Between Sacrament and Contract
Marriage as Covenant in
John Calvin’s Geneva

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Introduction

"Reformation denial" has become the new fashion among many Western historians today. A generation ago, the sixteenth-century Protestant Reformation was almost universally regarded as a formative era in the development of Western ideas and institutions. Today, it is regularly described as a historians’ fiction and historical failure. Martin Luther, John Calvin, Thomas Cranmer, and other sixteenth-century figures certainly called for reforms of all sorts, recent interpretations allow. But they inspired no real reformation. Their ideas had little impact on the beliefs and behavior of common people. Their policies perpetuated elitism and authoritarianism more than they cultivated equality and liberty. Their reforms tended to obstruct nascent movements for democracy and market economy and to inspire new excesses in the patriarchies of family, church, and state.  

The new two-volume Handbook of European History 1400-1600, prepared by forty leading historians, is part and product of this new historiographic fashion. In their introduction, the Handbook editors treat "the Reformation" as an ideological category of "nineteenth century Protestant historical belief," which served more to defend the self-identity of modern mainstream Protestants than to define a cardinal turning point in Western history. Recent historiography, the

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6 Thomas A. Brady Jr, Heiko Oberman, and James D. Tracy, eds., Handbook of European History 1400-1600: Late Middle Ages, Renaissance, and Reformation (Leiden: Brill, 1994), f1-siv.
formulations and divisions of public and private law; and many other changes associated with “the rise of legal humanism” and “the reception of Roman law.” The legal reformation also introduced major revisions to sixteenth-century European criminal laws and procedures, administrative structures and processes, and constitutional powers and rights. To be sure, this legal reformation retained ample adherence and coherence with earlier traditions of canon law, civil law, and customary law. And to be sure, the eighteenth-century Enlightenment-based revolutions and later codification movements transformed many European legal systems. But the sixteenth century was, by comparison, an equally fertile and revolutionary era.

It was the theological reformation inaugurated by Martin Luther in 1517 that helped to render this legal reformation of Europe so pervasive and resilient. And, in turn, it was the legal reformation begun in the previous century that helped to render the theological reformation so instantly effective and revolutionary. These legal and theological reformation movements remained mutually inspiring and integrating after the early 1520s in many areas of Protestant Europe. For example, many of the leading jurists of sixteenth-century Germany were converts to the evangelical cause and were quick to translate the new theological ideas of the day into new legal forms. Lutheran theologians replaced the traditional sacramental understanding of marriage with a new social concept of marriage and family life. On that basis, Lutheran jurists developed a new civil law of marriage, featuring requirements of parental consent, church consecration, and peer presence for the validity of marriage, and the modern law of divorce on grounds of adultery, desertion, abuse, and frigidity. Lutheran theologians introduced a radical new theology of the uses of the moral law, rooted in the Bible, particularly the Ten Commandments. On that basis, Lutheran jurists transformed traditional natural-law theory; introduced sweeping changes in the civil laws of sumptuousness and public morality; and developed an integrated theory of the retributive, deterrent, and rehabilitative functions of criminal law and punish-

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1Ibid., xvi.
2Ibid., xix.
3R. Schultze, “Reformation (Rechtsquellen),” in Handwörterbuch zur deutschen Rechtsgeschichte (Berlin: n.p., 1990), 468.
8Ibid. See also Karl Kähler, Luther und die Juristen: Zur Epoche der gegenständlichen Verhältnis des Rechts und der Stiftlichkeit (Bonn: Verlag von Rud. Besser, 1875).
Lutheran theologians introduced the concept of the magistrate as the "Landeowner," called by God to enforce both tables of the Decalogue in the community. On that basis, Lutheran jurisprudence introduced many of the legal forms and forums of the modern welfare state with state-run churches, schools, charities, workhouses, hospitals, and the like. Viewed through the binocular of law and religion, therefore, the "German Protestant reformation" is hardly the ideological concept or idle category that recent historiography suggests.

A similar claim may be made about the theological and legal reformation, inaugurated in 1536 by the Genevan reformer John Calvin. During his Genevan tenure from 1536 to 1538, and again from 1541 until his death in 1564, Calvin led a sweeping reformation of Genevan religious, political, and legal institutions. He introduced fundamental changes in systematic and biblical theology, as well as in biblical ethics and ecclesiology, that have shaped the Reformation tradition until this day. He also introduced fundamental changes in church-state relations, moral and summairy laws, criminal laws and procedures, education and poor relief, marriage and family laws, and much else. His influence left an indelible impression not only on sixteenth-century Geneva and surrounding rural polities but eventually on transplanted Calvinist communities throughout Huguenot France, the Pietist Netherlands, Presbyterian Scotland, Puritan England and New England, various parts of the German Palatinate, Poland, Czechoslovakia, Hungary, and eventually South Africa. So profound and enduring was his influence on the Western legal tradition that, two centuries later, even a religious skeptic such as Jean-Jacques Rousseau had only praise for his compatriot: "Those who consider Calvin only as a theologian fail to recognize the breadth of his genius. The editing of our wise laws, in which he had a large share, does him as much credit as his Institutes of the Christian Religion...[So long as the love of country and liberty is not extinct among us, the memory of this great man will be held in reverence.]"

This article takes up one small part of the story of the Calvinist reformation—the reformation of marriage law and theology in sixteenth-century Geneve. Calvin's reformation of marriage fell into two distinct phases. In the first half of his career, Calvin the jurist was primarily at work. Content to repeat theological commonplaces on marriage, he directed most of his energy to the establishment of a new marriage law for Geneva. A comprehensive Marriage Ordinance of 1545 brought old canon law rules and new civil law reforms into an impressive new synthesis. An Ecclesiastical Ordinance of 1541/7 and a Civil Ordinance of 1543 brought the city council and the church consistory into an imposing new alliance for the enforcement of these laws. When these legal reforms met with widespread resistance in Geneva in the later 1540s and early 1550s, Calvin the theologian went to work. In a series of late-life letters, sermons, and biblical commentaries, Calvin laid out a comprehensive covenant theology of marriage and family life that served to integrate and rationalize much of the new legal structure. This theological apologia, together with the stepped-up activities of the Genevan consistory, helped to render the new marriage law on the books a new law of action—in Geneva and, eventually, in dispersed reformed communities of Europe and their many colonies.

The Case of the French Nobleswoman

A 1552 case before the Genevan consistory provides a good opening view of this new law and theology of marriage, as well as the tensions that lingered between them in Calvin's mind. A "certain noblewoman from Paris," as she anonymously identified herself, sent a long letter to the consistory on June 24, 1552. The noblewoman's choice of anonymity was deliberate, for she wrote to complain bitterly of her husband's "idolatry and persecution of Christians," and to inquire whether "the law of marriage compels her to live with her husband, or whether the Gospel permits her to leave him and to seek liberty [in Geneva]." The prevailing law of Geneva gave husband and wife alike an equal right to sue for divorce on proof of adequate cause—a procedural equality for which Geneva had already become quite famous. Thus, if she moved to Geneva, this noblewoman could easily press an ex parte case against her husband for divorce. The prevailing popular stigma against divorce, however, rendered such suits very dangerous for a woman, particularly this one. By leaving her husband and homeland, she would at minimum put her liberty and property at risk. By filing a divorce suit against her husband, she would likely imperil her own life and limb as well.

Ten years earlier, this noblewoman had converted from Catholicism to the evangelical cause—contrary to her husband's confession and command. At first, he had indulged her somewhat, she writes, "though he held her all the time to the papal idolatry, forcing her to go to Mass and to undertake journeys and pilgrimages and make vows to the saints." Six years later, however, he and his relatives began a ruthless campaign against her and her Protestant co-religionists. "Some he throws into prison; others he charge[s] before the judge..."
and nobility." He forbids his wife to speak to any of them. He censors her letters, shadows her movements, threatens her servants with "the fire" not to conspire in her heresy. He forbids her to perform charity or to "sing Psalms or hymns or anything else in the praise of the Lord." He forces her continued compliance with "papal idolatry." If she disobeys him, he "threatens to throw her into the water or some other secret death"—suggesting that he might "amuse himself by having her burnt or killing her slowly in a permanent dungeon." Until now, she has suffered "in becoming Christian silence," she writes, indicating that she fears relating any more in her letter lest her husband find her out. She assures Calvin and his colleagues, however, that she has endured "grievous and severe assaults [and]... every kind of affliction of both spirit and body." She urges the Geneva consistory "to meet together to formulate a reply to her sad request so that she may have a resolution of her case, for she has no desire to live any longer in such idolatry."

Calvin's opinion, on behalf of the "unanimous" Geneva consistory, validates between pastoral gentleness and biblical legalism. Calvin, the pastor, opens with a few lines of "pity and compassion" for the noblewoman's "most severe and cruel servitude" suffered on account of "her true and pure religion." "We bear in mind the perplexity and anguish in which she must be...praying God that it would please Him to give her relief."

Calvin, the jurist, however, had little relief to give her. "Since she has asked for our counsel, regarding what is permissible," he writes, "our duty is to respond, purely and simply, on the basis of what God reveals to us in his Word, closing our eyes to all else." The new Genevan law followed the strict biblical view that divorce is permitted only on grounds of adultery (and, in rare cases, malicious desertion). Cruelty and abuse were insufficient grounds for divorce, and "voluntary divorce" by either or both parties was out of the question. A marital couple's differences in religion was also an insufficient ground for divorce. To the contrary, said Calvin, citing 1 Corinthians 7:13 and 1 Peter 3:1, "a believing party cannot, of his or her own free will, divorce the unbelieving... but should endure bravely and persevere with constancy... and make every effort to lead her partner into salvation." It would be an irony, said Calvin, "to abrogate the order of nature" in marriage for the sake of one form of Christianity over another. The parties must continue to live together, "and no matter how great his obstinacy might be, she must not let herself be diverted from the faith, but must affirm it with constancy and steadfastness, whatever the danger."

A little later in his opinion, Calvin, the pastor, softened this interpretation and seemed to be charting a road to relief. "If the party should be persecuted to the extent that she is in danger of denying her faith" or imperilling her life, he writes, "then she is justified in fleeing." A spouse need not put soul and body in mortal jeopardy for the sake of the marriage but may leave when faced with such a dire threat. "This does not constitute a voluntary divorce," said Calvin. The apostasy and cruelty together are tantamount to dissolution of the marriage itself, and an innocent party need not endure them. Given what the noblewoman had described in her letter—"grievous and severe assaults and every kind of affliction of both spirit and body"—this seemed to provide a rationale for finding in her favor.

Calvin, the jurist, had the final word in the case, and he found against her. His judgment rested on a rather technical legal point of inadequacy of notice, which he read into the same passages from Peter and Paul already cited. Contrary to what Scripture requires, Calvin concluded, the noblewoman had not given adequate notice to her husband of her religious dissatisfaction. "What she says in her letter is that she is only silent and dissimulates. When pressed to declare herself with idolatry, she yields and complies. This being so, she has no excuse for leaving her husband, without having made a more adequate declaration of her faith."—though, Calvin recognized, she would doubtless have to endure "greater compulsion" as a consequence of such declaration. "If thereafter," Calvin concluded, "she finds herself in grave peril, with her husband persecuting her to death, she may avail herself of the liberty which our Savior grants to His followers for escaping the fury of wolves."

This was a quite typical petition, and a quite typical response. With the death of Ulrich Zwingli, Martin Luther, and Martin Bucer by 1552, Calvin had emerged alongside Philip Melanchthon as the leading Protestant authority on the Continent. Private litigants and political magistrates from throughout Europe sought his counsel on sundry questions of marriage theology and law. A number of parties, particularly women, moved to Geneva to avail themselves of its more egalitarian marriage procedures and the possibilities of finding relief from oppressive homes and laws. Many of these parties, while not always so desperate in their plight as this French noblewoman, often raised the same...
kind of basic issue—how to balance biblical and civil laws on marriage and divorce, formal and equitable interpretations of the law; and church and state responsibilities in the formation, maintenance, and dissolution of marriage.

Calvin's own vacillations in this case—between theological principles and civil precepts, pastoral equity and legal formality—is a miniature portrait of the central tension of his broader reformation of marriage in Geneva. In 1552, Calvin was in the interim between the first phase of his reformation of marriage that was focussed almost exclusively on law and the second phase of his reformation that blended law more fully with theology. As he moved from his first to his second phase, Calvin often tempered his earlier legalism, even while confirming most of his laws. On questions of spousal oppression and apostasy, Calvin remained firm in his judgment not to grant divorce unless the soul and body of the innocent spouse were truly imperiled. This was consistent with (perhaps even caused by) his judgment not to countenance revolt against oppressive and apostate magistrates unless the soul and body of the citizen were truly imperiled. On many other marital questions, Calvin's early legal views underwent considerable theological tailoring and tempering as he moved into the second phase of his career. It is to those two phases of his career in marital reformation that we now turn.

The Early Reformation of Genevan Marriage

As a young Protestant neophyte in his early twenties, John Calvin naturally came under the influence of the first generation of Reformation leaders. In the years immediately following his conversion in 1532, Calvin read several writings of the leading Protestant lights—Martin Luther, Philip Melanchthon, Martin Bucer, Heinrich Bullinger, and Ulrich Zwingli. In his early travels, he also came upon the new church ordinances of Basel, Berne, Brunswick, Strasbourg, and Zürich, which already enjoyed wide circulation and authority in the rapidly expanding Protestant world.

Calvin's first formulations on marriage—from his 1536 Institutes to his 1545 Marriage Ordinance and its amendments—drew liberally from these disparate

Protestant sources. His theology of marriage remained rather rudimentary in these early writings, constituting little more than a distillation of prevailing Protestant principles. His legal formulations on marriage were more learned, ultimately yielding an impressive integration and elaboration of the Reformation's most daring legal reforms.

Calvin's emphasis on the law of marriage, rather than its theology, could only be expected during the first phase of his career in Geneva. Calvin was still young in his theology, and the ready acceptance of Protestant marriage teachings in the city allowed him to direct his initial theological forays to more central and controversial doctrines. Calvin was more learned in law, having studied canon law and civil law with the great jurists Pierre L'Estoile, Guillaume Budé, and Andreas Alciat, and having learned the basics of Protestant marriage law from Bucer, Melanchthon, and his Geneva colleague Guillaume Farel. Since Geneva still lacked a comprehensive new marriage law when he arrived, Calvin focused most of his initial efforts there.

Early Reforms of Marriage Theology

Calvin repeated, with only modest embellishment, the familiar Protestant attack on the prevailing Catholic theology of marriage. Like the Lutheran reformers, he grounded his attack in the theory of the two kingdoms. He wrote:

[T]here is a twofold government in man. One aspect is spiritual, whereby the conscience is instructed in piety and in reverencing God; the second is political, whereby man is educated for the duties of humanity and civil life that must be maintained among men. These are usually called the "spiritual" and the "temporal" kingdoms (not improper terms) by which is meant that the former sort of regime pertains to the life of the soul, while the latter has to do with the concerns of the present life—not only with food and clothing but with laying down laws whereby a man may live his life among other men honorably and temperately. For the former resides in the mind within, while the latter regulates only outward behavior.

