

Family Law
Law 281
Professor Murray

The first class meeting will be on Monday, January 7th, at 10:00 a.m. in Room 132. The casebook for this course is Areen, Spindelman & Tsoukala, Family Law: Cases and Materials (6th ed. 2012) ("FL"). The casebook is available for purchase at the bookstore. In addition to the casebook, supplementary course materials will be distributed via Bspace ("CM").

For the first class meeting, please read the following:

- Andrew Cherlin, *The Marriage-Go-Round* and Notes, FL 3-11
- Claude Levi-Strauss, *The Family*, in THE VIEW FROM AFAR, CM
- Sam Roberts, *Study Finds Wider View of "Family"*, CM

If you have not yet purchased the required text, the first assignment is posted to Bspace. Additionally, hard copies are available outside of my office (North Addition 419).

I am looking forward to meeting you on Monday. Happy New Year!

MM

Imagine what Dwight would have thought of the current incidence of divorce when more than one out of three marriages ends in divorce.

In fact, the divorce rate actually has *declined* in the last few decades from its high in 1979, when it was 22.8 divorces per thousand married couples per year, to 16.7 divorces per thousand married couples in 2005.² The decline correlates with the level of education of the parties. Among college-educated women who married between 1975 and 1979, 29 percent were divorced within ten years. For those who married between 1990 and 1994, by contrast, only 16.5 percent were divorced. Among high-school graduates, the divorce rate rose from 35 percent for those who married in 1975–79, to 38 percent for those who married in 1990–94. These diverging divorce rates suggest that we are becoming “a nation of separate and unequal families.”³

The United States may have a higher rate of divorce than most other nations, but we also have higher rates of marriage and remarriage. As you read the materials in this section, consider why this is so, and what the implications for family law and policy are.

ANDREW CHERLIN, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY*

13–35 (2009).

On Valentine’s Day in 2005, Governor Mike Huckabee of Arkansas, who would gain recognition in 2008 as a candidate for the Republican presidential nomination, and his wife, Janet, converted their marriage to a covenant marriage in front of a crowd of 6,400 at an arena in North Little Rock. The governor was aware that few Arkansas couples were choosing the covenant option—of the first hundred thousand or so marriages that had begun since it was introduced in 2001, about six hundred couples had chosen it. In Louisiana and Arizona, the other states that offered covenant marriages, the take-up rate wasn’t much better. Advocates for covenant marriage claimed that many couples were unaware of it and that the laws had been poorly implemented. Even so, the numbers were far smaller than anyone expected. Those who chose Arkansas’s option agreed to undergo premarital counseling. They also agreed that if either spouse ever requested a divorce, they would attend marital counseling before splitting up. And they agreed that neither spouse could obtain a quick divorce based on “no-fault” grounds such as incompatibility. Only if the other spouse had committed a serious transgression such as adultery or physical or sexual abuse could a covenant-married person ask for an immediate divorce. Otherwise, the person who wanted out had to wait at least two years for a divorce.¹

...

Governor Huckabee’s concern about the [high] divorce rate in Arkansas ... was well-taken. In 2004, for instance, Arkansas had the second-highest

2. Tyler Cowen, *Matrimony Has Its Benefits, and Divorce Has a Lot to Do with That*, N.Y. TIMES, Apr. 19, 2007, at C3. Divorce statistics are not particularly reliable because the federal government has stopped collecting them. Estimates depend on state reporting, and some of the largest states, such as California, do not report them.

3. *The Frayed Knot*, THE ECONOMIST 23 (May 26, 2007) (quoting Kay Hymowitz).

1. My description of the rally draws upon [Laura] Kellams, [*Huckabees Say ‘I Do’ to Covenant Marriage*, ARK. DEMOCRAT-GAZETTE, Feb. 15] 2005. Governor Huckabee’s radio address was aired on November 27, 2004; retrieved November 22, 2005, from <http://www.arkansas.gov/governor/media/radio/text/r11272004.html>.

number of divorces per person of any state (after Nevada, a divorce destination that does a brisk business with out-of-state visitors). But Governor Huckabee may not have known that Arkansas also had a large number of weddings. In 2004, it had the third-highest per capita rate of marriage (after Nevada and Hawaii, two popular wedding destinations). With much divorce *and* much marriage, Arkansas exemplifies the American pattern.

That a state in the Bible Belt—Arkansas is well above average in church membership—has a high rate of marriage may seem unremarkable; by contrast, its high divorce rate may seem odd. Yet six of the ten states with the highest divorce rates are in the South, and the other four are in the West.² George W. Bush carried all ten states in the 2004 presidential election, which suggests that having a socially conservative electorate does not insulate a state from divorce. It is true that people who are religious are less likely to divorce, but religious Americans still have high divorce rates by international standards. Moreover, people in high-divorce states tend to have less education, to marry earlier, and not to be Catholic—all of which are risk factors for divorce. That's why Arkansas stands out: it has one of the lowest percentages of high school graduates and of Catholics, and one of the lowest median ages at marriage, of any state.

Both marriage and divorce contribute to the larger picture of a country in which people partner, unpartner, and repartner faster than do people in any other Western nation. They form cohabiting relationships easily, but they end them after a shorter time than people in other nations. They tend to marry at younger ages. After a divorce, they tend to find a new partner more quickly. In other words, having several partnerships is more common in the United States not just because people exit intimate partnerships faster but also because they *enter* them faster and after a breakup *reenter* them faster. We know these facts from the work of demographers using the Fertility and Family Surveys, a remarkable set of surveys conducted between 1989 and 1997 in European countries, Canada, New Zealand, and the United States (as well as from other surveys in Great Britain and Australia, two countries that were not included). In each nation researchers asked a large, random sample of individuals comparable questions about their marriages, divorces, and cohabiting relationships.

Why, you might ask, did researchers go to the expense and trouble of conducting these surveys throughout Western Europe and non-European English-speaking countries? The answer is that enormous changes have occurred in family life not only in the United States but also throughout the Western world in the past half century (and, in much of the rest of the world, too, for that matter). People everywhere are concerned about the future of the family as they know it. In the Scandinavian countries and in France, cohabitation is even more common than in the United States, and a large proportion of all births occur to cohabiting couples—more than half of first births in Sweden. Divorce rates have increased, too, although not to the height seen in the United States. Yet what drives European concern is not the decline of marriage but rather the decline in births. It's hard for Americans to understand this concern because we don't share it. American women have enough children to maintain the size of our population, even ignoring immigration. In many European countries, in contrast, women are having fewer births. Countries such as France and Germany have long been

2. The ten states in order of divorces per person in 2004 are Nevada; Arkansas; Wyoming; Alabama and West Virginia (tied); Idaho; Kentucky, Oklahoma, and Tennessee (three-way tie); and New Mexico.

concerned with keeping their populations up so that they can field armies large enough to defend themselves. More recently, they have been concerned about having enough working-age adults to care for their growing elderly populations.

In the United States, however, the concern is about marriage, and the Fertility and Family Surveys have much to say about it. To compare, say, current divorce rates across countries, ideally we would interview a sample of people who get married this year in each country, follow them for the next several decades, and see how many become divorced. But no mere mortal has the time to wait that long. Instead, demographers use the “life table” method, so called because one of its first uses was to estimate how long people would live so that insurance companies could determine how much to charge them for life insurance policies.³ It can be used to estimate the expected “survival” time of marriages, cohabiting relationships, or periods of singlehood. Its estimates will be inaccurate if conditions change greatly in the future. Essentially, the life table answers this question: If conditions stay the same as they have been recently, how long would we expect a marriage, a cohabiting relationship, or a spell of being single to last?

The American Difference

Here are some comparisons that can be made between women in the United States (the American survey did not include men) and in other Western nations in the mid-1990s, when most of the surveys were conducted:

Americans marry and cohabit for the first time sooner than people in most other Western nations. Half of all first marriages occurred by age twenty-five in the United States, compared to age twenty-nine in Italy, thirty in France, thirty-one in Sweden, and thirty-two in the former West Germany. In part, ages of marriage are older in Europe because in some countries more young adults cohabit prior to marrying. Yet even if we consider the age at which half of all first partnerships of either kind (marital or cohabiting) occur, American women were relatively young: age twenty-two, compared to twenty-one in Sweden, age twenty-three in France, twenty-six in West Germany, and twenty-eight in Italy.

A higher proportion of Americans marry at some point in their lives than in most other Western nations: 84 percent of American women are predicted to marry by age forty. In contrast, the forecast drops to 70 percent in Sweden and 68 percent in France. (For technical reasons, all of these forecasts are likely to be somewhat lower than the actual percentages who will ever marry.) If we consider both marital and cohabiting relationships, however, over 90 percent

3. Here's how the life table method works. Imagine a woman who marries this year. Suppose that every year in the future her risk of divorce will be the same as the risk of people who have been married for exactly that many years in the recent past. By calculating these annual risks from people's recent experience, demographers can obtain an estimate of her probability of getting a divorce in the future if (and this is the big if) her future experience is similar to that of married people in the recent past. For each FFS country, then, we identify all of the people in the survey who have ever married. Then we calculate the fraction who told the interviewer that they divorced in their first year of marriage. That's the divorce risk for year one. Then, for everyone whose marriage lasted at least one year, we calculate the fraction who told the interviewer they divorced during their second year. That's the risk for year two. We repeat that calculation for all those who made it through at least two years, then all who made it through at least three, then at least four, and so forth. Then we cumulate all of these risks in a mathematical formula and obtain the estimated lifetime risk of divorce for our imaginary newlywed. In practice, the procedure is a bit more complicated than this. . . .

of women in nearly all countries will eventually begin an intimate partnership.

