social or civic “structures” (e.g., public institutions) that distort the truth of the person and his vocation, thereby perpetuating patterns of sinful and alienating behavior. Certainly, the individualizing and shattering effects of liberal society on the family would be an example of such patterns. On the other hand, John Paul also clearly presupposes that, however much alienating distortion as well as legitimate variation there may be from culture to culture, the family is part of the fundamental and indeed inescapable experience of being human. It is this fundamental experience of the human person lived out in and through the family, then, that we want to uncover.

Certainly, this fundamental experience is tacitly open to what lies beyond the family itself, its sustaining source. *Familiaris consortio* begins its discussion of the family by relating marital love back to creation through the doctrine of the image of God (FC, 11). There we are told that marriage and the family image God⁴⁵ because the relationship of man and woman in marriage, like consecrated virginity or celibacy, is a specification of the vocation to love. Thus, the family “becomes what it is” through a realization of the vocation and fundamental moral task of human nature itself: viz., to give an adequate “response due to the many gratuitous initiatives taken by God out of love for man.” This “due” response, the Pope tells us, is “a response of love,” and as such it reflects God’s glory (VS, 10). Moreover, parents “cooperate with God the Creator in conceiving and giving birth to a new human being.” Thus, “*God himself is present in human fatherhood and motherhood*” (LF, 9). This is the basis of what John Paul calls the “genealogy of the person.” By this phrase, he means that the person finds his origin both from his parents and, in and through his parents, from God. Because “God alone is the source of that ‘image and likeness’ which is proper to the human being,” and because every person conceived bears the image and likeness of God, this “genealogy of the person is inscribed in the very biology of generation” (9). As the *Letter to Families* puts it,

⁴⁴ *Sollicitudo rei socialis*, 36 (1987); *Reconciliatio et poenitentia*, 16 (1984).

⁴⁵ Cf. Marc Cardinal Ouellet, *Divine Likeness: Toward a Trinitarian Anthropology of the Family*, trans. Philip Milligan, Linda Cicone (Grand Rapids: Eerdmans Publishing Co., 2006).

“[b]egetting is the continuation of creation” (9). Thus, we could say that the family is situated theologically between creation and eschatological salvation, at the center of the fundamental vocation and dynamic tension of human nature and of the universe.

Now, this theological foundation would seem to be problematic for arriving at a secular understanding of the family. Certainly John Paul does not suggest that the Church or Christians could or should juridically impose theological doctrine on civil institutions.⁴⁶ The point is rather that the vision of the person and his relationship to the family *derived in part through the light cast by this trinitarian-christological foundation* ought at least to be a legitimate possibility as a cultural proposal, to be judged of course according to its intrinsic merits as such. Indeed, it is important to keep in mind the extent to which “secularity” is already saturated by originally theological concepts. This point is made in *Fides et ratio*, where John Paul reminds us of the influence of revelation in the formation of such concepts as the person, human dignity, equality, and freedom (FR, 76). Granted, of course, these concepts have been partially drained of their original content and have themselves become vehicles for advancing the fragmentary anthropology we have been discussing. They therefore stand in need of recuperation. Nevertheless, the encyclical’s point suggests that a purely secular domain of “public reason,” where “purely” means “untainted” or “uninformed” by a theological or religious background, simply does not exist and never has.

Without falsifying the Church’s concrete understanding of what the person or family is, it is possible to offer a model of the family that is structured in light of these concrete roots, by pointing to the family as it is implicated in the inescapable experience of simply being human, which necessarily includes the experience of the body. By “inescapable experience,” of course, I do not mean an empirical reality that everyone will spontaneously recognize as his or her own “experience” of married or family life. What I mean, rather, is what is inescapable in the experience of being embodied,

⁴⁶To see the clarity of this point, it is only necessary to consider John Paul’s very nuanced discussion of religious freedom in his many writings and allocutions on the topic. See my “The ‘Architecture of Freedom’: John Paul II and John Courtney Murray on Religious Freedom” (in *Catholicism and Religious Freedom: Contemporary Reflections on Vatican II’s Declaration on Religious Freedom*, K. Grasso and R. Hunt, eds. [Rowan and Littlefield, 2006]) for a discussion of this teaching.