Marriage, family, and sexuality are matters of the earthly kingdom alone, Calvin believed. Marriage is "a good and holy ordinance of God," designed to procreate children, to remedy incontinence, and to promote "love between husband and wife." Its morals and mores are subject to the laws of God that

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20 On Calvin's general views of civil disobedience, see, e.g., Ioannis Calvinini Institutionis Christianarum (Basel, 1536), 6.13 [hereafter Institutes (1536)]; Comm. Dan. 6.22; Comm. Deut. 5.10, with discussion and sources in Witte, "Moderate Religious Liberty," no. 65 and 134. On the analogy between marital and civic relations, see CO 296:90, 638:58, with discussion in Josef Bohatec, Calvinus Littera et Kosmos (Zürich, 1979), 4.62:53.

are written on the "tablet" of conscience, rewritten in the pages of Scripture, and distilled in the Ten Commandments. Marriage, however, is not a sacrament of the heavenly kingdom. Though it symbolizes the bond between Christ and His Church, marriage confers no divine promise and confers no sanctifying grace, as do the true sacraments of baptism and the Eucharist. Though it is a righteous mode of Christian living in the earthly kingdom, marriage has no bearing on one's salvation or eternal standing. Moreover, celibacy is not an obligation of the earthly kingdom. The celibate life is a "special gift of God," commended only to those "rare persons" who are continent by nature. "[T]he hypocrisy of demons to command celibacy," and "giddy levity" to exult the celibate state over the marital estate, Calvin charged. For the Church to command celibacy is to "contend against God" and to spur His gracious "remedy" for lust. For the Church to subordinate marriage to celibacy is to commit the spiritual "arrogance" of supplanting God's ordinance with a human tradition. Two decades earlier, such teachings would have been revolutionary. By the late 1530s, they had become familiar refrains in the Protestant litany.

Early Reforms of Marriage Law

Critique of Canon Law

Calvin took up, with more originality, the Protestant attack on the Catholic canon law of marriage, which had governed Genevan life continuously until just before his first arrival there in 1536. He issued a lengthy and bitter broadside against the arguments from Scripture, tradition, and the sacraments that the Church had adduced to support its vast ecclesiastical jurisdiction. "[T]he power to frame laws was both unknown to the apostles, and many times denied the ministers of the church by God's Word," he insisted. "[I]t is not a church which, passing the bounds of God's Word, wantsons and disports itself to frame new laws and dream up new things for spiritual life." The Bible alone is a sufficient guide for a person's Christian walk and a church's corporate life. For the

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Church to impose new laws upon its own members is to obstruct the simple law and liberty of the Gospel. For the Church to impose its own laws upon civil society is to obscure its essential pastoral, prophetic, and pedagogical callings. To be sure, said Calvin quoting St. Paul, "all things [must] be done decently and in order." Certain rules and structures "are necessary for internal discipline and the maintenance of peace, honesty, and good order in the assembly of Christians." But the church has no authority to impose laws "upon consciences in those matters in which they have been freed by Christ"—in the so-called adiaphora, the external and discretionary things of life that do not conduce to salvation. Marriage and family life are among these adiaphora. Laws governing such matters lie within the province of the state, not the church.

Particularly, the Church's sacramental theology of marriage, Calvin argued, has led all Christendom down a "long legal trail of errors, lies, frauds, and misdeeds." Calvin singled out for special critique the familiar targets of earlier Protestant attacks—the Church's usurpation of marital jurisdiction from secular judges, its condonation of secret marriages of minors without parental consent, its restrictions on the seasons for betrothal, its long roll of marital impediments beyond "the law of nations and of Moses," its easy dispensations from marital rules for the procreated and the powerful, its prohibitions against divorce and remarriage. "[P]apal tyranny" and "iniquitous laws," he wrote, have "so confused matrimonial cases... that it is necessary to review the controversies that often ensue therefrom in light of the Word of God" and "to make certain new ordinances by which [marriage] may be governed." 20

Ecclesiastical and Civil Ordinances

The city council of Geneva soon made "certain new ordinances" for the government of marriage. The 1541 Ecclesiastical Ordinance and the 1543 Civil Ordinance of Geneva—both drafted, in part, by Calvin—set out the church's new role in the family life and law of the community. 21 The church's "four

20See Institutes (1536), 1.4.1, 5.68-71.
21See ibid., 5.68-71, 6.25.
21Institutes (1536), 1.4.1, 5.17, 6.20.
offices" of pastors, teachers, elders, and deacons were to propound a purely biblical ethic of marriage and family life among its members—freed from the distortions of the canon law and free from the directions of a central episcopacy. Pastors were to expound relevant biblical passages from the pulpit; teachers were to explain them more simply to students and catechumens. Elders were to discipline sexual license and marital discord among church members; deacons were to aid orphans, widows, and the sexually abused. All church leaders were to set an example of sexual modesty, chastity, and integrity in their lives. Any pastor, the ordinances ordered, caught in fornication, "dissolute dancing," or sexual "scandal" was to be summarily dismissed.

The 1541 Ecclesiastical Ordinance established a central consistory for Geneva to work "hand-in-hand" with the Small Council in the governance of marital matters. The Small Council was the chief magisterial body of the city, which operated with several standing specialty committees—for finance, public works, charity, and the like. The consistory was established as a new standing committee to aid the Small Council in its governance of the moral, religious, sexual, and familial life of the city. The presiding officer of the consistory was one of the four leading syndics of the Small Council. The members of the consistory included both lay and clergy divided into two companies: (1) a Company of Elders (ten to twelve citizens elected from the three other representative city councils); and (2) a Company of Pastors (comprised of up to twelve pastors drawn from local churches). The "Moderator" of the Company of Pastors was John Calvin—who by his office and by his learning exerted a formidable influence on the consistory’s deliberations.

The Geneva consistory came to serve as something of a hearings court of first instance and a mediator of last resort in cases of sex, marriage, and family life (among many other subjects). The consistory met once a week for several hours. Parties could petition the consistory voluntarily or be subpoenaed to appear—often on the recommendation of a local pastor or magistrate. Pleadings were oral. Proceedings were recorded by a notary. Testimony was given under oath. Parties and witnesses could be questioned by any consistory member. Documentary or physical evidence could also be demanded and examined. The consistory process was designed to be less formal and more flexible than that of a courtroom—though it was doubtless equally unsevering to parties and witnesses, who generally appeared without legal counsel and without any guarantee of procedural rights. Over time, the Geneva consistory became rather famous, as we have seen, and parties throughout the Protestant world would look to it or write it for direction on questions of marriage and family life.

Both the 1541 Ecclesiastical Ordinance and the 1543 Civil Ordinance explicitly barred the consistory from exercising any jurisdiction over marriage—any power to make and enforce civil or criminal laws. The consistory could administer only spiritual sanctions of admonition, catechization, or public confession to conduct its affairs—a spiritual arsenal supplemented, after a long fight, with the power of excommunication. Cases or issues that required legal action or orders were referred to the Council for legal disposition. In such instances, the consistory’s findings of fact and recommendations of action were probative but not binding on the Council.

Critics of the day saw little distinction between this new Protestant consistory and the old Catholic Church courts that had enjoyed plenary jurisdiction over marital matters in Geneva until five years previously. The Ecclesiastical Ordinance, however, sought to safeguard against such a "reversion" by appointing to the consistory both lay and ministerial officers led by a powerful lay syndic and by expressly curtailing the consistory’s legal power: ""If ministers have no civil jurisdiction and wield only the spiritual sword of the Word of God, as St. Paul commands them," the Ordinance reads, "Disputes in marital cases are not spiritual matters but are mixed up with politics, and must remain a matter for the magistracy." "There must be no derogation by the consistory from the authority of the civil council or magistracy; the civil power must proceed unhindered."

The civil power must not proceed unguided, however. Clear and comprehensive rules are "the sinews of the commonwealth [and] the souls of the civil power," Calvin believed. Such rules were especially critical for governing the tender subjects of sex, marriage, and family life. The Geneva authorities had already, since the 1480s, supplemented a good deal of the Canon law of crimes with its own criminal prohibitions against sexual sins—prostitution, adultery, fornication, rape, incest, bigamy, sodomy, bestiality, and the like. These criminal laws were tightened and amended, in part at Calvin’s urging, in the early

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3Oaths were formally required only in 1556, though several earlier consistory cases show that the practice antedated the statutory requirement. See Bergier and Kingdon, eds. Registres de la Compagnie, 2:68 for the requirement.


1540s. But Geneva still lacked a civil law of marriage to replace the canon law system.

Marriage Ordinance

In 1545, Calvin and four members of the Council thus drafted a comprehensive Marriage Ordinance for Geneva and surrounding rural parishes—cleverly pulling its provisions from an array of biblical, canonical, and civil law sources. The Ordinance was not a legal code, though Calvin called it that. The Ordinance neither moved from general principles to concrete rules nor covered all relevant subjects equally or systematically. It was instead a large, learned, and (sometimes) loose collection of rules for the governance of marital formation, maintenance, and dissolution. Though the Ordinance was debated and amended several times before its formal adoption in 1561, its basic provisions served from the start as the new common law of marriage for Geneva.

The Ordinance dwelt at length on betrothals—seeking to safeguard against secret marriages and to secure the consent of the couple, their parents, and the broader community to this vital first step of intimate union. The consent of the couple was the essence of betrothal, and the drafters took pains to secure it. Betrothal promises had to be made “simply,” “unconditionally,” and “honorably in the fear of God.” Ideally, such betrothals were to be initiated by a “sober proposal” from the man, accepted by the woman, and witnessed by at least two persons of “good reputation”—though deviations from this procedure were tolerated. Betrothals made in secret, qualified with conditions, or procured by coercion were automatically null—and the couple themselves, as well as any


2The Ordinance was completed on November 5, 1545, presented to the Small Council on November 10, and to twelve representatives of the General Council on November 13. It was commented but not formally approved and circulated thereafter among ministers and magistrates of Geneva and beyond in slightly varying drafts. On November 11, 1545, another committee, again led by Calvin, was convened to study existing marriage law and to recommend improvements to the Marriage Ordinance. Calvin presented his report on November 25, but complained on January 30, 1550, that still no official position had been taken on the ordinance. On July 1, 1551, Calvin again complained to the Council that the lack of clear guidelines led to much confusion over questions of marriage. It was not until 1553 that it finally received formal endorsement, now with a few more amendments, CO 10:53m. The 1545 version is in CO 10:53a; a 1547 version in Bergier and Kingdon, Registres de la Compagnie, 39; the final 1561 version is incorporated in Les Ordonnances eclesiastiques (1561), in CO 10:91 and Richter, Die evangelischen Kirchenordnungen, 1:314. The following analysis and quotations are based on provisions common to all three drafts, unless otherwise noted.

accomplices in their wrongdoing, faced punishment. Betrothals procured through trickery or “surprise,” or made “frivolously, as when merely touching glasses when drinking together,” could be annulled on petition by either party. Betrothals involving a newcomer to the city were not valid until the parties produced proof of the newcomer’s integrity of character and eligibility for marriage. Absent such proof, the couple had to wait a year before they could marry.

The consent of the couple’s parents was also vital to the validity of the betrothal. The consent of fathers was the more critical; maternal consent was required only when fathers were absent, and would be respected only if (male) relatives would concur in her views. In the absence of both parents, guardians would give their consent, again with priority for the male voice. Minor children—men under twenty, women under eighteen—who entered marriage without such parental consent could have their betrothals unilaterally annulled by either set of parents or guardians. Adult or emancipated children could proceed without their parents’ consent, though “it is more fitting that they should always let themselves be governed by the advice of their fathers.” The Ordinance makes clear that parental consent was only a supplement, not a substitute, for the consent of the couple themselves. Parents were prohibited, on pain of imprisonment, from coercing their children into unwanted engagements, or withholding their consent or payment of dowry until the child chose a favorite partner. They were further prevented from forcing youngsters into marriage before they were mature enough to consent to and participate safely in the institution. Minor children “observing a modest and reverent spirit,” could refuse to follow their parents’ insistence on an unwanted betrothed or a prenuptial engagement. Other children, confronting a “negligent or excessively strict” father, could “have him compelled to give a dowry” in support of their marriage.

The consent of the broader state and church community also played a part in the betrothals. Betrothed couples were to register with a local civil magistrate, who would post notices of their pending nuptials and furnish the couple with a signed marriage certificate. Couples were to file this registration marriage thereafter with a local church, whose pastor was to announce their banns from the pulpit on three successive Sundays. Such widespread notice was an open invitation for fellow parishioners and citizens alike to approve of the match or to voice their objections. Any number of objections could be raised at this stage—for example, that one of the parties was “incompetent” by reason

3See also “Statute of June 4, 1537,” in Les sources du droit du canton de Genève, vol. 2, item no. 792 (requiring a one-year waiting period).

4The 1545 version set the age of majority as twenty-four for men, twenty for women.

5See also statute of January 18, 1541, in Les sources du droit du canton de Genève, vol. 2, item no. 785 (requiring churches to keep civil marriage registers); “Les ordonnances eclesiastiques,” in Bergier and Kingdon, Registres de la Compagnie, 9 (regarding church announcements of banns).
of youth, imbecility, contagion, or a "wild spirit," or that the parties were "incompatible" because of differences in age, religion, social rank, or economic status. These objections were not necessarily fatal to the betrothal, and officials were given wide discretion regarding their disposition. No such discretion was allowed if it was proved that the parties fell within one of the biblical degrees of consanguinity or affinity, that one of the parties had an "incurable contagious disease," or that the prospective bride "taken to be virgin is not so." All objections to betrothal, the Ordinance insisted, had to be voiced privately to the consistory, and only by citizens or by persons of good reputation. Such precautions helped to avoid the prospect of "defamation or injustice," particularly "to an honorable girl." Those who objected in an untimely or improper manner could be sued for defamation by the couple or their parents.

A couple, once properly betrothed, had little time to waste and little room to celebrate. Neither their publicly announced betrothal nor the civil registration of their marriage was sufficient to constitute a marriage. A formal church wedding had to follow—within three to six weeks of betrothal. If the couple procrastinated in their wedding plans, they would be reprimanded by the consistory; if they persisted, they would be "sent before the Council so that they may be compelled to celebrate it." If the prospective groom disappeared without cause, the woman was bound to her betrothal for a year. If the prospective bride disappeared, the man could break off the engagement immediately—unless there was evidence that she had been kidnapped or involuntarily detained. Cohabitation and consummation prior to the wedding were strictly forbidden to the parties on pain of imprisonment. Pregnant brides to be, though spared prison, were required to do public confession for fornication prior to the wedding and to wear a veil signalling their sin of fornication on the day of the wedding. Weddings were to be "modest affairs," "maintaining the decorum and gravity befitting Christians," and featuring a mutual swearing of oaths by the couple, as well as by their witnesses, followed by the blessing and sermon of the pastor. Weddings could not be held on the same Sunday for which the Eucharist was scheduled lest "the honor of the sacrament" be impugned. This was a marked departure from prevailing Catholic and other Protestant traditions that saw Eucharistic celebration as a vital part of the consecration of the marriage.