So Americans begin to have partners at a relatively young age, whereas many Europeans wait longer. And Americans turn those partnerships into marriages—or marry without living together beforehand—much more quickly. In France and the Nordic countries, in contrast, young adults tend to live with partners for several years before marrying, if they marry at all. In some southern European countries, such as Spain and Italy, living together prior to marrying is less common, and many young adults live with their parents well into their twenties before marrying. Other English-speaking countries are more similar to the United States, but people there still marry at somewhat older ages and are less likely to ever marry over their lifetimes.

Marriages and cohabiting relationships in the United States are far more fragile than elsewhere. After only five years, more than one-fifth of Americans who married had separated or divorced, compared to half that many or even fewer in other Western nations. And among Americans who began a cohabiting relationship, over half had broken up five years later (as opposed to remaining together, whether they subsequently married or not), which is a substantially higher figure than in other nations. Whether they started a partnership by marrying or by living together, Americans were less likely to be living with that partner five years later.

Because of these fragile partnerships, American children born to married or cohabiting parents are more likely to see their parents' partnership break up than are children in most other countries. Forty percent experienced a breakup by age fifteen. About the same percentage experienced a breakup in New Zealand. In Sweden, the country with the next-highest rate, the comparable figure was 30 percent; it was in the high twenties in western Germany and Canada, and the low twenties in France and Australia. Children born to cohabiting parents in the United States and New Zealand faced exceptionally high risks of experiencing a breakup: about three-fourths no longer lived with both parents at age fifteen. But even if we look just at children born to married couples, American children were more likely to see their parents break up. In fact, children born to *married* parents in the United States were more likely to experience their parents' breakup than were children born to *cohabiting* parents in Sweden.

Without doubt, then, there are more breakups of married and cohabiting couples in the United States than in any other Western country with the possible exception of New Zealand. So not only do Americans marry more, they also divorce more. Further, they end their cohabiting relationships more quickly. So they start and end partnerships with a speed that is virtually unmatched.

After their breakups, American parents are more likely to repartner. Consequently, children in the United States who have seen their parents' partnership end are more likely to have another adult partner (cohabiting or married) enter their household than are children living elsewhere. In the United States, nearly half of children who had experienced the breakup of their parents' marriage or cohabiting relationship saw the entry of another partner into their household within three years, a much higher proportion than in Sweden (where one-third see a new partner within three years), West Germany (29 percent), France (23 percent), or Italy (8 percent). In fact, American children spent more of their childhoods in stepfamilies than did children in continental Europe, Canada, or New Zealand. As a result, American children experienced not only more

breakups but also more new adults moving in with the biological parent who cared for them.

American women become parents at an earlier age and are much more likely to spend time as lone parents in their teens or twenties than are women in Western Europe. By age thirty, one-third of American women had spent time as lone mothers; in European countries such as France, Sweden, and the western part of Germany, the comparable percentages were half as large or even less. But children born to lone parents in the United States are also more likely to experience a parent's new partner moving into the household than in some other countries, including France, Sweden, and Germany. So more one-parent families started, and more ended.

What all these statistics mean is that family life in the United States involves more transitions than anywhere else. There is more marriage but also more divorce. There are more lone parents but also more repartnering. Cohabiting relationships are shorter. Over the course of people's adult lives, there is more movement into and out of marriages and cohabiting relationships than in other countries. The sheer number of partners people experience during their lives is greater. Jeffrey Timberlake has estimated the percentage of women in each country who had three or more live-in partners (married or cohabiting) by age thirty-five. These were women who may have lived with a man and then perhaps married him and had children, divorced him, lived with another man (partner number two), ended that relationship, and then lived with or married yet another man (partner number three). In most countries, the percentage of women who accomplished this feat by age thirty-five is negligible: almost no one in Italy or Spain, less than 2 percent in France or Canada, and 3 percent in Germany. The highest figures elsewhere were 4.5 percent in Sweden and 4 percent in New Zealand. But in the United States, 10 percent of women had three or more husbands or live-in partners by age thirty-five, more than twice the percentage in Sweden and New Zealand and several times the percentage anywhere else.

. . .

There are many similarities, of course, between the United States and other Western nations . . . but they won't help us to explain distinctive American family patterns. To do that, we have to look for differences, not similarities, between the United States and other countries.

One difference lies in the realm of culture: the contradictory emphases on marriage and individualism found only in the United States. . . .

. . .

The rise of individualism, historians and social commentators have argued, has been one of the master trends in the development of Western society over the past few centuries. And most would agree that an individualistic outlook on family and personal life has become more important since the mid-twentieth century. Robert Bellah and his colleagues, in an influential book on individualism and commitment in American life, distinguished between two types of individualism.⁴ They called the older form "utilitarian individualism." Think of the utilitarian individualist as the self-reliant, independent entrepreneur pursuing material success, such as a high position in a corporation or a senior partnership in a law firm. The great German social

4. ROBERT BELLAH, RICHARD MADSEN, WILLIAM M. SULLIVAN, ANN SWINDLER, & STEVEN M. TIPTON, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICA* (1985).

theorist Max Weber, in a classic book, suggested that there is a link between a similar concept, which he called “the Protestant ethic,” and the economic development of the West.⁵ He noted that Calvinists (including the group that became known as the Puritans in England and America) believed that some individuals had been predestined by God for earthly success. This doctrine encouraged people to work hard so that they could prove to others (and themselves) that they were among the elect. Weber used the writings of Benjamin Franklin, a prototype of the utilitarian individualist, to illustrate this spirit of industriousness. “Early to bed and early to rise,” Franklin advised in one of his famous aphorisms, “makes a man healthy, wealthy, and wise.”

The newer form of individualism, which Bellah and his colleagues called “expressive individualism,” germinated in the late nineteenth and early twentieth centuries and flowered in the second half of the twentieth. It is a view of life that emphasizes the development of one’s sense of self, the pursuit of emotional satisfaction, and the expression of one’s feelings. Until the past half century, individuals moved through a series of roles (student, spouse, parent, housewife or breadwinner) in a way that seemed more or less natural. Choices were constrained. In mill towns, two or three generations of kin might work at the same factory. Getting married was the only acceptable way to have children, except perhaps among the poor. Young people often chose their spouses from among a pool of acquaintances in their neighborhood, church, or school. But now you can’t get a job in the factory where your father and grandfather worked because overseas competition has forced it to close, so you must choose another career. You get little help from relatives in finding a partner, so you sign on to an Internet dating service and review hundreds of personal profiles. As other lifestyles become more acceptable, you must choose whether to get married and whether to have children. You develop your own sense of self by continually examining your situation, reflecting on it, and deciding whether to alter your behavior as a result. People pay attention to their experiences and make changes in their lives if they are not satisfied. They want to continue to grow and change throughout adulthood.

This kind of expressive individualism has flourished as prosperity has given more Americans the time and money to develop their senses of self—to cultivate their own emotional gardens, as it were. It suggests a view of intimate partnerships as continually changing as the partners’ inner selves develop. It encourages people to view the success of their partnerships in individualistic terms. And it suggests that commitments to spouses and partners are personal choices that can be, and perhaps should be, ended if they become unsatisfying.

The World Values Surveys asked about expressive individualism using a cluster of questions that contrast “survival versus self-expression” values. The answers to these questions suggest that the level of expressive individualism among Americans is high but not out of line for a wealthy Western nation: a little below that in Sweden and the Netherlands, comparable to the levels in Norway and West Germany, and greater than in Britain, Canada, or France. One question in this cluster asked people to place themselves on a scale of 1 to 10, where 1 means that they think the actions they take have no real effect on what happens to them (which indicates survival values) and 10 means they think they have completely free choice and control over their lives (self-expression values). More Americans placed themselves at the free choice end

5. MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Routledge 2002) (1904).

than did people in any other Western country, but some of the other countries were close: 82 percent of Americans chose 7, 8, 9, or 10, compared to 77 percent of Canadians, 74 percent of Swedes, and 73 percent of Germans.

The cultural model of individualism, then, holds that self-development and personal satisfaction are the key rewards of an intimate partnership. Your partnership must provide you with the opportunity to develop your sense of who you are and to express that sense through your relations with your partner. If it does not, then you should end it.

. . .

In practice, few Americans use just the cultural tools of the marriage model or just the tools of the individualism model. Rather, most Americans draw upon both. As a result, our actual marriages and cohabiting relationships typically combine them. People may rely on both sets of tools at the same time, or they may move from one to the other over time as their assessment of their personal lives changes. Moreover, they may not realize that they are combining two inconsistent models.