of being sexually differentiated as male or female, and so forth. Even within a homosexual inclination, for example, the experience of sexuality depends on and implies the sexualized body, which in itself is only sexualized *qua* differentiation into male and female. Sexual acts of whatever kind therefore in fact rely on this sexualized body for their very possibility. But maleness and femaleness depend on their correlation, at least physically, to each other. Their alternative and complementary structures would be meaningless outside of the context of their reciprocity.⁴⁷ Hence, the experience of sexual difference is inescapable in the sense that it is necessarily presupposed even in contrary choices and predispositions. My point, then, is that it is only through this inescapable experience of being embodied, sexually differentiated, and “familial” that we can arrive at an adequate sense of the good, as it pertains to the person, family and society, capable of reintegrating the fragmentary anthropology entailed in procedural justice.

3. Our starting point is the lapidary teaching of *Veritatis splendor* that “*it is in the unity of body and soul that the person is the subject of his own moral acts*” (48, emphasis original) and in its criticism of theories treating the human body as a “raw datum” or “pre-moral.” As the late Pope tells us, the body contains the “anticipatory signs” of self-gift precisely because it bears within it the primordial structure of being a gift both from and for another. The idea of “anticipatory signs” clearly points to John Paul’s signature development of a nuptial anthropology, in his famous Wednesday audiences during the early years of his pontificate,⁴⁸ and its central concept of the body as a “sacrament of the person.”⁴⁹

However, if John Paul II has spoken of a nuptial anthropology, we could just as easily draw out his insights for the family as a whole in what we might call a “familial anthropology.” Such an anthropology would include the nuptial but would also draw explicit attention to the relationships of paternity, filiality, and fraternity. According to such an anthropology, the gift-structure of the person permeates every aspect of bodily life, but is most especially manifest

⁴⁷For a more complete explanation of these last points, see Crawford, “Liberal Androgyny,” esp. pp. 256–260.

⁴⁸Collected in John Paul II, *Man and Woman He Created Them: A Theology of the Body*, trans. Michael Waldstein (Boston: Pauline Books & Media, 2006).

⁴⁹*Ibid.*, p. 203.

in those features of the body's constitution that display its ordination toward filiality and fraternity (the inescapable genetic likeness and physical resemblance of the child to his parents and siblings), nuptiality (the structural morphology as sexually differentiated beings dynamically ordered to each other through inclination, hormones, psychological makeup, and so forth) and paternity (the fruitful implications of sexual differentiation, genetic structure, instinct, hormones, desire, and so forth). The familial structure of the human person is therefore literally inscribed in his or her body from its very minutest chemical or metabolic processes to its large and visible bodily structures. The man and woman are structured on all of these levels for each other, just as they are structured on every level to conceive, nurture, give birth, nurse, protect, provide, and so forth. Likewise the child is structured on every level to be able to receive nurture and sustenance, as well as psychological, emotional, and educative formation by the parents.

The experience of being a person, as manifested in the body, therefore, entails from its origins the experience of being constituted in view of another. This is especially evident in the human person's sexual composition, which only has meaning as an anticipation of another.⁵⁰ But it is also evidenced in the experience of being a child, an experience that is itself deeply rooted in the love of the parents. This latter love declares to the child that even before his existence, as a subject of love in his own right, his presence was implied and somehow at least tacitly acknowledged in the hope and mystery of the parents' own love. It is therefore the ground in which familial love as a whole can spread its roots. The experience of being someone's child gives us the "prehistory" necessary to see life—whatever difficulties and frustrations we may begin to experience as we mature—as fundamentally "good" and even destined to exceed the finite bounds of the original family. In experiencing his origin in the love of his parents, the child understands that his or her existence, with all of its unique attributes and personal history, was already written into and destined from within their sexual differentiation as mother and father. This paradox of "uniqueness" coincident with this "already-being-written-into-and-destined-from-within" is,

⁵⁰Cf. Angelo Cardinal Scola, *The Nuptial Mystery*, trans. Michelle K. Borrás (Grand Rapids: Eerdmans Publishing, 2005), 91–96.

again, manifested in the coincident likeness and difference of every member of a family.