A marriage—once properly contracted, consecrated, and celebrated—was presumed permanent. The married couple was expected to maintain a common home. Both parties could be called to account for privately separating from bed or board—particularly if there was suspicion of adultery, fornication, concubinage, or sodomy. Couples who "wrangled and disputed with each other" were to be admonished by the consistory to "live in peace and unity"—with severe cases of discord reported to the congregation for popular reproof or to the Council for criminal punishment. Husbands were forbidden to "ill treat," "beat," or "torment," their wives and were subject to severe criminal sanctions if they persisted. The Ordinance made no provision, even in extreme cases, for the traditional halfway remedy of separation from bed and board (without divorce). An ethic of perpetual reconciliation of husband and wife coursed through the Ordinance, with ministers, magistrates, and members of the broader community all called to foster this end.

The presumption of permanent marriage was not irrebuttable, however. In instances of serious marital impediments or individual fault, a party could sue for annulment or divorce. The Ordinance rendered the process of marital dissolution as open and communal as it had rendered the process of marital formation. The drafters were as eager to safeguard against the prior canon-law practice of private dissolutions as against the traditional canon-law toleration of secret marriages.

A judgment of annulment required proof that a putative marriage was void from the start by reason of some defect (called an impediment) present at the time of the wedding but unknown to either of the marital parties. Either party could sue on discovery of a blood or familial relationship between them that violated biblical commands. Upon annulment each party was free to remarry.

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39The statute prohibited betrothal and marriage for parties related by these degrees of consanguinity: (1) father and daughter, mother and son, "and all other descendents in sequence, inasmuch as this contravenes the propriety of nature and is forbidden both by the law of God and by the civil laws"; (2) uncle and niece or great-niece, aunt and her nephew or great-nephew, and so in sequence, "inasmuch as the uncle represents the father and the aunt is in the place of the mother; (3) brother and sister or half brother and half sister; and (4) first cousins, saying that "while marriage is forbidden neither by the law of God nor by the civil law of the Romans, nevertheless for the avoidance of scandal and fear lest the Word of God should be blasphemed by the ignorant, marriage should not be contracted between first cousins until such time as we give a different ruling. There shall be no impediment to the other degrees." The statute further prohibited betrothal and marriage between parties related by degrees of affinity: (1) a man with his son's or grandson's widow, or a woman with her daughter's or granddaughter's husband, "and so on with other relations in a direct line"; (2) a man with his wife's daughter or granddaughter; (3) a woman with her husband's son or grandson; (4) a man with the divorced wife of his nephew or great-nephew, or a woman with her niece or great-niece's husband; and (5) a man with the widow of his brother and no woman with the widower of her sister. Moreover, the statute concludes: "When it comes to notice that a man has committed adultery with another man's wife he may not take her in marriage because of the scandal and the dangers connected with it."
A husband could sue if he discovered that his wife lacked presumed virginity, was incurably diseased, or refused to correct a "defect of her body" that prevented intercourse—again, leaving both parties free to remarry. A wife could sue on grounds of the impotence or incurable disease of her husband—leaving her free to remarry but him "forbidden to misuse any woman again." In all such cases, the parties were expected to prepare a register of their individual and collective properties and, with appropriate judicial supervision, reach an "amicable" parting of property and person.32

A judgment of divorce required proof in open court that a marriage, though properly contracted, was now broken by reason of the adultery or desertion of one of the parties. In cases of adultery, husband and wife were accorded an equal right to sue—a deliberate innovation to "ancient practice" in Geneva that the drafters grounded in St. Paul's teaching that husband and wife have a "mutual and reciprocal obligation" in "matters of intercourse of the bed." Only an entirely innocent plaintiff could bring such a suit; any evidence of mutual fault, fraud, or collusion in the adultery was fatal to the case. Failure to bring suit in a timely manner was taken as a sign of forgiveness and cut off the suit for divorce. After bringing suit, the plaintiff was urged to reconcile with the wayward spouse—and doubtless told that such reconciliation would likely exonerate the latter from criminal punishment. But the plaintiff could insist on the divorce, which the Council would order on referral from the consistory. The innocent party was free to remarry thereafter. The adulterer faced criminal punishment—imprisonment in the usual case, banishment or execution by drowning in an egregious case.33

Parties could also sue for divorce on grounds of desertion. These divorce cases were procedurally more complicated and substantively less egalitarian in their treatment of husband and wife. In cases where the husband left home for a legitimate reason (like business or military service), but inexplicably did not return and could not be found, the wife had to wait ten years before he could be presumed dead and she permitted to remarry. In cases where the husband left "through debauchery or some other evil disposition," the wife was to find him and to request his return. If she could not find him, she would have to wait one year before proceeding further. If she did find him and he refused to return—or the year of waiting had expired—she was to request three biweekly announcements of his desertion, both by the minister in the church and by the lieutenant of the city council. If he still failed to respond, she was to summon two or three of his relatives or close friends to try to find him and urge his return. If that proved futile, she could appear before the consistory to state her case, and with their approval, petition the magistrature for an order of ex parte divorce. The return of the husband anytime before such an order would end the proceedings. The husband would be admonished for his desertion. The wife would be compelled to welcome him back to bed and board. If the husband repeated his desertion, he faced prison. If he deserted habitually, the wife could sue for divorce ex parte with no further notification requirements.

A husband who brought suit for his wife's desertion followed the same procedures but with three simplifications. First, cases of intentional desertion and legitimate departure by the wife were treated alike. Second, husbands had no obligation to wait for one year (let alone ten) if he could not locate his wife; the public announcements of her departure and petitions for divorce could commence immediately. Third, even if a wife returned, her husband could reject her if he had "suspicion that she has misconducted herself." The consistory would urge their reconciliation, but if he insisted, they would investigate her conduct while away. If they found no evidence of misconduct, he would be compelled to accept her. If they reached "a very emphatic presumption that she committed adultery or kept bad and suspect company and did not conduct herself honorably as a good woman," the Ordinance reads, "the husband's petition shall be heard, and he shall be granted what reason dictates."

Marriage Litigation

The 1549 Marriage Ordinance provided generous guidance for the governance of marriage and family life in Geneva. It was left to the consistory and the Small Council to put these rules into action: "All matrimonial causes concerning personal relationships and not goods shall receive attention in the first instance in the consistory where an amicable solution, if one can be found, shall be effected in the name of God," the Ordinance concludes. "If it is necessary to pronounce some judicial sentence, the parties shall be sent to the Council with a statement of the decision of the consistory so that the definitive sentence may be given."

A vivid picture of the Marriage Ordinance in action can be seen in the case law of 1546, the year after the first draft was issued.34 A dozen cases on point are

32Calvin elaborated on this issue of property division at some length. What survives of his effort is in Fragment d'un projet d'ordonnance en matiere matrimoniale, in CO 10:145-44 and Dessin d'un projet d'ordonnance sui la procede civil, in CO 10:139, 141. On Calvin's views of property, see Bohacek, Calvin und das Recht, 251-53.

33For a study of this criminal law in action, see E. William Monter, "Crime and Punishment in Calvin's Geneva, 1562," Archiv für Reformationsgeschichte 54 (1973): 281. Monter reports that an "almost complete and consecutively numbered list of all criminal arrests and trials from February, 1592 to February, 1593," includes 157 criminal cases. Forty-one of these cases dealt with with extra-marital sex (adultery, rape, fornication, and sodomy). Of these, three defendants were convicted and executed for raping children; three convicted adulterers and six fornicators were banished; two convicted homosexuals were executed.

34Collected in Registres du Consistoire de Genève, vol. 2, with a few cases also reported in Registres de la Compagnie des Pasteurs de Genève, the clerical bench of the consistory. A microfilm of the original twenty-one-volume Registres du Consistoire de Genève is available at the Meeter Center for Calvin Studies at Calvin College. The register has been transcribed in (thankfully readable) French by Robert M. Kingdom and others, and the volumes are scheduled for publication by Droz in Geneva. The cases discussed hereafter are drawn from the transcript of volume 2, not yet published, prepared by Professor Kingdom and Jeffrey R. Watt.
reported in the consistory register for that year, touching many aspects of the marriage process, and implicating many rules of the new draft ordinance. All but one of the cases ended in the consistory—with guilty parties simply admonished and open questions left for later resolution or for action by one of the consistory members. This picture of the Marriage Ordinance in action is rendered all the more colorful in that John Calvin participated in all these cases as Moderator of the Company of Pastors, the clerical "bench" of the consistory.

Four cases reported in 1546 dealt with challenges to betrothal. A man, who testified that his fiancée was "corrupt" and wanted to be "separated" from him was released from his betrothal provided that his fiancée would come to the consistory to corroborate his story. A young couple who became engaged while the girl was tippling was ordered to reappear before the consistory with their parents "in order for the parents to declare that the promise of marriage was frivolous, and to be admonished to take better care of their children." Another young couple, who had married without the consent of the woman's parents, was deemed "not properly contracted" and was ordered to return to the consistory for further counsel. A Genevan woman, whose engagement with a man from Genève was challenged by a woman in the city of Berne, was given an extension on her engagement and permission to join with her fiancé in order to answer the objection.

Three cases dealt with spousal desertion, discord, and neglect. A maid, deserted by her husband for twelve years, came to inquire about a rumor that her husband was involved in a case in the town of Guyon. The consistory court's decision was that "Calvin should write to the consistory of Guyon" and ask for information about the case. A widower was haled into court apparently on suspicion that he had grossly neglected his wife before she died. Though the record is cryptic, the notary reports: "The decision is that it will be a scandal to open the door to many to kill their wives, when it appears that this woman was complaining futilely (of her ailment) and died in sadness." A disaffected married couple was summoned to the consistory for investigation. The husband complained of his perennial unhappiness and of his wife's "horrible" conduct. The wife complained of his apostasy and disaffection despite her best efforts to indulge and cajole him. She threatened to leave for another city if she was forced to endure him. He refused to describe her "horrible conduct," which would allow the consistory to determine the appropriate remedy. Exasperated, the consistory referred the case to Calvin to give pastoral guidance and reproof. The couple did not appear before the consistory again.

Four cases of improper sexual behavior fell to the consistory to resolve. A young man was admonished for frequenting a dance hall, for, as Calvin warned him on behalf of the consistory, "dancing leads to debauchery." Another man, suspected of fornication, was admonished for "hugging his maid lustfully in an open street," and not accepting his own pastor's reproof for such conduct. A woman was reprimanded for becoming pregnant and for failing to disclose her condition in time for the consistory to intervene. Her testimony that she had extracted a marriage promise from her lover did not seem to impress the consistory, given its new charge to outlaw secret betrothals. A young man was admonished for fathering an illegitimate child in a nearby town. When he denied the charge "with many words," he learned that the woman's own local consistory had reported the case to the Geneva consistory, that Calvin had been dispatched to investigate, and that his findings were that the woman "wears makeup" and is reputed to be "sexually promiscuous." This evidence was suffi-

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Gruent compounded his problems by "slandering Sir Calvin for saying in his sermons that dancers are debauchers. Sir Calvin answered him that he has said it differently in his sermons—that dancing leads to debauchery." Moreover, the notary notes, Gruent was found "drunk that evening and caused scandal."
Piancon did not take kindly to these charges and got himself into a debate with Calvin, the Moderator. The notary reports that Piancon:
first answered that concerning his maid, he knows that she is a good girl and then demanded to face his accusers. He was admonished that there is a rumor that the old maid housekeeper is a maquerelle of the young. [Piancon] answered Sir Calvin, saying that Sir Calvin is the one who calls her a maquerelle. He was admonished concerning his rebellious words against Master Raymond who was criticizing his conduct. He replied that there was nothing wrong with hugging girls, and denies that he was following her in the street. He admitted that he will not stop what he is doing and was not at all afraid of the pastor. He was admonished by Sir Calvin who told him that he was to let God take care of [his] judgment.
"Case of the Widow [Reblose], of Jehan Debye, June 17, 1546," in *Registres du Consistoire de Genève*, 266.
cient, despite the young man’s denials, to yield the consistory’s decision to “procure a written certificate” from the woman’s home town—presumably a certificate for a “shotgun wedding” between the fornicating parties.66

The consistory court dealt more fully and firmly with the marital conflicts and infidelities of an elderly Genevan aristocrat, Sir François Favre. On February 18, 1546, the consistory hailed the elder Favre before it and demanded that he account for “scandalous rumors” that “there is conflict between him and his wife” and that “she has departed for an unknown reason”—perhaps because “a maid was pregnant before she left the house.” According to the notation, “Favre responded that he is old, and would just like to have someone to take care of his house. Sir Calvin admonished him that this response was nonsense. The father of a household should account for his maid,” Calvin insisted, pressing Favre for a better answer. Favre tried again, saying “he knows nothing [about the maid’s pregnancy] and that his wife simply left with her property, under pressure by someone who wants to use that property.” There was no marital conflict, Favre argued. “He did not beat her.” His wife, he said, would corroborate his testimony on her return. Favre was “admonished, indeed well admonished,” the notation reports. The Consistory decided to refer the matter to the city prosecutor to collect further information about Favre from the pregnant maid. They later decided to send a letter to the nearby consistory of Gex, asking them to summon Casper Favre, François’ son, to Geneva to testify.

The case was reopened two years later when François Favre appeared voluntarily before the consistory court, now pleading for permission to divorce his wife ex parte. The notation reports as follows:

Favre demanded to be divorced from his wife because she had numerous lawsuits [against her], and her properties were situated in Morges where he was unable to attend to them. He had not taken her on this condition. Moreover, he confessed to having committed adultery, an action which his wife also condemned in agreeing to the action for divorce. After this [plea], Sir Calvin began to give his opinion. He affirmed that adultery is a sufficient cause for a woman to seek a divorce. For though the husband has preeminence over the wife, yet in this there is equality—[see] St. Paul, I Cor[inthians] 7: “the husband has not power over his body,” etc. However, here it is necessary [for the consistory] to consider when this fornication or adultery has taken place, whether it was before the marriage was contracted, and if it was during the marriage, whether the wife’s consent to continue living with her husband after the adulterous act would cancel the fault. The members of the consistory were urged in addition to beware, lest there be collusion between the parties, which would open the door to the dissolution of many marriages. Finally, it was pointed out that the wife, who was an interested party in the case, had not brought an action, although she had [per his testimony] accused him of disgraceful conduct.67

Favre’s divorce case was thus dismissed. Shortly thereafter, Favre was again accused of fornicating with his maid servants, as well as perjuring himself before the consistory and resisting its spiritual discipline. On the recommendation of the consistory, the Geneva authorities imprisoned him and forced him into a lengthy public apology. Favre eventually left the city to spare himself further scrutiny and embarrassment.68

These marital cases in 1546 were quite typical of the cases heard by the consistory in the 1540s and early 1550s. The consistory would hear one dozen to three dozen cases per year dealing with marriage, family, and sexuality. Virtually all these cases were of modest proportion—disputes over secret, conditional, or coerced betrothals, petitions for protection from parental or spousal coercion or neglect, inquiries into fornication or debauchery, complaints for discord or abuse, and charges of spousal desertion or delinquency. Almost all these cases met with either stern spiritual admonition or with simple avuncular advice and action, and ended there.69 Few cases during Calvin’s tenure, let alone in the 1540s, rose to the level of the social intrigue and legal complexity evident in the Favre case.70

Geneva’s New Marriage Law in Comparative Perspective

The Marriage Ordinance of Geneva—on the books and in action—was a watershed in the evolution of Protestant marriage and family law. The Ordinance collected and combined the most enduring provisions of the old Catholic canon law and the most daring reforms of the new Protestant civil law. The Ordinance retained the canons’ distinctions of betrothal, marriage, and consummation. But it imported various Protestant rules to simplify, abbreviate, and police the process. The Ordinance repeated the canonists’ requirement that the couple mutually consent to marriage. But it incorporated Protestant demands for the further consent of parents, parishioners, and citizens in the process. The Ordinance accepted the canonists’ biblically based

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68"Divorce of François Favre, October 30, 1548." in Bengier and Kingdon, eds., Registres de la Cour de Genteil, 1:41.