For instance, [in] a national survey in which people were asked whether they thought marriage was a lifetime relationship that shouldn't be ended except under extreme circumstances, . . . 76 percent agreed. The great majority, then, answered in a way consistent with the cultural model of marriage. Just a few pages farther along in the questionnaire they were asked whether they agreed or disagreed with this statement: "When a marriage is troubled and unhappy, it is generally better for the children if the couple stays together." It, too, reflects the marriage model, because the troubled and unhappy individual, by staying in the marriage, subordinates his or her personal satisfaction to the greater goal of raising the children well. It would seem logical, therefore, that most of the people who agreed that marriage is for life would also agree that it's better if the couple stays together. But they don't. Only 25 percent of the people who said marriage is for life also said that the couple should stay together. Forty percent disagreed and 35 percent said they neither agreed nor disagreed. How can it be that a few minutes after they all agreed that marriage is for life, only one-fourth agreed that unhappy people should stay in marriages for the sake of the children? These respondents, like many Americans, are drawing from two different cultural models simultaneously. When people think about the way marriage should be, they tend to say that it should be for life. But when people think about individual satisfaction, they tend to give others wide latitude to leave unhappy living arrangements. Cue them in one direction, and you get one picture; cue them in another, and you get a different picture. Both pictures, contradictory as they may be, are part of the way that Americans live their family lives. Together they spin the American merry-go-round of intimate partnerships.

NOTES

1. A recent study asked how the American public defines "family":

By emphatic margins, the public does not see marriage as the only path to family formation. Fully 86% say a single parent and child constitute a family; nearly as many (80%) say an unmarried couple living together with a child is a family; and

63% say a gay or lesbian couple raising a child is a family. The presence of children clearly matters in these definitions. If a cohabiting couple has no children, a majority of the public says they are not a family. Marriage matters, too. If a childless couple is married, 88% consider them to be a family.

PEW RESEARCH CENTER SOCIAL TRENDS STAFF, THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES, NOV. 18, 2010, *available at* <http://pewresearch.org/pubs/1802/decline-marriage-rise-new-families>.

The same study also describes how marriage rates have changed over the past five decades:

Over the past 50 years, a quiet revolution has taken place in this country. . . . At the center of this transformation is the shrinking institution of marriage. In 1960, 72% of American adults were married. By 2008, that share had fallen to 52%.

. . .

Marriage rates are now more strongly linked to education than they have been in the past, with college graduates (64%) much more likely to be married than those who have never attended college (48%).

The racial differences are even larger. Blacks (32%) are much less likely than whites (56%) to be married, and this gap has increased significantly over time. And black children (52%) are nearly three times as likely as white children (18%) and nearly twice as likely as Hispanic children (27%) to live with one parent.

As the country shifts away from marriage, a smaller proportion of adults are experiencing the economic gains that typically accrue from marriage. In 2008, the median household income of married adults was 41% greater than that of unmarried adults, even after controlling for differences in household size. In 1960, this gap was only 12%. The widening of the gap is explained partly by the increased share of wives in the workforce (61% in 2008 versus 32% in 1960) and partly by the increased differential in the educational attainment of the married and the unmarried.

The net result is that a marriage gap and a socio-economic gap have been growing side by side for the past half century, and each may be feeding off the other. Adults on the lower rungs of the socio-economic ladder (whether measured by income or education) are just as eager as other adults to marry. But they place a higher premium on economic security as a prerequisite for marriage than do those with higher levels of income and education. And this is a bar that they—and their pool of prospective spouses—may find increasingly difficult to meet, given the fact that, relative to other groups, they have experienced significant economic declines in recent decades.

Id.

2. Education correlates with the age at which people marry, as well as with the divorce rate:

Throughout the 20th century, college-educated adults in the United States have been less likely than their less-educated counterparts to be married by age 30. In 1990, for example, 75% of all 30-year-olds who did not have a college degree were married or had been married, compared with just 69% of those with a college degree.

In a reversal of long-standing marital patterns, college-educated young adults are more likely than young adults lacking a bachelor's degree to have married by the age of 30.

In 2008, 62% of college-educated 30-year-olds were married or had been married, compared with 60% of 30-year-olds who did not have a college degree.

...

Among the possible explanations for this shift are the declining economic fortunes of young men without a college degree and their increasing tendency to cohabit with a partner rather than marry. From 1990 to 2008, the inflation-adjusted median annual earnings of college-educated men ages 24 to 34 rose by 5% (to \$55,000 ...) while the median annual earnings of those with only a high school diploma declined by 12% (to \$32,000 ...). During this same period, the number of cohabiting households (that is, partners of the opposite sex living together without being married) more than doubled. About half of all cohabiters are under age 35, and more than 80% do not have a college degree.

RICHARD FRY, *THE REVERSAL OF THE COLLEGE MARRIAGE GAP 1–2* (2010), *available at* <http://pewsocialtrends.org/2010/10/07/the-reversal-of-the-college-marriage-gap/>.

3. There is also a link between marriage and social inequality:

[S]ocial inequality—the differences in standard of living and economic opportunity—is more pronounced in the United States than in other Western countries. The gap between high-income and low-income families is wider. Most other Western governments tax the wealthy more and provide more assistance to low- and moderate-income families. This is a major difference between the United States and other countries, and it matters for family life. Low- and moderate-income families in the United States have less protection against the vagaries of the labor market. And it is among low- and moderate-income Americans that we have seen the greatest increase in the number of people who have multiple partnerships.

ANDREW CHERLIN, *THE MARRIAGE-GO-ROUND*, 159–60 (2009).

B. THE AMERICAN FAMILY OVER TIME

Family law in America was different from the beginning. The original colonies varied in the approaches they took to the law on marriage and divorce depending on the religious background of the colonists. That pattern is still evident today in the state-by-state variations in marriage and divorce laws. By contrast, most nations have a single, national family law. Many of the colonies did not follow English law on marriage and divorce, moreover, although they did for most other areas of law. In Massachusetts Bay Colony, for example, Puritans permitted magistrates to perform marriages rather than ministers (in England, the church controlled access to marriages and required that they be performed by clergy), and divorce was available beginning in the 1640s. All of the New England colonies followed the Massachusetts Bay approach, as did some of the mid-Atlantic colonies. The southern colonies, by contrast, followed the Anglican tradition, which prohibited divorce. Indeed, divorce was not generally available in England (except for a small number granted by Parliament to aristocratic families) until 1857, more than two centuries after some American colonies began granting divorces.

Because they rejected English law on marriage and divorce, the colonists in Massachusetts Bay turned to their religious tradition to guide their handling of marriage and divorce. That tradition, which began during the Reformation, was shaped initially by the writings of Martin Luther. As early as 1525, the city of Zurich established a court to oversee its new marriage and divorce laws.

Works by Claude Lévi-Strauss in English translation

ANTHROPOLOGY AND MYTH: LECTURES 1957-1982

CONVERSATIONS WITH CLAUDE LÉVI-STRAUSS

ELEMENTARY STRUCTURES OF KINSHIP

THE JEALOUS POTTER

MYTH AND MEANING

MYTHOLOGQUES

(Originally published in English under the title

Introduction to the Science of Mythology):

VOLUME 1: THE RAW AND THE COOKED

VOLUME 2: FROM HONEY TO ASHES

VOLUME 3: THE ORIGIN OF TABLE MANNERS

VOLUME 4: THE NAKED MAN

THE SAVAGE MIND

STRUCTURAL ANTHROPOLOGY (IN TWO VOLUMES)

TOTEMISM

TRISTES TROPIQUES

THE VIEW FROM AFAR

THE WAY OF THE MASKS

THE VIEW FROM AFAR

Claude Lévi-Strauss

TRANSLATED BY

JOACHIM NEUGROSCHER

AND

PHOEBE HOSS



The University of Chicago Press

Chapter 3

The Family

SO PLAIN seems the word *family*, and so close to daily experience is the reality to which it refers, that one may expect to be confronted in this chapter with a simple situation. Anthropologists, however, discover complications even in "familiar" things. As a matter of fact, the comparative study of the family has given rise to bitter arguments among anthropologists and has resulted in a spectacular reversal of anthropological thought.

During the second half of the nineteenth century and the beginning of the twentieth, anthropologists, influenced by biological evolutionism, were trying to organize in a unilineal sequence the institutions that they observed throughout the world. Departing from the assumption that our own institutions are the most complex and evolved, they saw, in the modern institutions of so-called primitive people, the image of institutions that could have existed in prehistoric periods. And since the modern family is founded essentially on monogamous marriage, these anthropologists immediately inferred that savage societies—equated, for the purpose of their argument, with the societies of man at the beginning of his existence—could only have institutions of an exactly opposite type.

It was thus necessary to gather and distort facts to fit the hypotheses. Fanciful "early" stages of evolution were invented—such as "group marriage" and "promiscuity"—to account for the period when man was still so barbarous that he could not possibly conceive of the niceties of the social life it is the privilege of civilized to enjoy.

FAMILY, MARRIAGE, KINSHIP

Assigned its predetermined place and properly labeled, every custom different from our own could illustrate one of the stages encountered by humanity from its origin to our own day.