The fact that from this love comes an autonomous and individual person equal in dignity to the parents, and who in this sense “transcends” the parents, suggests to the child that his existence is rooted in a gift comprising more than the parents themselves could have given. Only a part can come from a finite whole, but the child is decidedly more than a part. His origin must therefore be rooted even more deeply than the parents’ love as such. Rather, this love, and the implications of the masculinity and femininity of the parents, must be a sign of that deeper origin.

My point, then, is that the primary experience of the body is one of a tissue of relations that offer each person his history and identity, a history and identity that is inscribed in every cell and in all of the outward attributes of the body. The body speaks of the relation with an entire world of others. This experience of being from and for another, of being constituted in one’s very being in view of another, of being a call and response, is part of the very fabric of human experience. Even where desirable conditions for the family are lacking, their presence is nevertheless felt through the hurt and rootlessness experienced in their absence.

What is crucial here is that these basic structures, written into the bodily life of the person as “anticipatory signs” or “sacrament,” are not only bodily but also manifest the interior structure and meaning of human freedom and reason themselves. It is only in and through this way of being a person that I can experience and intentionally engage the world as a whole. Indeed, these basic structures condition what I understand by the good itself. They can never be thought of only as “biological facts,” any more than I can experience my being as only a biological fact. Rather, they are necessarily ordering principles, anticipating and reflecting human realizations of the good. Insofar as they manifest my origin and destiny in a tissue of relations, they manifest my own good only within these relations. But what is crucial to recognize is that being situated in a tissue of relations is not only a factual or metaphysical reality, but is also *necessarily experienced as good insofar as I experience my being itself as good*.

My argument, then, is that an adequate sense of political or legal justice will have to presuppose this or a similar sense of the fully human good. It is this good that it will have to buttress and safeguard.

4. *Letter to Families* draws a direct link between justice, as disclosed in familial relations, and the Fourth Commandment to “honor your father and mother, that your days may be long in the land which your Lord gives to you,” which John Paul tells us parents owe to their children as well. “Honor” is associated with the recognition of the other, the “firm acknowledgement of the person” (15). Viewing the family as the “foundation of justice” therefore suggests grounding justice in such an “acknowledgment,” which necessarily includes the ontological debt I owe to the other who in a significant sense both gives me to myself and calls me, and who in this way gives shape to my good. Justice then cannot simply boil down to a maximization of indifferent freedom. Rather, it requires the social context and civil and juridical forms necessary for the realization and flourishing of this good. Indeed, this is what the Catholic tradition calls “subsidiarity.”

Certainly, the immediate response to the foregoing will be that talk about a “familial person” can only be understood as referring to the personal and moral order of private life. The question of justice among the members of the tightly knit community of the family, the objection will conclude, is a different one from the question of political and legal justice. Surely, as I already indicated, the two orders are distinct. Again, civil society is not simply the family writ large. Nevertheless, justice in the public order cannot be simply unrelated to that within the personal relations of the family. Justice, for example, in the economic order ought not to be understood in abstraction from “honor” or “gratitude,” in the sense just discussed. Hence, “the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who in various ways are endeavoring to satisfy their basic needs and who form a particular group at the service of the whole of society.”⁵¹ Such a view of economic justice sees the person as fundamentally the familial person (viz. as a person embedded in a tissue of relations: in the community of the firm, in society as a whole to which the firm owes its existence, and in the familial background concretizing the “basic needs” of the owners, employees, and society). In a word, true justice in the economic order presupposes the actual and concrete nature or anthropology of

⁵¹John Paul II, *Centesimus annus*, 35 (1991).

the person. Likewise, justice in the political and legal orders should presuppose the familial person.

Our question, then, is this: What is the identity and nature of the person as presupposed by the liberal political and legal orders?

B. Proceduralism as an anthropology

1. As we have seen, liberalism's rejection of deeply rooted anthropologies as a basis for founding a concept of justice means that justice is increasingly viewed from a purely juridical and procedural perspective. This in turn means that the subject of justice is viewed first and primarily as possessing interests and preferences, which his "equality in freedom" then allows him to realize insofar as doing so does not unduly interfere with the liberties and preferences of others.