71The most colorful such cases are captured in Kingdon, Adultery and Divorce.
on other issues that Geneva was described at the same time as "a woman's abyss."  

The most surprising feature of the new marriage law of Geneva is its legalistic, even positivistic, character. Unlike other Protestant laws on marriage of the day, both the Marriage Ordinance of 1543 and the marriage cases of 1546 are almost silent on any sources of law beyond the command of the sovereign. A typical Protestant ordinance of the day would begin at least with a bit of homiletic throat-clearing if not a fuller recitation of its sources in the Bible, reason, conscience, tradition, and custom. An elaborate law, such as this one, would sometimes also provide a crisp distillation of the polity's favorite theological doctrines supporting its basic provisions. In a dozen reported cases on a heated religious topic such as marriage, one could expect to find a liberal peppering of citations to everyone from Moses to Martin Luther, particularly with someone of Calvin's erudition in the room. But the new Geneva marriage law leaves its religious sources, and its theological rationale, almost completely hidden. First Corinthians 7 is mentioned twice in passing—but both times to make the quite unorthodox claim that, in cases of adultery, women and men should have equal rights to sue for divorce. For the rest, the rules are stated categorically and the decisions announced confidently, with very little by way of citation to religious authority and even less by way of theological explication.

The Marriage Ordinance mirrors Calvin's method in this first phase of marital reformation in Geneva. Law came first in his early reform efforts, theology a distant second. "The purity of our families depends on the purity of our laws," Calvin declared to the Geneva Small Council in urging their adoption of his Marriage Ordinance. The purification of marriage law was thus his first ambition.

The Transformation of Marriage Theology

"Rules without canons will either harden or wither over time," Lord Acton once said. "Whether hardened or withered, they come to little effect." Calvin learned this lesson the hard way in his reformation of Genevaan marriage law.

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73See also Seeger, Marriage, 135-82.

74See Kohler, Confer Konsistanz, 2-642-45, who traces some of these Genevan "innovations" to the laws of Zürich (1525) and Basel (1559). These prototype laws are reprinted in Richter, Die evangelischen Kirchenordnungen, 121, 120 and analyzed in Kohler's first volume and in Thomas Max Salley, "Canon Law and Swiss Reform: Legal Theory and Practice in the Marital Courts of Zürich, Bern, Basel, and St. Gall," in Herholz, Canon Law in Protestant Lands, 187.
However refined his early legal formulations on marriage may have been, they
did not admit of easy political adoption or popular acceptance. Genevan political
officials dithered for nearly two decades before finally yielding to most of
his legal reforms. Genevan parishioners and subjects resisted, with increasing
tempt, the authority of Calvin and the consistory to deal with marital mat-
ters.

Popular Contempt

Two cases of popular contempt appear already in the consistory register of
1546, when the Marriage Ordinance was first circulating. In one case, a man
charged Calvin with posturing as "the new pope" of marriage. 36 In another case,
a man flatly asserted that the consistory "lacked the authority" to dissolve his
sister's betrothal, punctuating his remarks with a few insulting jabs at Calvin. 37
Such juridical challenges become more pointed and frequent in sub-
sequent years, as anticlericalism escalated in Geneva. 38 Why should the church
consistory enjoy such authority over a civil estate such as marriage? Why should
the city magistrates be swayed by the pastors' teachings on sexuality and domes-
ticity? Why should ministers have such powers to probe the intimacies of bed
and board? Why should kings participate in the sacrament of Eucharist turn
on wrongs pertaining to the adiaphora of marriage? How was the magistrate
or minister to parse and police the line between the pastoral functions of the
consistory and the judicial functions of the council? Had not Calvin simply created
a new church court under his authority, wielding much of the same power and
prerogative as the former episcopal and inquisitorial courts of Catholicism—
but now lacking any final appeal to Rome? Dozens of litigants and pamphle-
teers voiced such criticisms in the later 1540s and 1550s. 39 Calvin had no ready
answers.

Not only the jurisdiction, but also the substance of the new marriage law
came under increasing challenge. Calvin may well have ingeniously cut and
pasted what he considered to be the best of Catholic and Protestant laws on
marriage, suitably amended with his own favorite norms. But why should these
laws be binding on Geneva? Why could Geneva not adopt some of the more lib-
eral rules of a Zürich or a Strasbourg, or the more conservative laws of a Rome
or a Paris? What was to prevent piecemeal or wholesale reform or rejection of
these new rules? What was to check the growing marital and sexual license in
Geneva about which Calvin and other pastors complained bitterly, the sharp
increases in adultery, desertion, and discord within the home, the escalation of
fornication, harlotry, and sumptuousness outside the home, the rapid exploita-
tion of the new rights to divorce and remarriage by the Genevan elite, the sharp
increases in "ribaldry" of music and literature and "lewdness" of manner and
speech among the youth—pathos that Calvin denounced with all the passion
and prescience of any modern-day Jeremiah? 40

Such challenges sent Calvin scurrying to his library, pulpit, and letter desk
to defend and draft a much more elaborate theology of marriage and fam-
ily life than he had earlier offered. In a long series of biblical commentaries,
sermons, and letters prepared in the last twelve years of his life, he provided a rich
theological apologia both for his marriage-law system as a whole, and for many
of the individual rules that he had prescribed. 41 Calvin's late-life ailments
and early death in 1564 kept him from fully elaborating, let alone systematizing,
these new theological sentiments. But even in its somewhat scattered form,
Calvin's new theology of marriage made an impressive and enduring contribu-
tion to the Western canon. Later reformed theologians and jurists, in
Europe and America, elaborated many of the basic theological insights that he
had adumbrated.

Such challenges also steered Calvin and his consistory colleagues to enforce
the new marriage laws of Geneva with greater rigor and vigor. Convinced of the
biblical warrant for the new marriage law, the consistory of the 1560s and there-
after set out with new resolve to break the political and popular resistance to the
new marriage-regime. Using a blend of pastoral cajolery and spiritual coercion,
they worked hard to translate the new marital law into a

37 Entry on December 16, 1545, in Die evangelischen Kirchenordnung, 2:98.
39 Ibid. For a example of such scorn and contempt, see, e.g., "Case of Lady Granotte, March 22,
1548," in Registres du Consistori, 4:11. Lady Granotte apparently had already appeared a few times
before the consistory for various moral and marital offenses. In this instance, the notary reports
that the "woman told the ministers that she did not like to come to the Consistory, even if it was
required by the church." When Calvin told her of the new changes, and that her behavior before
the consistory that day was contemptuous, she retorted that he was not telling the truth. All the
assistants were shocked at her audacity; and even though everybody tried to reprimand her, she
continued to say outrageous things against Calvin—that he came to Geneva to bring trouble and
scorn; and since he had come there was neither good nor peace. When she was reprimanded [by
Cabinet] that what she said was wrong, she responded that he does not practice what he preaches,
nor is there any love in him, only hatred, nor has word of consolation ever come from his mouth."
The woman's audacity, the notary reports, resulted in her ban from the Lord's Supper.

31-33; Gaillon, Leib, in CO 7:212f.
41 For a chart of Calvin's preaching schedule, see T. H. L. Parker, The Oracles of God: An
Introduction to the Preaching of John Calvin (London: Lutterworth Press, 1947), 160-62, with sermons
collected in CO and in Supplimenta Calvinia (Neukirchen: Kreis Moser Neukircher Verlag der
Buchhandlung, 1961- ). Calvin's biblical commentaries, all written after 1547 (see for this
Commentarius in Romam, which has little discussion of marriage), are collected in CO, with transla-
tions in Calvin's Commentaries, 47 vols (Edinburgh: Oliver & Boyd, 1847-1899). His letters are
collected in CO and in Bonnet, ed., Lettres. In what follows, I have used the CO and Supplimenta
Calvinia editions, unless otherwise noted.
new law of social action. The following two sections take up these theological and legal developments in turn.

Theology of Marriage

Calvin’s early theology of marriage had been grounded in the Lutheran doctrine of the two kingdoms. Marriage, he had argued, was an institution of the earthly kingdom alone—“a good and holy ordinance of God, just like farming, building, cobbling, and barbering.” Christians should participate in the institution—not to be justified or sanctified, but to keep themselves free from the sins of lust and incontinence. Church leaders should cooperate in the governance of marriage—not as spiritual lords of the Christian conscience but as pastoral aids to the Christian magistrate. This early theology may have allowed Calvin to counter Catholic claims that marriage is a sacrament subject to the Roman Catholic Church’s jurisdiction. But it did not allow him to counter either the political laxness in marriage law or the popular license in marriage life that prevailed in mid-sixteenth-century Geneva.

Calvin’s mature theology of marriage was grounded in the biblical doctrine of covenant. The idea of a divine covenant or agreement between God and humanity had long been taught in the Western Church. Theologians, at least since the time of Irenaeus in the second century, had discussed the interlocking biblical covenants: (1) the covenant of works whereby the chosen people of Israel, through obedience to God’s law, are promised eternal salvation and blessing; and (2) the covenant of grace whereby the elect, through faith in Christ’s incarnation and atonement, are promised eternal salvation and beatitude. The covenant of works was created in Abraham, confirmed in Moses, and consummated with the promulgation and acceptance of the Torah. The covenant of grace was created in Christ, confirmed in the Gospel, and consummated with the confession and conversion of the Christian. These traditional teachings on the covenant were well known to the early Reformers, and Calvin had already used them to fortify his doctrines of sin and salvation, law and Gospel, man and God.

In his later years, Calvin used the doctrine of covenant to describe not only the vertical relationships between God and man but also the horizontal relationships between husband and wife. Just as God draws the elect believer into a covenant relationship with Him, Calvin argued, so God draws husband and wife into a covenant relationship with each other. Just as God expects constant faith and good works in our relationship with Him, so he expects conjugal faithfulness and sacrificial works in our relationships with our spouses. “God is the founder of marriage,” Calvin wrote. “When a marriage takes place between a man and a woman, God presides and requires a mutual pledge from both. Hence Solomon, in Proverbs 2:17, calls marriage the covenant of God, for it is superior to all human contracts. So also Malachi 2:14 declares that God is as it were the stipulator of marriage who by his authority joins the man to the woman, and sanctions the alliance.”

God participates in the formation of the covenant of marriage through his chosen agents on earth, Calvin believed. The couple’s parents, as God’s “lieutenants” for children, instruct the young couple in the mores and morals of Christian marriage and give their consent to the union. Two witnesses, as “God’s priests to their peers,” testify to the sincerity and solemnity of the couple’s promises and attest to the marriage event. The minister, holding “God’s spiritual power of the Word,” blesses the union and admonishes the couple and the community of their respective biblical duties and rights. The magistrate, holding “God’s temporal power of the sword,” registers the parties, ensures the legality of their union, and protects them in their conjointed persons and properties. This involvement of parents, peers, ministers, and magistrates in the formation of marriage was not an idle or dispensable ceremony. These four parties represented different dimensions of God’s involvement in the marriage covenant, and they were thus essential to the legitimacy of the marriage itself. To omit any such party in the formation of the marriage was, in effect, to omit God from the marriage covenant.

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*Institution (1536), 5.68. But cf. *Institutes* (1559), 4:19.34 where Calvin repeats this language verbatim—and indeed the entire 1536 discussion of section on marriage as a “false sacrament.” This language stood in considerable tension with that of his sermons and commentaries discussed below.


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*Sec., e.g., Comm. Eph. 5:22.

*Comm. Mal. 2:14. See also Serm. Eph. 5:22-26 (“Marriage is not a thing ordained by men. We know that God is the author of it, and that it is solemnized in his name. The Scripture says that it is a holy covenant, and therefore calls it divine.”); Serm. Deut. 5:18 (“[M]arriage is called a covenant with God . . . meaning that God presides over marriages.”)

*Comm. Lev. 19:20; Serm. Deut. 5:16; Comm. 1 Cor. 7:36, 38; Serm. 1 Cor. 7:36-38; Comm. Eph. 6:13.

*Comm. 1 Thess. 4:3; Comm. 1 Peter 2:9; *Institutes* (1559), 4.18.16-17.

*Serm. Eph. 5:31-33.

The Law of the Marriage Covenant

God participates in the maintenance of the covenant of marriage not only through the one-time actions of his human agents but also through the continuous revelation of his moral law. Calvin repeated his earlier definition of the moral law as "God's commandments, engraved on the conscience, elaborated in Scripture, and distilled in the Decalogue. He now used sundry terms to describe this moral law—"the voice of nature," "the law of nature," "the natural order," "the inner mind," "the rule of equity," "the natural sense," "the sense of divine judgment," "the testimony of the heart," "the inner voice"—terms and concepts that he did not adequately sit or synthesize. For our purposes, these can all be viewed as synonyms to describe the basic norms created by God, and confirmed in the covenant, for the right ordering of our marital and sexual lives.

The covenant of marriage is grounded "in the creation and commandments of God," and "in the order and law of nature," Calvin believed. At creation, God ordained the structure of marriage to be a life-long heterosexual union between a man and a woman of the age of mature consent. God assigned to this marriage three interlocking purposes: (1) the mutual love and support of husband and wife, (2) the mutual procreation and nurture of children, and (3) the mutual protection of both parties from sexual sin. In nature, man and woman enjoy a "common dignity before God" and a common function of "completing" the life and love of the other. In marriage, husband and wife are "joined together in one body and one soul," but then assigned "distinct duties" and "different authorities." God has appointed the husband as the head of the family. God has appointed the wife, who is derived from and comes after the man, as his associate and companion—literally his "help meet." The divine mandate [in Paradise] was that the husband would look up in reverence to God, the woman would be a faithful assistant to him, and both with one consent would cultivate a holy, friendly, and peaceful intercourse.

This created subordination of the wife to the husband was exacerbated by the fall into sin, Calvin believed. "The woman had previously been subject to her husband, but that was a liberal and gentle subjection. Now she is cast into servitude to man—consigned perennially to a life of childbearing and domestic service, while the husband presides over her material and spiritual welfare and that of their children." Calvin reminded women of their God-given domestic roles many times—sometimes with a level of insight that warrants criticism, even when judged by sixteenth-century standards. But Calvin also made clear that husbands were not to abuse their superior offices within the marital estate, on pain of spiritual and civil sanctions. He called marital couples repeatedly to the mutual love and nurture that God had prescribed for marriage. He insisted, more than once, that the domestic vocation is equal in status to all other vocations. He further insisted that, despite the headship of the man within the home, the woman must enjoy both communal and parental equality. "While in other things, husband and wife differ both as to duty and as to authority," Calvin wrote, "with respect to their mutual obligations in bed ... they are bound to mutual benevolence." And again: "[A]uthority is distributed as much to one parent as to the other. ... God does not wish the father alone to rule the child; the mother must also have a share in the honor and the preeminence."