This position became ever less tenable in proportion to anthropology's accumulation of new findings. These demonstrated that the style of family characterized, in contemporary society, by monogamous marriage, by independent establishment of the young couple, by warm relationships between parents and offspring, and so on (traits that we sometimes have difficulty disentangling from the intricate skein that the customs of savage peoples present to our eyes) exists clearly also among those societies that remained on, or returned to, a cultural level that we judge rudimentary. To cite a few examples, the insular Andamanese of the Indian Ocean, the Fuegians of the southernmost tip of South America, the Nambikwara of central Brazil, and the Bushmen of South Africa lived in small, semi-nomadic bands; they had little or no political organization; and their technological level was very low: some of these people had no knowledge of weaving or did not practice pot making or construct permanent dwellings. Among them, however, the only social structure worthy of the name was the family, often even the monogamous family. The fieldworker had no trouble identifying married couples, who were closely united by sentimental bonds, by economic cooperation in every case, and by a common interest in their children.

The conjugal family thus predominates at the two ends of the scale on which one can arrange human societies according to their degree of technical and economic development. This fact has been interpreted in two ways. In societies that they place at the bottom of the scale, some writers have seen the ultimate evidence of a sort of golden age, which would have prevailed before men suffered the hardships and were exposed to the perversions of a more civilized life. At this archaic stage, it is claimed, humanity knew the benefits of the monogamous family, only to forget it later until Christianity rediscovered it. But if we except the Vienna school (whose position I have just stated), the general trend is rather to acknowledge that family life is present everywhere in human societies, even in those whose sexual and educational customs seem the most remote from our own. Thus, after having claimed for nearly a century that the family, as modern societies know it, is a relatively recent development, the outcome of a slow and lengthy evolution, anthropologists now lean toward the opposite conviction: the family—based on a union, more or less durable, but socially approved, of two individuals of opposite sexes who establish a

The Family

household and bear and raise children—appears to be a practically universal phenomenon, present in every type of society.

These extreme positions suffer from simplicity. We know cases—rare, it is true—where family bonds as we conceive of them seem not to exist. Among the Nayar, an important large group living on the Malabar coast of India, the men, engrossed in war, could not establish a family. A purely symbolical ceremony, marriage did not create permanent ties between spouses: the married woman had as many lovers as she wished; and the children belonged to the maternal line. Family authority and property rights were exercised not by the ephemeral husband—a negligible person—but by the wife's brothers. Since land was cultivated by an inferior caste, subservient to the Nayar, a woman's brothers were as completely free as her insignificant husband to devote themselves to military activities.

Bizarre institutions have frequently been misunderstood by being viewed as the vestige of an archaic social organization, once common in most societies. Highly specialized, the Nayar are the product of a long historical evolution and can teach us nothing about the early stages of humanity. On the other hand, there is little doubt that the Nayar represent an extreme form of a tendency that is far more frequent in human societies than is generally believed.

Without going as far as the Nayar, some human societies restrict the role of the conjugal family: they recognize it, but only as one pattern among others. Such is the case in Africa, among the Masai and the Chagga, whose youngest class of adult men were dedicated to warlike activities, lived in military settings, and established very free emotional and sexual relations with the corresponding class of adult girls. It was only after this active period that the men could marry and start a family. In such a system, the conjugal family existed side by side with institutional promiscuity.

For different reasons, the same dual pattern prevailed among the Bororo and other tribes of central Brazil, and among the Muria and other tribes of India and Assam. All the known instances could be arranged in such a way as to make the Nayar represent the most consistent, systematic, and logically extreme case. But the tendency that it illustrates is manifested elsewhere, and one sees it reappear in embryonic form even in modern societies.

Such was the case of Nazi Germany, where the family unit was beginning to split: on the one hand, the men dedicated to political and military work and enjoying a special prestige that allowed them a wide latitude of behavior; on the other hand, the women whose vocation

FAMILY, MARRIAGE, KINSHIP

consisted of the three *K*'s—*Küche*, *Kirche*, *Kinder* (that is "kitchen," "church," and "children"). Had this separation of masculine and feminine functions been maintained for several centuries, along with the increasing inequality of their respective states, it could very well have led to a social organization without a recognized family unit, as among the Nayar.

Anthropologists have taken great pains to show that, even among people who practice wife lending (during religious festivals or, on a more regular basis, between bereaved couples and including such reciprocal rights), these customs do not constitute survivals of "group marriage": they coexist with the family and involve it. It is true that, in order to be able to lend a wife, a man must first have one. However, several Australian tribes, such as the Wunambal of the northwestern part of the continent, judge as "very greedy" a man who would refuse to lend his wife to other potential husbands during the ceremonies: that is, he would be trying to keep for himself a privilege that, in the eyes of the group, could be shared by all those, however many they might be, who are equally entitled to it. As this attitude exists along with an official denial of physiological paternity, these groups doubly deny any bond between the husband and his wife's children. The family is no more than an economic association to which the man brings the products of his hunt and the woman those of her collecting and gathering. The theory that this social unit, founded on loans of reciprocal services, proves that the family exists everywhere, is no sounder than the theory that the "family" thus defined has little but its name in common with the family in today's accepted meaning of the term.

It is advisable to be prudent also in respect to the polygamous family: that is to say, where there prevails sometimes *polygyny* (the union of one man with several wives) and sometimes *polyandry* (the union of one wife with several husbands). These general definitions must be examined in detail. Sometimes the polygamous family consists of several monogamous families side by side: the same man has several wives, each living in a separate dwelling with her children. This situation has been observed often in Africa. On the other hand, among the Tupi-Kawahib of central Brazil, a chief may marry, simultaneously or in sequence, several sisters or a mother and her daughters by a former marriage. These women raise their respective children together without seeming to mind very much whether they are caring for their own children. Also, the chief willingly lends his wives to his younger brothers, his companions, or to passing visitors. Here we have a combina-

The Family

tion of polygyny and polyandry, which the kinship ties between the co-wives complicate further. I have witnessed, among the Indians, a mother and her daughter, married to one man; together they took care of children who were, at the same time, stepchildren to both, grandchildren to one, and half-brothers or half-sisters to the other.

As for polyandry proper, it may sometimes take extreme forms, as among the Toda of India, where several men, usually brothers, shared the same wife. At the time of a birth, the legal father was the one who performed a special ceremony, and he remained the legal father of all the children to be born until another husband decided, in his turn, to fulfill the rites of paternity. In Tibet and Nepal, polyandry seems to be explained by sociological reasons of the same type as those already encountered among the Nayar: for men obliged to pursue the wandering life of guides or bearers, polyandry offers the opportunity for there to be, at all times, on the spot, at least one husband to take care of domestic affairs.

Neither polyandry nor polygyny prevents the family from keeping its legal, economic, or even sentimental identity. What happens when the two patterns coexist? Up to a certain point, the Tupi-Kawahib illustrate this concurrence. The chief, as we have seen, exercises the right of polygamy and lends his wives to several categories of individuals who may or may not be members of his tribe. The bond between the spouses differs more in degree than in kind from other bonds, which can be arranged in descending order, from regular, to semi-permanent, to occasional ones. However, even in this case, only true marriage determines the children's status, starting with their clan membership.

The evolution of the Toda during the nineteenth century comes closer to what has been called "group marriage." The Toda practiced a form of polyandry facilitated by the custom of female infanticide, which created from the start an imbalance between the sexes. When this custom was prohibited by the British administration, the Toda continued to practice polyandry, with the differences that, rather than sharing one wife, it became possible for them to marry several. As in the case of the Nayar, the types of organization that seem remotest to the conjugal family occur not in the more savage and archaic societies but in the relatively recent and extremely sophisticated forms of social development.

It would thus be wrong to approach the study of the family in a dogmatic spirit. At each instant, the object that one thinks is in one's hands slips away. We do not know anything important about the types

FAMILY, MARRIAGE, KINSHIP

of social organization that prevailed in the very early stages of the history of humanity. Even for the Upper Paleolithic, ten thousand to twenty thousand years ago—aside from works of art, which are difficult to interpret—skeletal remains and stone implements provide little information about social organization and customs. Also, when one considers the immense range of human societies about which, since Herodotus, we have data, all that can be said from the perspective that concerns us here is that the conjugal family occurs frequently and that it seems absent, in general, in highly evolved societies and not, as one might have expected, in the most rudimentary and simple ones. On the other hand, there do exist types of non-conjugal family (whether polygamous or not); this fact alone can persuade us that the conjugal family does not emerge from a universal necessity; a society can conceivably exist and be maintained without it. Hence, the problem: if the universality of the family is not the effect of a natural law, how are we to explain that the family is found almost everywhere?

To progress toward a solution, let us try to define the family, not in an inductive way, by adding information gathered from the most diverse societies, nor by limiting ourselves to the situation that prevails in our own, but by constructing a model reduced to a few invariable properties, or distinctive characteristics, that a rapid survey has allowed us to discern.

1. The family originates in marriage.
2. It includes the husband, the wife, and the children born of their union, forming a nucleus around which other relatives can eventually gather.
3. The members of the family are united among themselves by:
 - a. Legal bonds.
 - b. Rights and obligations of an economic, a religious, or some other nature.
 - c. A precise framework of sexual rights and prohibitions, and a variable and diversified group of feelings, such as love, affection, respect, fear, and so on.

I shall examine these three aspects of the family in order.