Such a view, by its own terms (as is evidenced, for example, in Rawls' term "reproductive labor"), prescind from the question of the meaning and the role of sexuality or gender difference, the relation of the body to the person, the meaning and character of family, and so forth. These, according to the internal logic of the liberal view, are to be decided on an individual basis. But in creating this separation between what is public (reason as interest-pursuing, liberty as choice, desire as preference) from what is private (comprehensive beliefs), the public position effectively amounts to one in which the subject of justice is conceived as only having a body and a gender as a background factual matter, as a condition of life in the world as we know it, but not as a sign and manifestation of his or her personal identity and nature.

But in postponing comprehensive questions concerning the meaning of the body, gender, family, and so forth for private decision, liberalism necessarily places them after the point at which public justice and its institutions are established. This is true because it is the whole theory and purpose of procedural justice to create personal free space in which such comprehensive determinations may be made. For public purposes, therefore, justice appears to precede any particular view of the human person, his good, or his nature. But this in turn means that this justice and its institutions are predicated for public purposes on the idea of the person conceived in purely "spiritual" terms, as a subject defined solely as a possessor of preferences and liberties. Hence, the person is viewed as the possessor of an instrumental or procedural reason that is fundamen-

tally un-ordered by an intrinsic relationship to the body and its structures.

In this way, the public version of justice, and therefore the inner form of law and civic institutions, tacitly presupposes a dualistic view of man according to which the body is reduced to sub-personal matter to be privately related to the free and spiritual domain of the person by an act of choice or by a given person's innate preferences. Any further meaning the body might have can only be a personal modification (religious or otherwise) of this starting point at the private level through choice.

But this is effectively to have taken an anthropological position; it is to have decided ahead of time that, when it comes to public institutions and actions, the human person is *essentially* without gender or family. He can be connected to these only by an act of choice, treated as entirely arbitrary from the public standpoint. This anthropological fragmentation rules out for purposes of justice and institutions that the family, inscribed in the body, could represent an inherent (given) truth or meaning or vocation.

While liberalism does not outwardly propose that this spiritualized figure is the concrete person in all of his complex personal reality, its concept of justice and its institutions nevertheless presuppose it. Thus, the foundational concept of the person is already set for public purposes by the time the individual supplies his own beliefs. And that person is conceived in abstraction from his familial and embodied character. Liberalism therefore projects a structurally non-familial and tacitly androgynous vision of the human person. The built-in tendency then is to see a person's public identity as one in which the body is appropriated personally by means of a chosen or innate preference for and identification with particular familial or marital models. It implies that the structure of wedding or conceiving or birthing is a question of will or preference or predisposition, but not of nature or of natural relationships already inscribed in human being prior to choice or personal preference.

2. Liberalism's procedural sense of justice therefore has important implications. Its tacit adherence to the good as indifferent freedom for the achievement of preferences and for self-definition implies that reason is primarily instrumental and technical, that the body is only the context, circumstance, and instrument of human action, that desire is arbitrary, that the "natural" family is therefore merely "biological" in a materialist sense of that term, and that, therefore, the core of truly "human" family life boils down to an act

of the collective wills of essentially abstract individuals with their indifferent freedom.

Now there are certainly numerous ways in which this basic starting point plays out in society as a whole, but it is clear that it has the result of opening the way to the sort of anthropological and familial fragmentation we saw explicitly manifested in the earlier discussion. It invites a public treatment of sexuality, for example, in terms of alternative “orientations.” Even if one prefers “heterosexual” marriage and family, this is treated precisely as an individual preference, that is to say, as an “orientation” rather than as a movement of nature.⁵² It also invites the gradual privatization of such relations, that is to say their reduction from civil status to private contract. It therefore invites the *dis*-integration of marital-familial relations, such as sexuality, fruitfulness, and care-giving.

It does no good to say that this is only the case at the level of state institutions, and that the individual and his family are free to live in the beliefs of their choice. If it is true that the concrete person is the familial person, civil institutions and laws will nevertheless treat him or her as though he or she were non-familial and androgynous. It will mean that the social milieu generated by laws and institutions (including those governing marriage and family, establishing schools and curricula, setting rules of professional conduct and social behavior, and so forth) in which those concrete people live will mediate precisely this non-familial and androgynous anthropology. And this is precisely the situation we find today in Western liberal states and, increasingly, others that have come under their ideological influence. It is in this sense, then, that despite its generation of pluralisms in lifestyle and orientations, at a deeper anthropological level it produces a banal and androgynous uniformity.