Calvin used this understanding of the created structure and purposes of marriage to integrate a variety of biblical norms and maxes for life within the covenant of marriage. In Calvin's view, these biblical norms had different implications (1) for the believer versus the nonbeliever, and (2) for the married cou-

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89 Institutes (1559), 2.7.1; 2.8.1; 4.20.15.


92 Comm. Gen. 1.27.1; 1.28; 2.18; 2.21; 2.22; Comm. 1 Cor. 9.11; Comm. Eph. 5.36-32; Serm. Eph. 5.28-30.

93 Comm. Gen. 1.27.

94 Comm. Gen. 2.18, 22.

95 Comm. Gen. 2.18. See also Comm. 1 Cor. 9.8; 11:4-10.

96 Comm. Gen. 2.18.
ple versus the unmarried party. Calvin spelled out these distinctions in some detail, for to him they were critical to resolving some of the tensions that might appear between and among biblical and natural norms for marriage.

Calvin explained the first distinction (the differential impact of biblical marital norms on believers and nonbelievers) in the context of his broader theory of the "uses" of the moral law. Like other Protestant Reformers, Calvin believed that the moral law provides no pathway to salvation. Prior to the fall into sin, the moral law was a recipe for righteousness. But since the Fall, no person has been capable of perfectly abiding by the moral law and thereby earning salvation by good works alone. Salvation now comes through faith and grace, not by works and the law, said Calvin. Nonetheless, from God's point of view, the moral law continues to be useful in this earthly life—to have uses. God uses both its basic norms known to all persons and its more refined norms known only to believers through the Bible to govern and guide humanity.

On the one hand, said Calvin, the moral law has a "civil use" of defining for all persons what is absolutely necessary to maintain a modicum of civil and domestic order. In this sense, God uses "the moral law as a halter to check the raging and otherwise limitless raging lusts of the flesh. . . . Hindered by fright or shame, sinners dare neither execute what they have conceived in their minds, nor openly breach forth the rage of their lust." The moral law thus imposes upon them a "constrained and coerced righteousness," a "civil morality." Even the pagans, therefore, have always recognized the natural duties of sexual restraint, heterosexual monogamy, marital fidelity, procreation of children, bondage to kin, and the like, which are essential to the survival of marriage and the family.

On the other hand, the moral law has a "spiritual use" of defining for believers what is aspirationally needed to attain a measure of holiness or sancification. Even the most devout saints, Calvin wrote, still need the moral law "to learn more thoroughly . . . the Lord's will [and] to be aroused to obedience."

In this sense, the moral law teaches them not only the "civil righteousness" that is common to nonbelievers but also the "spiritual righteousness" that is becoming of believers. The moral law not only coerces them against violence and violation but also cultivates in them charity and love. It not only punishes harmful acts of adultery and fornication but also prohibits evil thoughts of passion and lust.

God's moral law for the covenant of marriage thus gives rise to two tracks of marital norms—civil norms, which are common to all persons, and spiritual norms, which are distinctly Christian. This moral law, in turn, gives rise to two tracks of marital morality—a simple "morality of duty" demanded of all persons regardless of their faith, and a higher "morality of aspiration" demanded of believers in order to reflect their faith. In Calvin's mind, commandments and counsels, musts and shoulds, absolutes and adiaphoras for marriage can thereby be distinguished.

This two-track system of marital morality, Calvin believed, corresponded roughly to the division of marital responsibility between church and state in this earthly life. It was the church's responsibility to teach aspirational spiritual norms for marriage and family life. It was the state's responsibility to enforce mandatory civil norms. This division of responsibility fit rather neatly into the procedural divisions between the consistory and the Council in Calvin's Geneva. In marriage cases, the consistory would first call parties to their higher spiritual duties, backing their recommendations with (threats of) spiritual discipline. If such spiritual counsel failed, the parties were referred to the Council to compel them, using civil and criminal sanctions, to honor at least their basic civil duties for marriage.

With this first distinction in mind, Calvin spelled out various biblical norms for unmarried and married parties—grounding and integrating many of these norms in the created structure and created purposes of marriage.

The Structure of the Marriage Covenant

Calvin grounded various biblical rules against illicit sexual unions in the created structure of marriage—a lifelong heterosexual union of a fit man and a fit woman. Citing Moses and Paul, he condemned as "monstrous vices" sodomy, buggery, bestiality, homosexuality, and other "unnatural" acts and alliances—

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11Though Calvin had adumbrated this theory of the uses of the law already in the mid-1550s, his full elaboration came in his 1550 edition of the Institutes. There he distinguished a "civil use of the moral law" (that yielded civil morality through coercion), a "theological use" (condemning persons in their sin to repent), and an "educational use" (teaching those who have repented spiritual morality). See Institutes (1559), 2.7.8-15. The fullest exposition of the doctrine before 1559 came in his Sermon on Deuteronomy in the mid-1550s on Jewish laws on marriage, divorce, polygamy, adultery, and the like. See, e.g., Serm. Deut. 5:18, 21; 21:15-17; 22:25-30; 24:1-4. Here, Calvin generally distinguished only the civil use and educational use (he called it "spiritual" use), touching lightly on the "theological use" only in Serm. Deut. 5:21. What follows in the text therefore touches on the first two uses.
12Institutes (1559), 2.7.12.
13 Ibid., 2.8.6.
15See Institutes (1559), 4:11.3-16; 4:20.1-2; see also Witte, "Moderate Religious Liberty," 385-59.
arguing cryptically that to "lust for our own kind" or "for brutes" was "repugnant to the modesty of nature itself." He condemned as "incestuous," marriages contracted between the blood and family relatives identified in Leviticus—arguing that God had prohibited such unions to avoid discord, abuse, rivalry, and exploitation among these relatives. This Levitical law against incest, said Calvin, "was not simply a civil law of Israel . . . nor one of those laws which can be repealed in accordance with the circumstances of time and place. It flows from the very root of nature, and is grounded in the general source of all laws, which is permanent and inviolate." Thus "unfit relatives" who were innocently married and later discovered their Levitical impediment must have their marriages immediately annulled. Those who knowingly marry in violation of these Levitical prohibitions were to face not only annulment but also civil and spiritual sanctions.

Calvin condemned, at greater length, the traditional Hebrew practice of polygamy, which had again become fashionable in a few quarters of Europe. To allow polygamy, Calvin argued, is to ignore the creation story of "the one man and the one woman" whom God had created and joined together in Paradise. "God could have created two wives for Adam if he wanted to," Calvin preached. "But God was content with one." Since this mutual union was consecrated by the Lord, the mixture of three or four persons is false and wicked" and "contrary to the order and law of nature." To hold up as normative the polygamous practice of Solomon, David, and other Old Testament figures, Calvin continued, is to elevate the customs of the Jews above the laws of Christ. God had tolerated the practice of polygamy among the Jews to accommodate their waywardness and disbelief—but even then, the prophets had condemned the institution unequivocally. "Today, this liberty accorded to the Jews [of entering into polygamy] is not permitted to us. For Jesus Christ has revealed himself in this world, and declared the will of God to us more fully." Christ and his apostles teach that the "two shall become one flesh." For Calvin, that was the end of the matter—and he left it to his Genevan colleague Theodore Beza to work out further details of his argument. When Calvin encountered the institution again in a later biblical commentary, he dismissed the issue facetiously: "He that takes two wives is worthy to be cut down the middle, he that takes three to be cut in three pieces."

The Special Case of Adultery

Calvin saved his greatest thunder for the sin of adultery outlawed in the Decalogue. He read the commandment, "Thou shalt not commit adultery," expansively to outlaw various illicit alliances and actions, both inside and outside the marital estate.

Inside marriage, the obvious case of adultery, of course, is sexual intercourse "or any other form of lewd sexual act" with a party not one’s spouse. Calvin regarded this form of adultery as "the worst abomination," for in one act the adulterer violates his or her covenant bonds with spouse, God, and broader community. It is not without cause that marriage is called a covenant with God," Calvin thundered from his Geneva pulpit. "[W]herever a husband breaks his promise which he has made to his wife, he has not only perjured himself with respect to her, but also with respect to God. The same is true of the wife. She not only wrongs her husband, but the living God." Other parties are also vicariously injured. When a

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2 Comm. Lev. 18 and 20 passim; Comm. Gen. 29:27; Serm. Deut. 22:25-30. See also Consilium, in CO 10:231-293 and Consilium, in CO 10:235-38 (regarding the right of a man to marry his dead brother's widow in Lev. 18:18—by that point a cause célèbre occasioned by Henry VIII's marriage to Katherine of Aragon, the widow of Henry VII); Consilium, in CO 10:233-35 (on man marrying his deceased wife's sister).
5 Building on Calvin's doctrine, Beza elaborated these Levitical impediments at length in his "De Republ. et Divisit" (1563), reprinted in Theodore Beza, Transactiones Theologicae, 2d ed. (Basel: Votum, 1882), 26, 55-68.
woman commits adultery, for example, "she injures her husband, exposes him
to shame, despoils also the name of her family, despoils her unborn children,
despoils those already born to her in lawful marriage." Calvin

Given its disparate and devastating impact, adultery had to be counted among
the worst offenses—"even graver" than idolatry, heresy, or impiety. For "one can
be idolatrous, heretical, or impious, and still hold to matrimonial obligation. But
to be both adulterer, and spouse, to be these two things at once, is impossible." In
Calvin's view, the moral law therefore "denounces capital punishment for
adultery," and he decreed the modern-day habit of treating the offense more
lightly. "The punishment of death was always awarded to adultery. Thus, it is all
the more base and shameful that Christians do not emulate Gentiles at least in
this. Adultery is punished no less severely by the Julian law (of Rome) than by the
law of God. Yet, those who boastfully call themselves Christian are so tender and
remiss that they punish this execrable offense only with a very light reproof." Though Calvin lamented this laxness of punishment, he addressed directly
the consequences of adultery for the innocent spouse. Automatic execution of
the adulterer would have left the innocent party with the stark but simple choice
of remaining single or remarrying. Sparing the adulterer complicated matters.
The fate of the marriage rests in the hands of the innocent spouse. Calvin believed.
The innocent spouse has power either to forgive the fault and restore the marriage or to condemn the fault and confirm its dissolution.

The innocent spouse's confirmation of the dissolution of the marriage was
to be expressed by filing for divorce on grounds of adultery. "Christ has allowed"
the innocent spouse to seek divorce, and even remarry thereafter if so inclined, said Calvin. But a true believer should reconcile with the wayward spouse—following the example of Joseph's indulgence of the Virgin Mary when he first learned of her pregnancy. God has instituted divorce as "a concession" to our sinfulness, "permitting it only within the common civil order, which serves to bridge men here below, and not within the higher spiritual order "where the children of God ought to be reformed by the Holy Spirit. Though God does not punish those who divorce on reasonable and lawful
grounds. He meant that marriage should always remain inviolable."

Calvin was churlish about expanding the grounds for divorce beyond adultery
but generous about entertaining divorce suits brought on this ground. Christ teaches that a proven case of adultery is the only "reasonable and lawful
ground" for divorce, Calvin argued. To expand the grounds for divorce beyond
adultery is both bad theology and bad policy. "Those who search for other
grounds ought justly to be set at nought, for they choose to be wise above the
heavenly teacher." They also invite endless amendment to the moral law:

Some say that leprosy is a proper ground for divorce, because the contagion
of the disease affects not only the husband but also the children... Another
man develops such a dislike of his wife that he cannot endure to keep com-
pany with her. Will [divorce or] polygamy cure this evil? Another man's wife
falls into illness or apoplexy, or becomes afflicted with an incurable disease.
May the husband reject her under the pretense of incontinence? Obviously not, said Calvin, as he drew the line firmly at adultery alone as a legitimate
ground for divorce.

When properly pled on grounds of adultery, Calvin believed, divorce actions
had to be made equally available to husband and wife. "The right to divorce
belongs equally and mutually to both sides for both have a mutual and equal
obligation to fidelity. Though in other matters the husband is superior to the wife,
in matters of the marriage bed, the wife has an equal right. For he is not the
lord of his own body; and therefore, when, by committing adultery, he has
dissolved the marriage, his wife is set at liberty." The same is true in reverse
for the husband. Once at liberty, the innocent spouse is free to remarry, said
Calvin, following conventional Protestant teaching.

Calvin went beyond Protestant convention, however, in his surprising solicitude
for the parties after divorce. Both parties, he wrote, would be severely
tempted to sexual sin, and both should be granted relief to avoid still greater
sin. For the innocent party, Calvin counseled remarriage—even, if necessary,
before issuance of the magistrate's final divorce decree: "If adultery is proven,
even if no sentence is passed, a Christian church may proceed to marry

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14Ibid. The quoted passage is from Bz. De Repudiis et Divortiis, 100.
16Comm. Deut. 25:24-25, 24:1-4; Comm. Matt. 19:9. See also Bz. De Repudiis et Divortiis, 89 (after adultery, "the bond of marriage, if it persists, is kept united by the will of the innocent spouse, and can be made strong again by the will of the innocent spouse"). See Bzl. L'Homme et la Femme, 63-78.
18Ibid. See also Bzl. De Repudiis et Divortiis, 90.

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16Ibid. The quoted passage is from Bz. De Repudiis et Divortiis, 100.
18Comm. Deut. 25:24-25, 24:1-4; Comm. Matt. 19:9. See also Bz. De Repudiis et Divortiis, 89 (after adultery, "the bond of marriage, if it persists, is kept united by the will of the innocent spouse, and can be made strong again by the will of the innocent spouse"). See Bzl. L'Homme et la Femme, 63-78.
20Ibid. See also Bzl. De Repudiis et Divortiis, 90.

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those who can produce such hearings.” Likewise, the wayward party should eventually be allowed to remarry. “Adultery has not been punished as severely as it should have been, and the lives of those who violate the marriage bond have been spared.” Calvin wrote grimly in a late-life letter. But then he turned quite pragmatic: “But it would be harsh to prohibit a man from marrying during his whole lifetime if his wife has divorced him for adultery, or to prohibit a woman who has been repudiated by her husband, especially if they have difficulty with being sexually continent; one indulgence necessarily brings the other along with it.” Calvin would not allow the guilty party “to fly off immediately to another marriage.” The freedom to remarry should be put off for a time, he insisted, “whether for a definite period of time or until the innocent party has remarried.” Calvin considered various other acts within the marital estate—besides sexual intercourse with a third party—to be tantamount to adultery. On one extreme, he regarded sexual perversity with one’s own spouse as a violation of the spirit of the seventh commandment. “We know to what end marriage was ordained—that persons should live honestly together, and that there should be no beastly looseness and or coupling themselves together like dogs and bitches, or bulls and cows.” Married couples “should show that they do not bear God’s image in vain.” And again: “If married couples recognize that their association is blessed by the Lord, they are thereby admonished not to pollute it with uncontrolled and dissolute lust... For it is fitting that a marriage, once consecrated in the Lord, be called to moderation and modesty.” Calvin saw this more as a spiritual law of sexual prudence than a civil law against marital prudence. But he did occasionally press the Genevan Council to reprimand couples who proved too sexually raucous, and he issued several stern admonitions on sexual modesty to parishioners and correspondents alike.