I have distinguished between two broad types of marriage—monogamous and polygamous; and it must be emphasized that the first, by far the most common, is still more so than a rapid survey would lead

The Family

one to think. Among the so-called polygamous societies, a fair number are so in the full sense of the term; but others distinguish between the “first” wife, who alone enjoys all the prerogatives of the matrimonial state, and “secondary” wives, who are scarcely more than official concubines. Moreover, in all polygamous societies, few men can, in fact, have several wives—as is easily understandable since, in any population, the number of men and women is approximately the same, with a difference of about ten percent in favor of one or the other sex. Polygamous practice thus depends on certain conditions: either the children of one of the two sexes are deliberately destroyed (a custom recorded in some cases, as in female infanticide among the Toda); or life expectancy differs according to sex (for example, among the Inuit or in several Australian tribes where men, exposed to the dangers of whale hunting or even war, die younger than women. It is necessary also to consider those exceedingly hierarchical societies where a class, privileged by age or wealth or having magico-religious prerogatives, claims for itself a substantial fraction of the group’s women at the expense of younger members or those less well-off.

We know societies, especially in Africa, where it is necessary to be rich to have many wives (as a bride-price must be paid), but where, at the same time, having several wives allows a man to enrich himself still more: he disposes thus of any surplus of manual labor, which is provided by the wives themselves and their children. Sometimes it is clear that the systematic practice of polygamy would be limited automatically by the structural modifications it imposes on society.

The predominance of monogamous marriage is thus not surprising. That monogamy is not an attribute of human nature is adequately attested by the existence of polygamy in many societies and under diverse forms. But if monogamy constitutes the most common form, it does so simply because, in a normal situation and in the absence of any disparity deliberately or accidentally introduced, every human group has about one woman for one man. For moral, religious, and economic reasons modern societies have institutionalized monogamous marriage (not without contriving all sorts of ways of getting around the rule: premarital freedom, prostitution, adultery). In societies where no prejudice against polygamy exists, or that even honor it, the lack of social standing or economic means can lead to the same result: each man has neither the means nor the power to acquire for himself more than one wife; he must therefore make a virtue of necessity.

Whether marriage is monogamous or polygamous (as in the latter

FAMILY, MARRIAGE, KINSHIP

case, polygynous or polyandrous, or even both at once); whether one union is the result of free choice, accords with a prescriptive or preferential rule, or obeys the will of ancestors: in every case, a distinction is clearly determined between marriage as a legal bond, socially approved, and temporary or permanent unions resulting from violence or consent. It matters little whether group intervention is explicit or tacit; what matters is that each society has at its command a means of differentiating between *de facto* unions and legal ones—a means arrived at in several ways.

On the whole, human societies put a high price on the conjugal state. Wherever there exist age rankings, under a loose or an institutionalized form, the tendency is to assign to one category the young adolescent boys and the adult bachelors; to another, older adolescents and childless husbands; to a third, married adults in full possession of their rights, generally after the birth of the first child. This threefold distinction has been recognized not only among many so-called primitive peoples but also by peasant communities of western Europe, if only on the occasion of feasts and ceremonies, up to the beginning of the twentieth century. Even today, in the south of France, the terms *jeune homme* ("young man") and *célibataire* ("bachelor") are often taken as synonyms (as are, in standard French, the terms *garçon* ["boy"] and *célibataire*, with the result that the current, but already significant, expression *un vieux garçon* ["an old boy"] becomes, still more revealingly, *un vieux jeune homme* ["an old young man"]).

In most societies, the bachelor appears repugnant and even contemptible. It is scarcely an exaggeration to say that bachelors do not exist in illiterate societies, for the simple reason that they could not survive. I remember having one day noticed, in a Boróro village of central Brazil, a man about thirty years old, who was carelessly dressed and appeared to be badly nourished, sad, and solitary. I thought at first he was sick. "But no," was the answer to my question, "he is a bachelor." And it is true that, in a society where work is apportioned between the sexes, and where only the conjugal state permits a man to enjoy the products of women's labor—including delousing, other care of the hair, and body painting, in addition to gardening and cooking (since the Boróro woman cultivates the soil and makes the pots)—a bachelor is half a human being.

What is true of the bachelor is true also, to a lesser degree, of the childless couple. Without doubt the spouses can lead a normal life and provide for their needs; but many societies deny them full status not only in the bosom of the group but beyond the group, in that society

The Family

of ancestors as important as, if not more so than, the living; because no one who lacks the cult of self provided by descendants can hope to achieve the rank of ancestor. Finally, the orphan shares the lot of the bachelor. Some languages make the two words their most serious insults; bachelors and orphans are sometimes equated with cripples and sorcerers, as if their conditions resulted from the same supernatural curse.

Society has come to express in a solemn manner its interest in the marriage of its members. So it is among us, where prospective spouses, if of legal age, must first publish banns and next secure the services of an authorized representative of the group to celebrate their union. Our society is certainly not the only one that subordinates agreement between individuals to public authority; but more often, marriage concerns not so much private persons, on the one hand, and the whole society, on the other, as more or less inclusive communities upon which each individual depends—families, lineages, clans; and it is between these groups, not between individuals, that marriage creates a bond. There are several reasons for this situation.

Even societies on a very low technical and economic level attribute so great an importance to marriage that parents are very soon concerned to find a match for their children, who are thus promised from their early youth. Moreover, by a paradox to which I must return, if each marriage gives birth to a family, it is the family or, rather, families that promote marriage as the principal socially approved device by which they are prepared to ally themselves with each other. As they say in New Guinea, the aim of marriage is not so much to acquire a wife for oneself as to obtain brothers-in-law. As soon as one recognizes that marriage unites groups rather than individuals, one is enlightened about many customs. One understands why, in several regions of Africa which trace descent according to the paternal line, marriage becomes final only when the wife has given birth to a son: under this condition only has the marriage fulfilled its function, which is to perpetuate the husband's line. The levirate and the sororate spring from the same principles: if marriage creates a bond between groups, a group can be logically required to replace, with a brother or a sister, the defaulting spouse it has originally furnished. On the death of the husband, the levirate provides that his unmarried brothers have a preferential right to his widow (or, as it is sometimes expressed, a duty, shared among the surviving brothers, to take charge of the widow and her children). Likewise, the sororate provides the sisters of the wife a preferential right if the marriage is polygamous or, in the case of monog-

amy, permits a husband to demand a sister in place of his wife if the latter is sterile, if her conduct justifies divorce, or if she dies. But, in whatever way society affirms its investment in the marriage of its members—through the channel of particular groups to which they belong or, more directly, through the intervention of the state—it remains true that marriage is not, never has been, and cannot be a private affair.



It is necessary to refer to cases as extreme as that of the Nayar in order to find societies where there does not exist, at least temporarily, a *de facto* union between husband, wife, and children. But let us be careful to note that while this nucleus constitutes the legal family among us, many societies have decided otherwise. Whether by instinct or by ancestral tradition, the mother takes care of her children and is happy to do so. Psychological tendencies also probably explain why a man, living in intimacy with a woman, feels affection for the children who are born to her, and whose physical and mental development he follows with interest even if he is officially denied any role in their procreation. Some societies seek to incorporate these feelings through such customs as the *couvade*: that the father shares symbolically in the indispositions (natural or imposed by custom) of the woman who is pregnant or in labor has often been explained by the need to integrate tendencies and attitudes that, in and of themselves, do not seem particularly homogeneous.

The great majority of societies, however, do not waste much interest on the nuclear family, which is important among some of them, including our own. As a general rule, as we have seen, it is the groups who count, not particular unions between individuals. Moreover, many societies are committed to assigning children either to the father's kinship group or to the mother's and succeed in sharply distinguishing the two types of bond, in order to recognize one to the exclusion of the other or else to allocate to them distinct areas of rights and obligations. Sometimes property rights are inherited in one line, religious privileges and obligations in the other; sometimes social status and magic lore are distributed in parallel fashion. There are countless examples of such patterns, from Africa, Asia, America, or Oceania. To cite but one, the Hopi Indians of Arizona carefully distribute different types of legal and religious rights between the paternal and

the maternal lines; but at the same time, the frequency of divorce renders the family so unstable that many fathers do not live under the same roof as their children, because the houses belong to the wives, and the children's property rights follow the maternal line.

The brittleness of the conjugal family, apparently very common in societies that anthropologists study, does not prevent these societies from attaching some value to marital fidelity and to affection between parents and children. But these moral ideals are accounted for in another way than are the rules of law, which often trace kinship exclusively in the paternal or the maternal line, or else distinguish rights and obligations as respectively affected by each line. We know extreme cases, such as that of the Emerillon, a little tribe of French Guiana, which about thirty or forty years ago had no more than about fifty members. At this time, marriage was so precarious that each individual could, in the course of life, have married in succession every one of the other sex: it was also reported that the language had special names to distinguish from which of at least eight consecutive unions the children had issued. This was probably a recent phenomenon, explainable by the lack of an effective group and by living conditions that had been profoundly altered for one or two centuries. But it is obvious from such examples that the conjugal family can become practically imperceptible.