Indeed, these conclusions are bolstered by the essential claim of the more radical thinkers that liberal culture unjustly enforces a “heterosexual” norm. It is true that in many ways we continue, at least for the time being, to have a culture that favors the man-woman couple and the child. Most jurisdictions continue, for example, only to recognize marriages between a man and a woman. But if the presupposed concept of justice is in fact procedural, and therefore disembodied and finally androgynous, then the centrality

⁵²Cf. Crawford, “Liberal Androgyny,” for a discussion of the problematic character of the term “heterosexual.”

of the man–woman couple and the child in society and its institutions will always seem like an arbitrary imposition. Thus the supposed neutrality of procedural justice will appear as a vast lie, a mask for the deployment of power by the majority. Far from being the foundation of justice, then, any set notion of the family will always appear to be a kind of *injustice*. Recognition of the family as “first and vital cell” or “foundation of justice” will increasingly resemble an unjust promotion of the self-interests of a social faction, rather than the necessary implications of a pre-political truth. In this sense, then, the radical view described above merely realizes what is latent already in more moderate liberal views.

IV. Conclusion

Perhaps I can gather together the strands of my argument in three final points. First, defenders of liberalism will of course be troubled by my claim that the family is the root of society in the sense I have proposed, since it sees the family as disclosing a comprehensive anthropological vision and being *on that basis* the root of society and the foundation of justice. Thus, it is necessary to see the human person, disclosed by the family at his anthropological core, as the human person who gives shape to what justice means from the beginning. As such, because liberal justice relies precisely on the rejection of such comprehensive views, the outline I have given would have to be considered—from a liberal perspective—a turn *away* from justice. If on the other hand the person presupposed by justice is the familial person in the sense I have described, then the treatment of the person as effectively androgynous would have to be considered a turn away from justice. According to this second view, marriage (understood as the permanent and fruitful union of a man and a woman) and the family that flows from it should be protected, buttressed, and anticipated by civil institutions and laws.

Thus, if the person at the root of justice is presupposed to be essentially androgynous and disembodied, then the civil treatment of marriage and family will inevitably follow the logic of that anthropology. But if, instead, the presupposed anthropology is familial, then the androgynous presuppositions of procedural accounts of justice will be seen as fragmenting and alienating. If the person is presupposed to be essentially disembodied and androgynous, then the availability of legal, technological, and social conditions and

practices that effectively sever intrinsic familial relations or that reduce them to only material elements necessary as a context for human social life will be seen, insofar as they can become available, as *requirements* of justice. But if the presupposed anthropology is that of the familial person, then these developments will be recognized as a kind of legal, technological, or social violence against men, women and children who are thereby effectively abstracted or uprooted from the genealogy of the person.

Of course, second and more generally, my argument charges liberalism itself with an interior inconsistency in its treatment of the family. As I stated earlier, the family is a (perhaps *the*) crucial point at which liberalism is especially challenged. It is faced with the prospect of providing for what seems to be a basic and natural human institution that nevertheless also demands some type of civil treatment, even if this treatment is reduced to the mere enforcement of an essentially contractualized set of relations and the management of the fallout generated by that reduction. The result is that, on the one hand, liberalism claims to prescind from comprehensive and metaphysical positions for the purpose of arriving at its civil institutions and legal order as they concern marriage and family, while, on the other hand, it nevertheless imports such a position by way of its tacit presuppositions about the person. Hence, the most fundamental question is not whether it is legitimate to inject a particular anthropology and its sense of the good into an otherwise neutral political or legal order. Rather, the question is ultimately, which anthropology should we accept as the truer and more authentically human?

Finally, we might recall once again our initial question. Why is *recognition* of the family as root of society and foundation of justice so difficult? Insofar as the tacit anthropology of civil institutions is androgynous, this underlying anthropology will effectively render what the Church proposes for the person, marriage, and the family unintelligible. When liberalism's procedural justice displaces the concrete familial person with what amounts to a bodiless and androgynous person, it effectively stymies any real cultural discussion of what the Church means by the "civilization of love." □

DAVID S. CRAWFORD is associate professor of moral theology and family law at the Pontifical John Paul II Institute for Studies on Marriage and Family at The Catholic University of America in Washington, D.C.