On the other extreme, Calvin regarded one spouse’s desertion of the other, or both spouses’ voluntary separation from each other, as virtual forms of adultery. Husband and wife, he said flatly, “must live together and stay together till death.” Any undue separation from bed or board, beyond what was necessary for a spouse to carry out normal civic and vocational obligations, “is close to the appearance of adultery”—particularly “if it is prompted by capriciousness or sexual desire.” Any abandonment of one’s spouse is doubly suspect—especially if done angrily or maliciously. Calvin pressed this logic not only for the simple reason that virile spouses, left on their own, might be tempted to adultery—in mind, if not in fact. He was also concerned that such separations violated God’s literal command that husband and wife be joined together permanently in soul, mind, and body. “[I]t is the law of marriage that when a man joins himself to a wife, he takes her to be a companion to live with her and die with her. If the nature of marriage is such... a married man is only half a person, and he can no more separate himself from his wife than cut himself into two pieces.”

Calvin thus stood opposed to the traditional canon law and civil-law remedy of separation from bed and board. He stood even more firmly opposed to the new social fashion of couples separating simply because “their manners were not congenial, or their appearance did not please, or some other [trivial] offense.” Calvin advocated perpetual union of bed and board between husband and wife—by force of law and arms, if necessary. He ordered separated couples to reconcile with each other, deserting spouses to return to their homes, abandoned spouses to forgive the desertion. Where reconciliation proved impossible, Calvin preferred to treat the marriage as dissolved by reason of the presumed adultery of one party, rather than perpetuated without the cohabitation of both parties. This was consistent with his strict biblical reading that adultery is the sole ground for divorce granted by the moral law.

Calvin was not always consistent in his treatment of separation, however. As we saw in the opening story of the French noblewoman, where one party deviates from the faith and abuses the other, Calvin generally allowed only for separation by the innocent spouse, with no right of remarriage. In cases of malicious desertion, he sometimes insisted that the innocent spouse bring proof of actual adultery before a divorce action could lie. Calvin was aware that he thereby left the innocent party subject to sexual temptation. He offered only a vague homily in reply: “Would it not be inhuman to refuse [the innocent party] the remedy of [re]marriage when constantly burning with desire? My answer is that when we are prompted by the infirmity of our flesh, we must have recourse to the remedy; after which it is the Lord’s part to bridle and restrain

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113 Letter by Charles d’Epreville (a pseudonym for Calvin), ibid. De Republ. et Divinit. 884989 repeated this counsel, arguing that the divorce and remarriage of both parties could occur without any involvement of the magistrate.

114 Institutio, in CO 10:251.


116 Consilium, in CO 10:242-44.

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our affections by his Spirit, though matters should not succeed according to our desires.\textsuperscript{135}

On this point, Theodore Beza was more insistent and consistent than Calvin in treating "desertion as adultery," and allowing divorce and remarriage to the innocent party. A party deserted "in soul," through a difference of religion, or "in body," through malicious abandonment, is like the innocent spouse in a case of adultery, said Beza. The innocent party has power either to forgive the fault and restore the marriage, or to condemn the fault and confirm its dissolution. The innocent party need wait for reconciliation with the wayward spouse "only so long as conscience allows." Thereafter, he or she can abandon the dissolved marriage by filing for divorce, and contract a new marriage if so desired.\textsuperscript{139}

For Calvin, the commandment against adultery was equally binding on the unmarried, and equally applicable to both illicit sexual activities per se and various acts leading to the same. Calvin condemned with particular vehemence the sin of fornication—sexual intercourse or other illicit acts of sexual touching by a nonmarried party.\textsuperscript{140} He decried at length the widespread practice of casual sex, prostitution, concubinage, premarital sex, nonmarital cohabitation, and other forms of bedhopping that he encountered in modern-day Geneva as well as in ancient Bible stories. "Today it is not only the common man who flatters himself into thinking that fornication is not such a great and mortal sin. We even see high born persons making light of God by calling fornication a natural sin and a matter of little consequence. There are actually such shameless snares that talk that way."\textsuperscript{141} All these actions, Calvin believed, openly defied God's commandment against adultery, and God's condemnation of chaste and holy marriage.\textsuperscript{142} Calvin had simple biblical counsel to offer against the "scourge of fornication": preach against it constantly, punish it severely by spiritual and criminal sanctions,\textsuperscript{143} and portray everything from an individual case of syphilis to a community's encounter with pestilence as God's retribution for the offense.\textsuperscript{144} He followed this counsel to the letter.

Calvin stretched the reach of the commandment against adultery far beyond the sin of actual fornication. For believers abiding by the spiritual law, such an extension was natural, for as Christ taught in the Beatitudes: "continence involved not only keeping the body free from fornication, but also keeping a chaste mind."\textsuperscript{145} But Calvin urged a comparable extension of the civil law of adultery. In his more exuberant moments, he tended to treat all manner of mildly sexual activities—lasciviousness, dancing, bravely gaming, sexual innuendo, coarse humor, provocative primping, suggestive plays and literature, and much more—as forms of adultery, punishable by the state.\textsuperscript{146} Calvin would not tie the sexy dresser and the sardonic whoremonger to the same stake for flogging or execution. He viewed these more attenuated forms of adultery as violations of milder criminal laws against wantonness, punishable by admonition and fines.\textsuperscript{147} But he was insistent that even such attenuated sexual conduct was a form of adultery that deserved both spiritual reproof and criminal sanctions.

The Purpose of the Marriage Covenant

Starting with the created structure of the marriage covenant, Calvin was thus able to integrate various biblical and natural norms against bestiality, homosexuality, polygamy, adultery, desertion, and fornication and to smuggle in a tepid endorsement of divorce and firmer prohibition against separation. Turning to the created purposes of marriage—mutual love of husband and wife, mutual procreation of children, and mutual protection from lust—Calvin was able to integrate several other such norms.

Sexual dysfunction, Calvin insisted, was an absolute barrier to marriage, for it vitiated all three purposes of marriage. Thus, putative marriages of prepubescent children were null, even if the parties have reached sufficient maturity to consent to marry, for "the terms of the marriage cannot be carried out."\textsuperscript{148} Marriages of "the frigid and eunuch" were likewise null, for such unions "completely obviate the nature and purpose of marriage. For what is marriage except the joining of a male and female, and why was it instituted except to produce children and to remedy sexual inconstancy?"\textsuperscript{149} Calvin called for automatic annulment of any marriage of a permanently dysfunctional party—and called for penalties if the condition had been kept secret prior to the wedding.\textsuperscript{150}

\textsuperscript{135}{Comm. 1 Cor. 7:11.}
\textsuperscript{136}{Beza, "De Repulis et Divoriis," 95-99.}
\textsuperscript{137}{Institutes (1559), 2.2.41, 44; Comm. Lev. 20:10; 22:22-27.}
\textsuperscript{138}{Serm. Deut. 5:18}
\textsuperscript{139}{Centum Libertinis, in CO 7:212-14.}
\textsuperscript{140}{In 1568, Geneva adopted the rule that when fornicating couples appear at the church for their wedding ceremony, "the minister make public declaration of their fault, which they ought also to recognize to undo the scandal." Les sourres du droit du canton de Geneve, vol. 3, 1042. Four months later, the penalty against fornication was raised from six days to nine, plus a fine; recidivists had also to appear in church before the sermon and make public confession of their sin and reparation to the shameless parties and families. Ibid., vol. 3, 1946.}
\textsuperscript{141}{Serm. Deut. 22:23-30, 28:25-29, 59:64; Comm. Lev. 20:10, 22:22-27; Lect. Exk. 16:9, 26; Comm. 1 Cor. 6:18; Serm. Eph. 5:5-5.}
\textsuperscript{142}{Quoted and discussed in Georgia Harkness, John Calvin: The Man and his Ethics (New York: Henry Holt, 1931), 130.}
\textsuperscript{143}{Serm. Deut. 22:25-28, 25-30; Serm. Eph. 5:3-5; Comm. 1 Peter 3:3; Serm. Tit. 2:3-5.}
\textsuperscript{144}{See Bieri, L'Homme et la Feme, 124-26, 138-45; W. Fred Graham, The Constructive Revolutionary: John Calvin and His Socio-Economic Impact (Atlanta: John Knox, 1978), 110-15.}
\textsuperscript{145}{Centum Libertinis, in CO 10:234.}
\textsuperscript{146}{Ibid.}
\textsuperscript{147}{Ibid. See also Beza, "De repulis et divoriis," 72-73, 109-10; Siger, Marriage, 116-18.}
Calvin grounded a number of prudential norms for the unmarried believer in the created purposes of marriage. Citing both Moses and Paul, he counseled Christians against marrying unbelievers, for such unions would invariably jeopardize all three created functions of marriage. The unbeliever could not know the true meaning of love reflected in Christ, would not know how to raise children in the love of God, and might not resist the temptations to lust that marriage was supposed to remedy. Calvin did not regard differences in religion as an absolute bar to the contracting of marriage—let alone a ground for annulment or divorce, as we have seen. Instead, he wrote simply: "When a man is to marry, he should (so far as possible) choose a wife who will help him in the worship of God... who knows God and his word, and who is ready to give up all idolatry." To do otherwise, said Calvin, was "spiritually unlawful," though civilly permissible.

Citing Moses' account of the evil world on the eve of the Flood—"the sons of men saw that the daughters of men were fair and took to wife such as they chose"—Calvin counseled against entering marriage with undue levity or lust. "Marriage is a thing too sacred to allow that men should be induced to it by the lust of their eyes," he wrote. "Elegance of form" may certainly have a place in the calculus of marriage, but we "profane the covenant of marriage" when "our appetite becomes brutal, when we are so ravished with the charms of beauty, that those things which are chief are not taken into account." Calvin laid out "those things which are chief" in his account of what he sought in his own wife: "I am none of those innumerable who embrace also the vice of those they are in love with, where they are西南 at first sight with a fine figure. This only is the beauty which allures me, if she is chaste, if not too nice and fastidious, if economical, if patient, if there is hope that she will be interested about my health," and if she could produce children. Calvin could not have been surprised that this account did not bring an overwhelming response from eligible women. He did eventually find and marry Idelette de Bure, a pious widow of evangelical stock with two grown children. During their seven years of marriage, they had a son, who died in infancy—"a severe wound," as Calvin put it. His pain was doubled by Idelette's premature death and his step-daughter Judith's "lustful rush" into marriage and divorce a few years later on account of her adultery.

Calvin chose thereafter to remain a widower, and seemed to draw on this experience in advising other widows and widowers. Citing Paul, he urged widows and widowers to refrain from remarriage if they were beyond childbearing years and "altogether beyond the danger of incontinence." For, in such instances, the marital purposes of procreation and perhaps even mutual love would be compromised, and "the inconveniences of mixed married life" might well not be worth it. "Women are no less at liberty than men to marry a second time upon becoming widows," Calvin insisted—reiterating both his concern for gender equality in questions of sexuality and his condemnation of mandatory celibacy. But neither elderly widows nor elderly widowers should rush into marriage too easily. Building on this same moral, Calvin discouraged marriages between young men and elderly women—arguing that such unions "were contrary to the order of nature" for they would not yield children, and "contrary to the law of conscience" for they would tempt the young husband to adultery. He sometimes pressed this counsel in the obverse case as well—even to the point of condemning the late-life espousals of his dear friend and fellow reformer Guillaume Farel to a young maiden."
Calvin also grounded several biblical norms for married parties in the created purposes of marriage. Most importantly, he urged that married couples retain a healthy sex life, even after their childbearing years. "Satan dazzles us ... to imagine that we are polluted by intercourse," said Calvin.  

But "when the marital bed is dedicated to the name of the Lord, that is, when parties are joined together in his name, and live honorably, it is something of a holy estate." For "the mantle of marriage exists to sanctify what is defiled and profane; it serves to cleanse what used to be soiled and dirty in itself."  

Husband and wife should not, therefore, "withhold sex from the other." Nor should they "neglect or reject" one another after intimacy or intercourse. Couples may forgo their sexual obligations for a season, said Calvin echoing the traditional position on the "Pauline privilege." But such abstinence should occur only by mutual consent and only for a finite period—lest one party be tempted to adultery by too long a wait. The traditional option of maintaining a sexless "spiritual marriage" was anathema to Calvin.  

If a couple proved barren, Calvin urged them to accept this as God’s providential design. “We are fruitful or barren as God imparts his power,” he wrote. Those who are barren should adopt orphans or find other ways of serving the next generation. Calvin would hear nothing of concubinage or surrogate motherhood as a viable alternative to sterility, despite the example of Abraham and other Old Testament figures. In taking Hagar as his concubine, “Abraham took a liberty” that God had not counseled, Calvin believed, and his reward was perpetual strife between Sarah and Hagar, Isaac and Ishmael, and among their many descendants. This, for Calvin, was proof enough that concubinage was no viable option for the modern day. Calvin would also hear nothing of divorce on grounds of sterility. Procreation was only one created purpose of marriage, he counselled. Where it could not be achieved, a couple had to double their efforts to achieve the other purposes of mutual love and mutual protection from lust—“treating each other with chaste tenderness” even where God would not bless them with children.

If, after a time, one marital party became incapable of sexual performance because of frailty, impotence, or sickness, Calvin urged understanding and patience on the part of the other spouse. Here, too, he would hear nothing of concubinage, separation, or divorce as a remedy or a result of this later sexual incapacitation. There was a blurriness line between automatic annulment of a new marriage where one party proved permanently impotent or frigid and automatic perpetuation of a longstanding marriage where a spouse once capable of intercourse later became incapacitated. Calvin did little to clarify the line. Theodore Beza, and his colleagues on the Geneva consistory did, favoring perpetuation of any such marriage, and opting for annulment only if the sexually active party sought it within a few months of the wedding and (obviously) only if the couple lacked their own natural children.

If one party contracted leprosy, or some other form of contagious disease, Calvin again urged “Christian patience” by the healthy party and sexual restraint by the afflicted party. He again flatly prohibited concubinage, separation, or divorce as options. In one extreme case, Calvin did allow for separation from bed and board where a husband had been afflicted with "elephantiasis," a disease that dramatically increased his sexual appetite but that was highly contagious and dangerous to the wife. It would be "cruel," said Calvin, "to obligate the woman to share a home and marriage bed with a husband who is forgetful of all the laws of nature. We feel that she must be allowed to live as a widow, after a legal investigation by judges has intervened. Meanwhile, she should continue to attend her husband and perform any duties she can, provided that he does not require of her anything virtually unnatural."  