On the other hand, other societies provide a broader and firmer base for the institution of the family. Thus, sometimes as late as the nineteenth century, there were several European regions where the family, the basic unit of society, was of a type that could be called domestic rather than conjugal. The eldest living male, or a community of brothers born of the same dead ancestor, held all the property rights, exercised authority over the whole family group, and oversaw agricultural tasks. In the Russian *bratsvo*, the *zadruga* of the Slavs of the south, and the French *maisie*, large families consisted of a dominant elder and his brothers, his sons, nephews, and grandsons and their wives, his unmarried daughters, nieces, and granddaughters, and so on down to the great-grandchildren. Such arrangements are called, in English, "joint families" and, in French, *familles étendues* ["extended families"] and include up to several dozens of people who live and work under a common authority: these are convenient but deceptive terms, because they imply that these large units are, from the beginning, composed of several little conjugal families in association. But, even among ourselves, the conjugal family has been legally recognized only after a complex historical evolution, attributable in part or to the gradual

FAMILY, MARRIAGE, KINSHIP

recognition of its natural base; because this evolution has, above all, consisted of the dissolution of the extended family, so that of it there remains only a nucleus which has little by little acquired a legal status that used to be vested in much vaster conglomerations. In this sense, such terms as "joint" or "extended" family might be appropriately discarded. It is rather the conjugal family that could be called "restricted."

We have seen that when the family fills a tenuous functional role, it tends to descend even below the conjugal level. In the opposite case, it is effective above that level. So far as it exists in our societies, the conjugal family is thus not the expression of a universal need and is no longer inscribed in the depths of human nature: it is a halfway measure, a certain state of equilibrium between patterns that are in opposition to one another and that other societies have positively preferred.

To complete the picture, it is necessary finally to consider the cases where the conjugal family exists, but under forms that we would doubtless not be the only ones to judge incompatible with the aims that human beings conceive as the basis of the household. The Chukchee of eastern Siberia do not view as unsuitable a marriage between a girl about twenty years old and a baby boy of two or three years. The young woman, often already a mother if she has lovers, raises her child and her little husband together. In North America, the Mohave observe the opposite practice: an adult man marries a baby girl and cares for her until she is old enough to fulfill her marital duties. Such marriages are considered very sound: the memory of the paternal attention lavished by the husband on his little wife reinforces, it is believed, the natural affection between the spouses. Similar cases are known in the Andean and the tropical regions of South America and also in Melanesia.

However bizarre they appear to us, these types of marriage still respect the difference between the sexes, an essential condition in our eyes (although homosexual demands are beginning to undermine it) for the establishment of a family. But, in Africa, women of high rank often had the right to marry other women whom authorized lovers made pregnant. The noblewoman became the legal "father" of the children and, rigorously following the patrilineal rule, passed on to them her name, her rank, and her property. In other cases, the conjugal family served to procreate children but not to raise them, because families competed among themselves to adopt children (from a higher rank, if possible); a family thus sometimes bespoke the child of another

The Family

family from before its birth. The custom was common in Polynesia and in a region of South America. The practice is comparable to that of entrusting boys to a maternal uncle, which has been recorded as occurring, up until recently, among the people of the northwestern coast of North America, and among the European nobility of the Middle Ages.



Over the centuries, Christian morality has considered sexual intercourse to be a sin unless it occurs within marriage and with the aim of founding a family. Here and there, other societies have assigned the same limits to legal sexuality, but these are rare. In most cases, marriage has nothing to do with sensual pleasure, because all sorts of possibilities for its satisfaction exist outside of marriage and sometimes in opposition to it. In central India, the Muria of Bastar put pubescent boys and girls into communal houses where they enjoy complete sexual freedom; but when the time comes for marriage, it is forbidden between those who were once lovers, so that, within the village community, each man marries a woman known to have been the mistress of one or even several of his neighbors.

In general, thus, sexual considerations interfere little in matrimonial plans. On the other hand, economic considerations are paramount, because it is above all the division of labor between the sexes that makes marriage indispensable. But, as with the family, the sexual division of labor rests on a social, rather than a natural, basis. Doubtless, in all human groups, women bring children into the world, nourish them, and care for them, while men are employed in hunting and going to war. Even this apparently natural separation of tasks, however, is not always rigid: men may not have babies but may, in societies that practice the *couvade*, act as if they do. And there is a great difference between a Nambikwara father who watches tenderly over his baby, cleaning it when it soils itself, and the European aristocrat whose children were, not so long ago, brought to him ceremoniously, for a few moments, from the women's quarters, where they were kept until they were old enough to learn horseback riding and fencing. On the other hand, the Nambikwara chief's young concubines disdain domestic work and prefer to accompany their husband on his adventurous expeditions. It is possible that a similar custom, notable among other South American tribes where a particular *c* of women—

FAMILY, MARRIAGE, KINSHIP

half-courtesans, half-servants—remained celibate and followed the men to war, was the source of the legend of the Amazons.

When we turn to occupations that are less significantly contrasted than child rearing and war, it becomes still more difficult to make out the general rules that govern the division of work between the sexes. Boróro women till the soil; but among the Zuñi, the men do it; it varies from tribe to tribe whether the construction of houses, huts, or shelters, pot making, weaving, and basket making are the duties of one or the other sex. It is necessary thus to distinguish the *fact* of the division of labor, which is practically universal, from the *criteria* according to which, in one place or another, tasks are assigned to either sex. These criteria, too, spring from cultural factors: they are no less artificial than the forms of the family itself.

Again, we are confronted with the same problem. If natural reasons, which could explain the sexual division of labor, do not appear decisive once one leaves the solid ground of biological difference; if criteria for the division of labor vary from one society to another—why does it exist? I have already posed the same question in regard to the family: the fact of the family is universal; the forms it takes are scarcely relevant, at least in respect to any natural necessity. But, after having considered the different aspects of the problem, we are perhaps better able to perceive what they have in common and to discern some general characteristics that will begin to answer it. In the realm of social organization, the family appears to be a positive reality (some people would say the only one); and owing to this fact, we are persuaded to define it exclusively by its positive qualities. But each time we try to show what the family is, we are at the same time obliged to imply what it is not; and these negative aspects may be as important as the others. The same is true of the division of labor: to state that one sex is appointed to certain tasks amounts to stating that these are forbidden to the other sex. Viewed from this perspective, the division of labor establishes an interdependence between the sexes.

This reciprocity evidently also belongs to the sexual aspect of family life. We are not allowed to reduce it to this aspect, because, as we have seen, most societies do not establish between family and sexuality the intimate connection characteristic of our own. But, like the division of labor, the family can be defined by a negative function: always and everywhere, the existence of the family involves prohibitions that render certain unions impossible or at least condemned.

Restrictions on freedom of choice vary considerably from one society to another. In ancient Russia, there existed the custom of *snokat'*

The Family

esvo, which accorded the father sexual rights over the young wife or his son. In other societies, the son of a sister exercised a symmetrical right over the wife of his maternal uncle. We ourselves no longer object to the remarriage of a man to his wife's sister, an incestuous practice under English law throughout the nineteenth century. At the very least, all known societies, past or present, assert that if the relation between spouses (and eventually several others, as we have just seen) implies reciprocal sexual rights, other kinship bonds—also serving the function of a family structure—make sexual relations immoral, subject to legal sanction, or simply inconceivable. The universal prohibition against incest specifies that individuals in the relation of parent and child or of brother and sister cannot have sexual relations or, even less, marry one another. Some societies—ancient Egypt, pre-Columbian Peru, several kingdoms in Africa, southeast Asia, and Polynesia—defined incest less strictly and permitted it (or even prescribed it), in certain forms, to the reigning family (in ancient Egypt, it was perhaps more common), but not without setting limits: the half-sister to the exclusion of the true one or, in the case of marriage with the true sister, the oldest to the exclusion of the youngest.

Since the original publication of this chapter in 1956, specialists in animal ethology have wished to find a natural basis for the incest prohibition. It seems that diverse species of social animals avoid mating with close kin, or that such unions rarely take place. This condition stems perhaps from the fact that the older males of the group expel the younger ones as soon as they become adults.

Assuming this data, unknown or incompletely published a quarter of a century ago, to be correctly interpreted by the observers, one would misunderstand, in extrapolating from it, the essential difference that separates animal behavior from human institutions: only the latter can systematically set up negative rules to create social bonds. What I have said about the sexual division of labor can help us grasp this point: just as the principle of the division of labor establishes an interdependence between the sexes, compelling them thereby to work together within the family, so the prohibition of incest establishes an interdependence between biological families and forces them to produce new families; and through these alone will the social group succeed in perpetuating itself.

One could have better understood the similarity between these two processes if they had not been labeled with such dissimilar terms as "division," on the one hand, and "prohibition," on the other. Had we called the division of labor "prohibition of tasks" by its negative

FAMILY, MARRIAGE, KINSHIP

aspect would have been perceived. Inversely, we would highlight the positive aspect of the incest prohibition if we defined it as "division of the rights of marriage between families," because the incest prohibition was established only so that families (however defined by each society) could intermingle, rather than each family, for its own benefit, with itself.

Nothing could thus be more wrong than to reduce the family to its natural base. It cannot be explained by either the instinct for procreation, or by the maternal instinct, or by ties of affection between husband and wife and between father and children, or by the combination of all these factors. As important as they are, these elements could not by themselves give rise to a family, and for a very simple reason: in all human societies, the absolute requirement for the creation of a new family is the previous existence of two other families, each prepared to furnish a man or a woman whose marriage would give rise to a third family, and so on indefinitely. In other words, what differentiates man from animal is that, in humanity, no family could exist if there were not first a society: a number of families who recognize that there exist other bonds than the blood tie, and that the natural process of filiation can be carried on only as integrated into the social process of marriage.