Calvin’s Covenant Theology of Marriage in Comparative Perspective

Calvin’s covenant theology of marriage was neither very systematic nor entirely consistent. The foregoing account is no simple report from a chapter or two of Calvin’s Institutes or other systematic works. It is a patchwork quilt, stitched together from many thin strands of argument strewn all over Calvin’s
late-life commentaries, sermons, letters, consilia, and legal fragments. And, even granting all of Calvin's close distinctions—between believers and nonbelievers, couples and singles, spiritual and civil laws, Old Testament customs and New Testament canons—this patchwork account is not free from anomaly. For example, Calvin harvested a thick sheaf of modern-day prescriptions for marriage from the creation story of Adam and Eve—often reading the Genesis passages inventively and with anticipation of New Testament teachings and customs. But he would take no modern lessons from the Bible’s descriptions of Abel’s incest, Abraham’s concubinage, or Solomon’s polygamy, condemning all such “unnatural” actions unequivocally. Calvin read into a few pastoral asides from Paul a very progressive understanding of equality of women in rights to marital sex, parenthood, and divorce. But he squeezed out of the creation story a general principle of subordination of women in all other matters, even to the point of denying women a right to propose marriage to a prospective husband. 208 Calvin insisted that any marital impediments of blood and family be grounded in a strict reading of the Bible, or be discarded. But he imported, rather casually, various impediments of crime, religion, and quality that had only shallow grounding in the Bible. Calvin read the term adultery in the seventh commandment expansively to include a fantastic range of illicit conduct—from a husband’s fornication with a third party relative to a bit of suggestive sexual innuendo with one’s own spouse. But when discussing Christ’s permission to divorce on grounds of the same term adultery, he read it extremely narrowly to cover only cases of proven illicit intercourse by one’s spouse and a third party. Calvin was remarkably solicitous for the sexual needs and temptations of divorcees—even suggesting that they could remarry before church authorities before the state issued a divorce decree. But he offered only bland injunctions to “Christian patience” to allay the sexual burning of both single and married persons for whom no natural sexual outlet was available. Even a sympathetic parsing of Calvin’s opening distinctions, and a generous appreciation for his sixteenth-century rhetorical style, cannot explain away these and many other anomalies in his presentation.

Such anomalies were inevitable but not fatal. Given the loose literary forums and forms in which Calvin worked, it was inevitable that loose ends and loose logic would remain undetected. This was doubly inevitable given the conditions during which Calvin wrote in his later life—rapidly deteriorating health, escalating demands for his pastoral and political counsel, burning controversies over the execution of Servetus, and a proliferation of other demands associated with subjects of reform that had nothing to do with marriage and family life. 209 In that context, it was remarkable that Calvin was able to rise to the level of refinement and comprehension that he did.

The profundity of Calvin’s insights for marriage were not lost on his contemporaries or his successors. Even in prototype form, Calvin’s covenant theology of marriage proved to be a powerful Protestant model for marriage that exercised an enormous and enduring influence on the Western tradition.

Calvin’s covenant model mediated both the sacramental and the contractual models of marriage that pressed for recognition in his day. On the one hand, this covenant model confirmed the sacred and sanctifying qualities of marriage—without ascribing to it sacramental functions. Calvin now held a far more exalted spiritual view of marriage than he had earlier espoused. He described marriage in sweeping spiritual terms as “a sacred bond,” “a holy fellowship,” a “divine partnership,” a “loving association,” “a heavenly calling,” “the fountainhead of life,” “the holiest kind of community in all the worlds,” the “principal and most sacred ... of all the offices pertaining to human society.” 210 Conjugal love is “holy” when “husband and wife are joined in one body and one soul.” 211 “God reigns in a little household, even one in dire poverty, when the husband and the wife dedicate themselves to their duties to each other. Here there is a holiness greater and nearer to the kingdom of God than there is even in a cloister.” 212 Calvin had come a long way from his earlier glum description of marriage as “a good ordinance, just like farming, building, cobbling, and barbering.” 213

With this more exalted spiritual view of marriage, Calvin also described more fully the biblical uses of marriage to symbolize the relationship of God and humanity. He analyzed at length the Old Testament image of Yahweh’s covenant of marriage with Israel, and Israel’s proclivity for playing the harlot—worshipping false gods and allying with Gentile neighbors, much as delinquent spouses abandon faith in God and faithfulness to each other. 214

208See, e.g., “Letter of Ms. de Falais (May 1, 1547),” in Calvin, Letters 2:110-41 (where Calvin expressed great dismay that a woman asked a man for marriage “rather than wait to be asked,” and expressed confidence that “a judge will soon put an end to the matter”). See also other instances where Calvin engaged in virtual bride-hunts for the (sons of) distinguished friends and patricians—even to the point of brokering one such relationship between a couple of equal status. See, e.g., “Letter to Monsieur de Falais (July 4, 1546),” in Calvin, Letters 2:483; “Letters to Viret (July 13, 15, and 25, 1546),” ibid., 2:65-69; “Letter to Monsieur de Falais (May 1, 1547),” ibid., 2:110; “Letter to Ms. de Falais (July 17, 1548),” ibid., 2:173; “Letter to Viret (September 1, 1548),” ibid., 4:109. To be sure, in this, Calvin was following the customary practice of any well-meaning aristocrat or pastor of the day. But note that, for the sake of biblical truth, he was quite willing to break the custom and the common law on other issues of gender equality.


212Serm. 1 Tim. 5:11-15, CR 55:492.

returned repeatedly to the New Testament image of Christ's marriage to the Church—holding up Christ's faithfulness and sacrificial love toward us as a model to which spouses and parents should aspire.\textsuperscript{200} He went so far as to say that "marriage is the holiest bond that God has set among us," for it is "a figure of the Son of God and all the faithful," "a symbol of our divine covenant with our Father."\textsuperscript{201} But then, almost in self-chiding, Calvin reiterated his earlier position that marriage, though symbolic of God's relationship with persons, is not a sacrament for it does not confirm a divine promise. "Anyone who would classify such similitudes with the sacraments ought to be sent to a mental hospital."\textsuperscript{202}

On the other hand, Calvin's covenant model confirmed the contractual and consensual qualities of marriage—without subjecting it to the personal preferences of the parties. "It is the mutual consent of the man and the woman that constitutes marriage," Calvin insisted, echoing traditional views.\textsuperscript{203} Lack of true consent—by reason of immaturity, drunkenness, insincerity, conditionality, mistake, fraud, coercion, or similar impairment—perforce breaks the marriage contract, just as it breaks any other contract.\textsuperscript{204}

But marriage is more than a contract, and turns more on the voluntary consent of the parties. God is a third party to every marriage, Calvin believed, and He has set its basic terms in the order and law of creation. "Other contracts depend on the mere inclination of men, and can be entered into and dissolved by that same inclination."\textsuperscript{205} Not so the covenant of marriage. Our "freedom of contract" in marriage is effectively limited to choosing which party to marry—from among the mature, unrelated, virile members of the opposite sex available to us. We have no freedom to forgo marriage—unless we have the rare gift of natural continence—or else we "spurn God's remedy for lust" and "tempt our nature" to sexual perversion.\textsuperscript{206} We also have no freedom to abandon marriage, "for otherwise the whole order of nature would be overthrown."\textsuperscript{207}

\textsuperscript{200}Serm. Eph. 5:28-30; 31-33; Comm. Eph. 5:30-32.
\textsuperscript{202}Institutes (1559), 4.19.34. This repeats verbatim what Calvin had written in Institutes (1536), 5.69.
\textsuperscript{203}Comm. Gen. 29:27; see also Comm. Gen. 2:18; Serm. Eph. 5:22-26; Consilium, in CO, 10:251-52.
\textsuperscript{204}See Serm. Eph. 5, CO 51:763-65. For Calvin's general views of contract, see also his Proquisitum de invenire de Calvisius relatiis a la Legislation civil et politique, in CO 16:126, 130-32, 139, with brief discussion of commercial contracts in Behaue, Calvinus Lehrs von Recht und Körre, 687-700.
\textsuperscript{205}Comm. 1 Cor. 7:11.
\textsuperscript{206}See Institutes (1559), 2.8.42; 4.19.34-37; Comm. Gen. 2:18, 2:22; Comm. Matt. 19:11 ("the choice to marry is not put in our own hands, as if we were to deliberate on the matter"); Comm. 1 Cor. 7:7-8, 21-28; Comm. 1 Tim. 5:13. See also correspondence in CO 5:336; 7:42, 670.

"Consider what will be left of safety in the world—of order, of loyalty, of honesty, of assurance—if marriage, which is the most sacred union, and ought to be most faithfully guarded, can thus be violated," Calvin thundered.\textsuperscript{208} "In truth, all contracts and all promises that we make ought to be faithfully upheld. But if we should make a comparison, it is not without cause that marriage is called a covenant with God," for it cannot be broken.\textsuperscript{209}

Calvin's covenantal model of marriage not only mediated the sacramental and contractual models of marriage that he encountered in Geneva, it also modified the social model of marriage that he inherited from Wittenberg. Using the two-kingsdoms theory, Luther and his colleagues had treated marriage as a social estate of the earthly kingdom alone—an institution fundamentally secular in nature, social in function, and civil in governance.\textsuperscript{210} Calvin echoed and endorsed these evangelical Lutheran teachings on marriage. But he also superimposed on this two-kingsdoms framework a doctrine of marriage as covenant. The effect of this was to add a spiritual dimension to marital life in the earthly kingdom, a marital obligation to spiritual life in the heavenly kingdom, and complementary marital roles for both church and state in the governance of both kingdoms.

Marriage was an earthly order and obligation for all persons, said Calvin, echoing Luther. But it also had vital spiritual sources and sanctions for Christians. Marriage required the coercive power of the state to preserve its integrity. But it also required the spiritual counsel of the church to demonstrate its necessity. Marriage was grounded in the will and consent of the parties. But it was also founded in the creation and commandments of God. Marriage deterred sinful persons from the lust and incontinence of this earthly life. But it also symbolized for them the love and sacrifice of the heavenly life. Marriage served the social purpose of procreation as well as protection from sin. But it also served the divine purpose of sanctification and edification by grace. None of these sentiments was altogether original with Calvin, nor were they entirely unknown to Luther. But, using the doctrine of covenant, Calvin was able to cast these traditional teachings into a new ensemble, with new theological emphases and new legal implications.

Calvin's covenantal model of marriage also helped to refine and rationalize many of the rules set out in the Geneva Marriage Ordinance of 1545 and its amendments. For example, the doctrine of covenant provided Calvin with a sturdy new rationale for the familiar Protestant requirement that the formation of marriages be intensely public affairs. Earlier Protestant Reformers (as well as later Catholic theologians at the Council of Trent) had grounded the involvement of various parties in the formation of marriage in discrete biblical pas-
sages, with no general theory to integrate them. Parental consent was based on the fourth commandment of the Decalogue and Paul's admonitions to parents and children. Mandatory witnesses to betrothals and espousals was rooted in Peter's dispositions on the priesthood of believers. Church consecration and celebration of the marriage was grounded in Christ's delegation of the power of the keys to Peter and the apostles. Civil registration and publication of marriage banns was based on Paul's general descriptions of state power in Romans 13. Calvin repeated, and embellished, these familiar biblical rationales for the involvement of each party in the process of marriage formation. But he also integrated these separate biblical rationales by treating all four of these parties as allied agents of God in the formation of the marital covenant. He thereby rebuffed the agitation in his day for the truncation of the public formalities and functionaries of marriage formation. He also helped to confirm the place of parents, peers, ministers, and magistrates in the marriage process for centuries to come. Subsequent generations of Reformed theologians and jurists—building on Calvin's work as well as that of his contemporary Heinrich Bullinger who espoused similar sentiments—elaborated at length this covenantal concept of a public marriage process.

Similarly, the doctrine of covenant allowed Calvin to tighten the rules and standards for entering and exiting marriages. The 1540 Marriage Ordinance distinguished clearly between betrothal and marriage, annulment and divorce. At the same time, however, it conformed terms such as recision, dissolution, nullity, voidness, and the like, leaving unclear the legal effect of a given defect, impediment, or illicit action. Calvin's exposition on the moral law for the covenant of marriage made this somewhat clearer. Betrothals and marriages were automatically annulled if the parties breached Levitical impediments or involved a sexually dysfunctional party. Betrothals could be broken by either party, or at the instigation of a third party, for any number of reasons of Christian prudence—differences in religion or quality; and/or concerns for compatibility, maturity, security, and the like. Marriages once entered were virtually permanent. The rules of Christian prudence that could annul betrothals could not annul marriages. Separation from bed or board was not an option—save in the most dire case of danger to an innocent spouse's body and soul. Divorce could be granted on strict biblical grounds of adultery or on a fully proven case of malicious desertion that was tantamount to adultery.

Geneva's New Marriage Law in Action

This new covenant theology of marriage and family life did not remain confined to sermons, commentaries, and letters. In the course of the 1560s and thereafter, it also came to vivid legal application in the work of the Geneva consistory—led by Calvin, still serving as the Moderator of the Company of Pastors, who was eventually replaced in office by Theodore Beza. Newly convinced of the biblical value and validity of Geneva's statutory reforms of marriage, Calvin and his consistory colleagues set out to render this new law on the books a new law in action.

The Geneva Consistory

The consistory's stepped-up activities in the enforcement of Geneva marriage law was driven not only by new theological conviction but also by new political power. For more than a decade after his return to Geneva in 1541, Calvin and other new emigrés to the city had been caught up in an escalating battle of political wills with the local landed aristocracy. One gravamen of their dispute concerned the refugees' access to citizenship, suffrage, and attendant political and professional positions. (Calvin, despite his political prominence, did not gain Geneva citizenship until December 1559, within five years of his death.) The other issue was the degree of legal and religious control that could be exercised by the consistory and clergy of the new Reformed churches—an issue exacerbated by the controversial execution for heresy of Michael Servetus on October 27, 1553. Open riot over both these issues broke out in Geneva in...
early 1555, and episodes of insurrectionary violence erupted several times thereafter. The party in favor of Calvin and his colleagues ultimately prevailed, leading to the removal of their more hardened opponents from prominent political positions—and indeed the withdrawal of several of them from Geneva altogether.222

A crucial new weapon won in this political battle was the consistory’s unequivocal power to enforce its spiritual discipline by using the ban (excommunication). The consistory announced and defended this power proudly in front of the assembly of Genevan officials. The notary reports:

John Calvin, in the name of the consistory, together with the ministers of the city who are present with him, most adequately refuted the arguments which had been advanced for the diminution, indeed the abolition, of the Consistory’s authority. He showed, on the basis of passages in the Holy Bible and from the consistent practice of the apostolic church, what the true practice of excommunication was, and to whom was given the power to excommunicate or admit to communion. Despite every effort of Satan to overthrow Godly and useful an order [as excommunication and the ban] ... God has been victorious.223

This “Godly victory” helped to restore to the Geneva consistory a good deal of the authority of the traditional Catholic Church courts over questions of marital morality—but now on a new theological grounding. The Catholic Church had based its power to ban and excommunicate on the sacrament of penance. All baptized believers, the Church had taught, were required to confess their sins and to reconcile themselves to God, on pain of eternal punishment. The Church had claimed the authority to define the vices that required confession, to hear the sinner’s confession, to absolve him or her from eternal punishment, and to prescribe virtuous works of purgation. Failure to adhere to the Church’s moral regimen, for marriage and many other moral matters, could lead to the ban or, in extreme cases, to excommunication—a great peril to eternal life.224

The Reformed Church of Geneva based its authority over morality on the sacrament of the Eucharist (which they called Holy Communion or the Lord’s Supper). Baptized believers, who sought to partake of communion, the Reformed Church taught, were required “to examine their hearts and confess their sins,” lest they “profane and pollute” the sacrament and “eat and drink judgment upon themselves” and upon the whole congregation.225 To be banned from communion or excommunicated altogether was not necessarily threatening to eternal life. But in the small community of Geneva, it was a threat to civil life. Banned or excommunicated parties often faced various civil deprivations—the denial or cancellation of professional licenses, the loss of business clients, the suspension of voting rights, the denial of standing to press civil suits, the abridgment of criminal procedural protections—as well as many unofficial forms of social shunning.226 Thus, the addition of the ban and excommunication to its arsenal of spiritual weapons considerably enhanced the consistory’s power over questions of sexuality, marriage, and family life in Geneva.