We shall probably never know how men came to recognize this social dependence of the natural order. Nothing permits the assumption that humanity, from the time it emerged from the animal condition, was not endowed with a form of social organization which, in its fundamental structure, scarcely differed from later ones. Indeed, it would be difficult to imagine any elementary social organization that lacked the incest prohibition. Because it remodels the biological conditions of mating and procreation, it allows families to perpetuate themselves only confined within an artificial framework of prohibitions and obligations. It is there alone that we can place the passage from nature to culture, from the animal condition to the human condition; and it is there alone that we can grasp their elaboration.

As Edward Burnett Tylor understood a century ago, the ultimate explanation is probably found in the fact that man knew very early that he had to choose between "either marrying-out or being killed-out" (1889, p. 267): the best, but not the only, way for biological families not to be driven to reciprocal extermination is to link themselves by ties of blood. Biological families that wished to live in isolation, side by side with one another, would each form a closed group, self-perpetuating and inevitably prey to ignorance, fear, and hatred. In opposition to the separatist tendency of consanguinity, the incest prohibition

The Family

succeeded in weaving the web of affinity that sustains societies and without which none could survive.



Although we do not yet know what exactly the family is, we have glimpsed so far its conditions of existence and the possible laws that govern its reproduction. In order to ensure the social interdependence of biological families, so-called primitive peoples have rules, which are simple or complex but always ingenious, and which are sometimes hard for us to understand, with our habit of thought being adapted to societies incomparably more dense and more fluid than theirs.

In order for us to ensure that biological families will not close in upon themselves and become so many isolated cells, it suffices to forbid marriage between very close relatives. Our large societies provide each individual with many opportunities for contacts beyond the restricted family and satisfactorily guarantee that the hundreds of thousands or the millions of families constituting a modern society will not run the risk of congealing. The freedom of choice of mate (except that one has to be outside the restricted family) ensures that the flow of exchanges between families will be kept open. An uninterrupted mixing will take place; and, from all those shuttlings, a homogeneous and well-blended social fabric will result.

Very different conditions prevail in so-called primitive societies. The overall population may vary from a few dozen to several thousand, but it remains small compared with ours. Moreover, a minimal social fluidity prevents each individual from meeting many others beyond the village or in the hunting grounds. Many societies try to multiply the opportunities for contact during feasts and tribal ceremonies. But these encounters remain, in general, circumscribed by the tribal circle, where most so-called primitive people see a sort of extended family at whose limits social relations stop. Often these people even go so far as to deny human dignity to their neighbors. There doubtless exist, in South America and in Melanesia, societies that prescribe marriage with foreign tribes and sometimes enemies; in such a case, explain natives of New Guinea, "one looks for a wife only among those with whom one is at war." But the network of intermarriage thus extended remains frozen in the traditional mold; and even if it includes several tribes instead of one, its rigid frontiers are rarely crossed.

FAMILY, MARRIAGE, KINSHIP

Under such an arrangement, biological families can establish among themselves a homogeneous society through procedures similar to ours: that is to say, simply by prohibiting marriage between close relatives and without recourse to positive rules. Sometimes, in very small societies, this method is effective only if the inadequate size of the group and the lack of social mobility are compensated for by increasing the impediments to marriage. For a man, these will extend beyond mother, sister, and daughter to include all women with whom, however remotely, a kinship tie can be traced. These small groups characterized by a rudimentary cultural level and a relatively unstructured social and political organization (as are certain peoples of the semi-desert regions of the Americas) provide examples of this solution.

The great majority of so-called primitive peoples have adopted another method. Instead of trusting to probability again, so that there are enough impediments to marriage automatically to ensure exchanges between biological families, they have preferred to enact positive rules, constraining individuals and families, so that the one or the other form a particular kind of union.

In this case, the entire field of kinship becomes a kind of chessboard on which a complicated game unfolds. An adequate terminology assigns the members of the group to categories in accordance with these principles: that the category or categories of the parents determines directly or indirectly those to which their children belong; and that, following their respective categories, the members of the group can or cannot intermarry. Peoples who appear ignorant or savage have thus invented codes that we have trouble deciphering without the help of our best logicians and mathematicians. Rather than going into detail about these calculations, which are sometimes so long that one has to have recourse to computers, I shall limit myself to a few simple cases, beginning with marriage between cross-cousins.

This system separates collateral relatives into two categories: "parallel" collaterals, if their kinship is through siblings of the same sex (two brothers or two sisters); and "collateral" cross-cousins, if through siblings of opposite sexes. My paternal uncle and my maternal aunt are for me parallel relations; my maternal uncle and my paternal aunt, cross-relatives. The cousins issuing, respectively, from two brothers or two sisters are parallel to each other; those issuing, respectively, from a brother and a sister are crossed. In the following generation, the children of the sister (for a man) and those of a brother (for a woman) are cross-nephews and cross-nieces; they are parallel nephews and

The Family

nieces if (for a man) they are born to his brother or (for a woman) to her sister.

Almost all the societies that apply this distinction equate parallel relatives with the closest relatives of the same generation: the brother of my father is a "father," and the sister of my mother, a "mother"; I call my parallel cousins "brothers" or "sisters," and I look on my parallel nephews as my own children. With all parallel kin, a marriage would be incestuous and, hence, forbidden. On the other hand, cross-relatives receive distinctive names; and it is among them that, as a duty or through a preference for non-relatives, that one chooses a spouse. Furthermore, often only one single word exists to designate one's female cross-cousin and one's wife as well as one's male cross-cousin and one's husband.

Certain societies push the distinction still farther. Some forbid marriage between cross-cousins and impose or authorize it only between their children—cross-cousins also, but in the second degree. Other societies elaborate on the notion of cross-cousins and subdivide these relatives into two categories: one including unions permitted or prescribed; the other, prohibited unions. Although the daughter of the maternal uncle and that of the paternal aunt are equally entitled to be cross-cousins, tribes have been found, established sometimes side by side, that forbid or prescribe either the one or the other. Certain tribes of India believe death preferable to the crime that, according to them, would be constituted by a marriage conforming to the rule of a neighboring tribe.

These distinctions, and others that could be cited, are difficult to explain by biological or psychological reasons and seem senseless. They are illuminated, however, by my previous discussion, and also when one remembers that the essential aim of impediments to marriage is to establish an interdependence between biological families. To put it in stronger terms, these rules express society's refusal to acknowledge the family as an exclusive reality. For all systems, complicated as they are by distinctions of terminology, by prohibitions, by prescriptions, or by preferences, are no more than processes for dividing families into rival or allied camps, who can and must take part in the great game of marriage.

Let us consider briefly the rules of this game. Every society first desires to reproduce itself; it must thus possess a rule to assign children the same status in the social structure as that of their parents' occupation. The so-called unilineal rule of descent is, in this respect, the simplest: it makes children members of the same sub-division of the

whole society (family, line, or clan) as either their father and his male ancestors (patrilineal descent) or their mother and her female ancestors (matrilineal descent). The two functions can also be considered simultaneously or can be combined to define a third into which children are placed. For example, with a father from subdivision A and a mother from subdivision B, the children would belong to subdivision C; they would be in subdivision D if the situation were reversed. Individuals C and D could marry one another, and their children would be either A or B according to the status of their (the parents') respective assignments. One could spend one's spare time thinking up rules of this kind, and it would be surprising not to find at least one society that practiced them.

After the rule of descent has been determined, another question presents itself: Of how many exogamous groups is a particular society comprised? With marriage being forbidden by definition within the exogamous group, there must be at least one other group to which members of the first can apply to obtain a spouse. Each restricted family in our society constitutes an exogamous group; there are so many groups that the choice of spouse of each of its members can be left to chance. In so-called primitive societies, there are many fewer groups—partly because of the limited dimensions of the societies themselves, and also because the recognized ties of kinship stretch much farther than they do among us.

Let us first examine a society with unilineal descent and comprising only two exogamous groups, A and B. One solution is possible: the men from A marry the women from B; the women from A marry the men from B. One can thus imagine two men—from A and B, respectively—exchanging their sisters, each of whom would become the wife of the other man. If the reader is willing to use a piece of paper and a pencil to construct the hypothetical genealogy resulting from such an arrangement, he would establish firmly that, whatever might be the patrilineal or matrilineal rule of descent, the siblings and the parallel cousins will fall into one of two exogamous groups and the cross-cousins into the other. Hence, only cross-cousins (if the game is played between two or four groups) or the children of cross-cousins (for a game between eight groups; a game between six constitutes an intermediate case) will satisfy the initial condition that spouses must belong to distinct groups.

So far I have limited myself to examples of exogamous groups in even numbers—two, four, six, eight—and opposed two by two. What will happen if the society is composed of an odd number of groups?

According to the preceding rules, one group will remain, I dare say, "on the board," without a partner with whom to trade. It is necessary then to introduce other rules, capable of dealing with any number, odd or even, of parties engaged in matrimonial exchange.

These rules can take two forms: either the exchanges will remain simultaneous while becoming indirect, or they will remain direct but will then stretch out over time. Take the first type: group A gives its sisters or its daughters in marriage to group B; B to C; C to D; D to n ; and finally n to A. When the cycle is completed, every group has given a woman and has received one, although it has not given to the same group as that from which it has received. An easy-to-follow scheme shows that, with this formula, one's parallel cousins fall as before into the same group as one's brothers and sisters; thanks to the rule of exogamy, they cannot marry each other. But—and it is the essential fact—cross-cousins subdivide into two categories according to whether they come from the mother's or the father's side. Thus, the female cross-cousin on the mother's side (that is, the mother's brother's daughter) will always fall into the group that provides wives (A, if I am B; B, if I am C; and so on); and, inversely, the female cross-cousin on the father's side (the father's sister's daughter) will always fall into the other group, to which my group gives wives, but from which it does not receive any (B, if I am A; C, if I am B; and so on). Thus, in such a system, it is normal for a man to marry a cross-cousin of the first type but against the rule to marry one of the second.

The alternative system keeps the exchange direct, but through consecutive generations: group A receives a wife from group B; in the following generation, group A returns to group B the daughter born from the previous marriage. If groups continue to be arranged in conventional order—A, B, C, D, n —in any generation, C, let us say, gives a wife to D and receives one from B; in the following generation, C repays B, so to speak, and gets its own return from D. Here again the patient reader will find out that cross-cousins are subdivided into two categories, but the reverse of the preceding way: the daughter of the paternal aunt is the permitted or prescribed spouse, while the daughter of the maternal uncle is prohibited.

Beside these relatively simple cases, all over the world there are still kinship systems and marriage rules about which we continue to specu-

late—such as those of the Ambrym in the New Hebrides and the Murngin or Miwuyt of northwestern Australia; and the whole complex of systems, principally North American and African, known as Crow-Omaha, named for the populations where those systems were first observed. But to decipher these and other codes, it is necessary to proceed as I have just done by considering that the analysis of kinship terms and of permitted, prescribed, or prohibited degrees reveals the mysteries of that very special game which consists, for members of an actual or reputed biological family, of exchanging women with other families—that is, breaking up families already established to create out of them others which, in time, will be broken up for the same ends.

This incessant work or destruction and reconstruction does not imply that descent is unilineal, as I assumed at the beginning in order to facilitate my exposition. It is enough that, by virtue of any principle—which may be unilineal descent but also, in a vague sense, ties of blood or other sorts of tie—a group that is losing a woman over whom it assumes authority considers itself owed a substitute woman, who comes from the same group as that to which it has ceded a daughter or a sister, or from a third group; in more general terms, the social rule provides that any individual can, in principle, marry beyond the prohibited degrees so as to establish and perpetuate among all the biological families interconnections that, in terms of the whole society, are approximately balanced.

Women readers, who may be shocked to see themselves reduced to being objects of exchange between male partners, can be reassured that the rules of the game would remain unchanged were the opposite convention adopted, with men being exchanged by women's groups. As a matter of fact, a few societies of a highly developed matrilineal type have, to a limited extent, expressed things that way. And both sexes can accommodate themselves to a slightly more complicated description of the game, which says that groups consisting of both men and women exchange among themselves kinship relations.

But from whatever perspective, the same conclusions must be drawn: the restricted family is no more the basic element of society than it is its product. It is more precise to say that society can exist only in opposition to the family while respecting its constraints: no society can maintain itself through time if women do not give birth to children; and if they do not benefit from male protection while carrying, nursing, and raising their children; and, finally, if precise sets of rules do not exist to perpetuate the basic pattern of the social fabric throughout the generations.

Society's primary social concern regarding the family, however, is not to honor it or to perpetuate it. Everything shows rather that society mistrusts the family and contests its right to exist as a separate entity. Restricted families are permitted to endure only for a limited time, either long or short according to the case, but on the strict condition that their component parts be ceaselessly displaced, loaned, borrowed, given away, or returned, so that new restricted families may be endlessly created before disintegrating in their turn. Thus, the relation between society as a whole and restricted families is not static, as is a house and the bricks it is built of; it is rather a dynamic process of tensions and oppositions which are always in precarious equilibrium. The point of equilibrium and the chances of its lasting vary endlessly according to time and place. But, in every case, the word of the Scriptures, "You will leave your father and your mother," provides the golden rule (or, possibly, the iron rule) for the establishment of any society.

If society belongs to the realm of culture, the family is, in the heart of social life, the emanation of those natural requirements without which there could be no society, and hence no mankind. As Bacon said, one can overcome nature only by submitting to its laws. Therefore, society has to give the family some recognition. And it is not so surprising that, as geographers have also shown in respect to the use of natural resources, the greatest compliance with the natural laws is likely to be found at both extremes of the scale on which one can order the economic and technological development of cultures. Those at the lower extreme are not in a position to pay the necessary price of breaking away from the natural order; those at the other end, instructed by past errors (at least one hopes they are), know that the best policy is the one that recognizes nature and its laws. Thus, the small, relatively stable, monogamous family occupies, both in societies judged very primitive and in modern societies, a bigger place than it does in what may be called (for the sake of argument) the intermediate levels.

Nonetheless, these shifts in the equilibrium point between nature and culture do not affect the whole picture. When one travels slowly and with great effort, halts should be long and frequent. And when one can travel often and fast, one should also stop often to catch one's breath. It is also true that the more roads there are, the more they are likely to intersect. Social life imposes on its individual members, and on the groups to which they are kin, an incessant changing of places. From this point, family life is little else than the expression of the need

FAMILY, MARRIAGE, KINSHIP

to slacken the pace at the crossroads and to take a little rest. But the orders are to keep on marching; and society can no more be said to consist of families than a journey is made up of the stopovers that break it into stages. One can say that families in any society are both its condition and its negation.

Chapter 4

An Australian “Atom of Kinship”

A NEW FASHION has been spreading among our English-language colleagues as they repudiate all the achievements of our discipline, revile its founders and the scholars who succeeded them, and insist that it is necessary to “rethink” anthropology from top to bottom, that nothing from its past remains valid. This rancor has been vented by turns on Frazer, Malinowski, Radcliffe-Brown, and several other anthropologists. Because of his position in Australian studies, Alfred R. Radcliffe-Brown has been a favorite target of young Australian anthropologists. It is sometimes amazing how his analyses and conclusions have been challenged in toto, and quite sharply, by investigators who, though often of the highest caliber, are condemned by current conditions to know only aboriginal groups whose traditional culture has greatly deteriorated. These groups are cooped up in missions, whose influence they have been absorbing for decades; or they lead precarious lives on the outskirts of cities, camping in vacant lots or between the tracks of some railroad yard. To such reservations, the detractors of Radcliffe-Brown cuttingly retort that the aborigines he met were as acculturated as those of today. Maybe so—but, even without any experience of Australian reality, we have the right to conjecture that a state of acculturation in 1910 was very different from one

The New York Times Reprints

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers here or use the "Reprints" tool that appears next to any article. Visit www.nytimes.com/reprints for samples and additional information. Order a reprint of this article now.

**I KEPT MY EYES
OPEN FOR
127 HOURS**

September 15, 2010

Study Finds Wider View of 'Family'

By SAM ROBERTS

A majority of Americans now say their definition of family includes same-sex couples with children, as well as married gay and lesbian couples.

At the same time, most Americans do not consider unmarried cohabiting couples, either heterosexual or same-sex, to be a family — unless they have children.

The findings — part of a survey conducted this year as well as in 2003 and 2006 by Brian Powell, a sociology professor at Indiana University, Bloomington — are reported in a new book, "Counted Out: Same-Sex Relations and Americans' Definitions of Family," to be published on Wednesday by the Russell Sage Foundation. Since the surveys began, the proportion of people who reported having a gay friend or relative rose 10 percentage points, said Professor Powell, the book's lead author.

"This is not because more people are gay now than in 2003," he said. "This indicates a more open social environment in which individuals now feel more comfortable discussing and acknowledging sexuality. Ironically with all the antigay initiatives, all of a sudden people were saying the word 'gay' out loud. Just the discussion about it made people more comfortable."

The book concludes that framing the equality of same-sex couples in terms of "the best interests of the child" might prove to be a more successful political argument than others.

"Neither the numbers from our data nor actual votes on initiatives are anywhere near the sufficient magnitude to support the idea that the public is ready to embrace same sex-couples with open arms," the authors say. But, likening the resistance to laws and mores against interracial marriage, "we envisage a day in the near future when same-sex families also will gain acceptance by a large plurality of the public."

The latest telephone survey of 830 people conducted this year found that Americans were almost equally divided on same-sex marriage. "I don't think people are ready to embrace it, but people are ready to accept it," Professor Powell said of same-sex marriage.

The survey also found a growing acceptance that genetics, rather than parenting, peers or

God's will, was responsible for sexual orientation.

Since 2003, the survey found a decline of 11 percentage points in the number of people who generally define family as a husband and wife with or without children.

Prof. Stephanie Coontz of Evergreen State College in Washington, director of research and public education at the Council on Contemporary Families, a research and advocacy group, said that "Americans seem to be open to seeing same-sex couples with children as families, even while they hesitate to recognize their unions as marriage."

David Blankenhorn, president of the Institute for American Values, a marriage research and advocacy group, said he was not surprised by the findings. "I like the standard definition of family: two or more persons related by blood, marriage or adoption," Mr. Blankenhorn said. "Keeps it simple and coherent."

But, he added: "We live in groups, and we need each other. So it's always a good thing, isn't it, when any of us truly loves and is loved by another."