A picture of the Geneva consistory’s enhanced involvement in marriage questions can be seen in the cases that came before it in the first nine months of 1557—the time before the harvest, when marital litigation was at its briskest. This was the first full season of hearings after the political untangling of Geneva had died down, when Calvin and his colleagues could set about their consistory work in earnest. In this nine-month period, the consistory heard some eighty cases on questions of marriage, family, and sexual conduct—up to seven cases per week. As in its cases of a decade before, the consistory still adhered closely to the rules of the Marriage Ordinance of 1545 and various complementary civil and criminal norms. But now the consistory often offered more by way of legal and theological rationale for its decisions. It made considerable use of the ban—though not excommunication—to enforce its discipline, particularly in cases of sexual misconduct or abuse. And it collaborated more closely and fully with the Council on cases involving difficult issues, recalcitrant parties, or disputed testimony. This was not only theologically commended but strategically wise. The Geneva Council held far broader powers of arrest and subpoena and had license to extract evidence from obstinate witnesses by force, even torture, if necessary.227

Disputed Betrothals and Marriages

Cases of disputed betrothals occupied a good deal of space on the consistory’s docket in 1557. A few of these cases were simple disputes between the betrothed parties. A woman was relieved of her engagement to a young man

226Walter Köhler, Gesetze Konstatazioni, 2:504-6.
who had since their engagement contracted syphilis. In the consistory's view, the disease not only betrayed his unfaithfulness to her but to proceed to marriage would also endanger her health. The woman was freed from her engagement. The man was sent to the Council for punishment for his presumed fornication. An other woman requested the consistory for the right not to marry [her fiancé] even though they were engaged. The notary reports no stated reason for her disaffection, though the record hints at his "lack of employment." Her fiancé testified that it was by his own will and deliberation to have her as his wife. The consistory concluded that it "finds nothing to stop the marriage from having effect" and ordered the couple to marry after he had found employment. A man requested the consistory to permit him to marry on the strength of a prenuptial contract that he and his fiancé had executed some time earlier. The consistory ordered the man to prove that he had made appropriate arrangements with the woman's family, and that the contract was legitimate. The man was back the following week, accompanied by a lawyer, to corroborate the legitimacy of the contract and the arrangement. The consistory was convinced, and ordered the marriage to proceed with all due speed "according to God."

Most of the disputed betrothal cases heard in 1557 concerned the consent of parents or guardians to the pending nuptials. A young woman and her father were reprimanded for entering a prenuptial contract for marriage without procuring the consent of the future groom's father. Another father was ordered to procure a letter of consent from the father of the minor groom, even though he lived in a distant foreign city and procurement of the letter could well delay the wedding unduly. A guardian was questioned closely about his delayed consent to his ward's betrothal; only when he had assured the consistory that he consented fully to the union, and was legitimately delayed, did the consistory allow the marriage to proceed. A bickering pair of parents was sent to the Council to sort out conflicting testimony over whether the father had in fact, consented to the marriage of his minor daughter. A young orphaned woman, who promised marriage to two gentlemen seriatim, was sent with her guardian and two prospective husbands to the Council for investigation and reproach. The Council decided to dissolve the first secret betrothal, which both the young woman and the guardian "did not like," and to confirm the second betrothal, since this was the match that the guardian had suggested and approved.

The consistory did reserve the right to second-guess parents suspected of acting in bad faith. It nullified the engagement of a handicapped fourteen-year-old girl, despite the father's insistence on her marriage and the production of a fully executed prenuptial contract. The consistory considered the woman too young to be married and judged that her disabling "hump" would likely obstruct childbearing, perhaps even intercourse. It confirmed the engagement and marriage of another couple, despite the loud post hoc protests of the woman's father. The father had consented to his daughter's engagement. Thereafter, the couple had been properly married in a church but apparently without his knowledge. The father shortly thereafter withdrew his consent to the engagement and marriage and forcibly took his daughter back into his own custody. When questioned by the consistory, the father charged that his son-in-law had not tendered to him the full payment he had promised, causing the father to lose some properties he had intended to buy with the funds. The consistory tried to force the young man to make the payment, but the father said he would refuse it, if tendered, because he now believed the young man to be dishonest. The consistory decided to send the matter to the Council for final disposition, recommending that "such marriage should not be broken and may not be dissolved, for this would open the door to many others." The Council, on investigation, concurred, and, through the consistory, ordered the father to return the woman to her husband, and for the marriage to continue, even without his consent.

The consistory also periodically dissolved engagements that violated other rules of Christian prudence. The consistory applied rather literally Calvin's recommendations against marriages between parties with sharp differences in age. It annulled the engagement of a twenty-five-year-old man to a woman "at least as old as his mother," arguing that "women should not be married with men who are not close to them in age, and those who are no longer able to bear

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205Reported in Köhler, Gesifer Konzistorium, 2:631.
206"Case of Jeanne, Daughter of the Late Rov Faver of Avilly (February 18, 1557)," in Registres du Consistorium de Genève, 12:5.
207"Case of Antoine Gue: (March 4, 1557)," ibid., 12:12.
208Ibid., 12:14.
209"Case of Pierre Clerc de Bonne (February 25, 1557)," ibid., 12:28. See also "Case of Francony Longey (August 30, 1557)," ibid., 12:91 (father of a daughter reprimanded for not seeking consent to marriage of his future son-in-law's father).
210"Case of Sir DuBois (February 16, 1557)," ibid., 12:5.
211"Case of Laurent Corbet and Pierrette Quinaire, (February 18, 1557)," ibid., 12:25.
212"Case of Jean Tissier, et al. (August 12 and 19, 1557)," ibid., 12:46, 89.
213"Case of Philiberte, Daughter of the Late Guillaume the Chapuis (May 27, 1557)," ibid., 12:52.
214Ibid., 12:62.
215"Case of Francony Chastelain (January 2, 1556)," ibid., 10:81.
216"Case of Nycolas Millet (May 13 and 29, 1557)," ibid., 12:45. The notary seems to have grouped the two days of proceedings together. Moreover, the first "supplication" by Nicolas and other documents are dated "July 27, 1559." Either this case was backdated and interpolated to May, 1557, or Nicolas's initial filing was mistaken—by him or by the notary who transcribed it.
children should not marry younger men." Calvin and two colleagues were com-
misioned to report the matter to the Small Council so "as to avoid the conse-
quencies that even the pagans do not suffer" and "so that the order of nature
would not be broken." The consistory ruled similarly in a case of a betrothal
between a twenty-two-year-old man and a widow of forty, who reportedly already
had more than twenty children. The consistory not only annulled the
betrothal, but since the parties had already consummated their engagement,
they also banned both parties from the Lord’s Supper and referred them to the
Council for punishment of their fornication.

The consistory pressed this same logic to order the annulment of "a mar-
riage already contracted" between a widow over seventy years old, and a servant
of hers, aged about twenty-seven or twenty-eight. The sole stated ground for the
annulment was "too great an inequality of age" between the couple. There was
no reported evidence of fraud or stratagem by the young man, though mar-
rriage between servants and their masters was much frowned upon in the day.
The Council agreed with the consistory, holding that such marriages were
"against the order of nature" and placed the young man in "sore temptation to
adultery." The consistory apparently rethought its position shortly there-
after—or, more likely, just applied it differently in the case of a distinguished
widower—for it confirmed, despite Calvin's sharp protestations, the engage-
ment of the sixty-eight-year-old Geneva reformer Guillaume Farel and a young
woman some four decades his junior.

A few of these betrothal cases were considerably more involved and required
protracted evidentiary hearings and considerable legal discernment from the
consistory. In these cases, Calvin’s legal talents shone through. In one case, the
consistory was asked to determine whether an engaged man and woman were
bound by a longstanding, but now stale, betrothal. Three years before the man
had procured the consent of the woman’s father for permission to marry, and
had given an engagement ring to the woman. The woman had accepted his
proposal for marriage but on condition that both her parents consent to their
union and that the man make an additional dowry gift, of considerable value,
to her family. The man apparently never made the additional gift, nor did he
 procure her mother’s consent. The parties, who had grown disenchanted with
each other over the years, asked whether the marriage needed to go forward.
Calvin undertook the consistory’s investigation, the notary reports, question-
ing at length the woman’s mother (without oath), as well as the parties and
their siblings. An obvious ground for annulment of the betrothal was that the
parties had strayed well beyond the statutory six-week window between
betrothal and wedding. Without stating his grounds, Calvin eventually found
that there was no real marriage, and the parties could "with a clear conscience
be set free from any obligation" to marry.

Another case of protracted betrothal raised more sinister facts. A father peti-
tioned the consistory to determine the legitimacy of a betrothal between his
minor daughter and a man of the age of consent. The father had approved the
match more than two years before. The man had then deserted his fiancée
inexplicably. He testified that he had been imprisoned in France for his adher-
ence to the evangelical cause. He further testified that he and his fiancée had
made up since his return, and that he had made appropriate arrangements
with her family. The consistory took the case under advisement and ordered
him to reappear with corroborating witnesses. Two weeks later, the same
father was back before the consistory, now with witnesses who testified that the
young man was fraudulently exploiting the one-year period that deserted maid-
en had wait before being freed from their betrothals. The young man, they
said, "did not want to take her for his wife, but he would return here every year
to prevent the girl from getting married, and he would oppose any man who
would like to marry her." Calvin cross-examined the man at length, and dis-
covered that he, in fact, had married someone else in France and had children.
Moreover, rather than being imprisoned for his evangelical sentiments, he had,
it seemed, voluntarily partaken of the Catholic Mass and Eucharist. Calvin, on
behalf of the consistory, reprimanded the young man severely, ordered him to
bring his wife and children to Geneva, banned him from the Lord’s Supper,
and, later, ordered him to appear before the Council for criminal sanctions.

The consistory was asked to determine the legitimacy of a betrothal between
a young man and a young woman, both under the age of majority. The young
man had apparently used amulets of liquor to induce her family to consent
to the union and had, since receiving the same, fraternized rather freely with
the woman, much to her family's chagrin. On hearing these developments, the
consistory ordered the young woman to remain in her parents' home while the
case was pending. It then ordered that the marriage could proceed only if both
sets of parents would state their consent to the union. The young man's par-
ents appeared the following week to protest the marriage—loudly. Given the
amount of putative sexual contact between the couple to date, the consistory

290 Case of Bartholomew de Ducreos (December 31, 1556), ibid., 11:93.
291 Case of Thomas Lambert and Jehanne Marie (April, 1557), ibid., 12:38.
292 Case of the Widow of Jean Acurd (January, 1557), in Registres de la Compagnie des Pasteurs, 271, with further discussion in Kohler, Confer Konsistenzum, 2631.
293 Ibid. See also CO 21:703.
295 Case of Jacques Regnault (March 4, 1557), ibid., 12:12. The consistory ruled similarly in the "Case of Claude Myerse (July 22, 1557), ibid., 12:77 when a fiancée, who had left the city, sought to return and have his engagement restored.
296 Case of Jacques Regnault (March 18, 1557), ibid., 12:18.
297 Case of Claude de la Grouse, et al. (March 4, 1557), ibid., 1:215.
removed the case to the Council, recommending dissolution of the betrothal, and a permanent prohibition against the parties' seeing each other again. The Council agreed.\textsuperscript{250}

The consistory judged the legitimacy not only of these budding new unions but also of the existing marriages of couples newly arrived in Geneva. New engravés were generally required to register with the city clerk and provide proof, inter alia, of their marital status. A sealed marriage certificate together with a letter of introduction from the syndic of the foreign city was generally adequate, and such cases were rubber-stamped if and when they came to the consistory for approval.\textsuperscript{250} Absent such proof, the consistory would review the evidence more closely. Three such cases in 1557 involved the secret marriages of former Catholic priests newly converted to the Protestant cause. In one case, the consistory investigated a couple who had moved to Geneva in order to experience "a true Reformation of the Gospel." The couple, and several witnesses, testified that they had been secretly married in the Catholic Church but, given the man’s clerical status at the time, "without the promises required." They had lived faithfully in marriage ever since, and adduced several credible character witnesses. After considerable deliberation, the consistory decided simply to "confirm the marriage."\textsuperscript{251} In another case, the consistory investigated the marriage of a former Catholic priest and his former maid. The man testified that he had secretly married the woman when he was a priest, and they had a daughter, now fully grown. Though they had no character witnesses, and though he had been delayed for some time before joining his wife in Geneva, the consistory seemed convinced of their sincerity. Their decision was that "the marriage should be done again in this city; and the judge should be asked to sign their banns" of marriage, which would then be announced from the church.\textsuperscript{252} The consistory reached the same conclusion in the case of a former priest who said that "his marriage was not done according to God, and wants it to be confirmed and approved in the congregation of believers." He was referred to the Council for appropriate action.\textsuperscript{253}

\textbf{Sexual Offenses}

The consistory’s busiest business came in the enforcement of Geneva’s expansive laws against fornication and adultery. The consistory dealt summarily with minor sexual offenses. A young man was reprimanded for kissing a young woman without the permission of her father or guardian, and ordered not to see her again.\textsuperscript{254} Another single man was admonished for regularly frequenting the house of a married woman while her husband was away and was forbidden from returning to her home on pain of spiritual punishment.\textsuperscript{255} A man was banned from the Lord’s Supper, and recommended to the Council for dismissal from the position of city guard for allowing his betrothed daughter and fiancé secretly to celebrate and consummate their marriage in his own house.\textsuperscript{256} Another man was likewise banned for secretly and "with bad intentions" putting his hand under a widow’s apron and saying that they should have a drink." The woman was banned as well, for good measure, since "she should change her behavior."\textsuperscript{257} A group of rascally party goers was reprimanded and banned from the Lord’s Supper for "singing bad songs”—presumably sexually ribald or blasphemous songs, given the severity of the punishment.\textsuperscript{258}

Cases of fornication and premarital sex were quite common, and generally met first with stern spiritual sanctions aimed at extracting confessions from the parties. A young man was banned from the Lord’s Supper for fornicating with a maiden and not confessing his sin.\textsuperscript{259} Another young man, who had excused himself from the Lord’s Supper because of his fornication with a maid, successfully petitioned the consistory to forgive him and allow him at commu-

\textsuperscript{250} "Case of Francois Rosset and His Wife Matheè (March 18, 1557)," ibid., 12:17.

\textsuperscript{251} "Case of Etienne De Faye (May 6, 1557)," ibid., 12:41 (approving as "true, good, and legitimate" the marriage of an ariscoat that was celebrated in "Christian church" in France; and certified in a sealed certificate); "Case of Claude de St. Mahe and Estienne de St. Mahe (August 30, 1557)," ibid., 12:92 (a man, privately charged with being illegitimately married, was given three months to get his "marriage attestation"); "Case of Arnaud Gassion and Marguer Roseau (September 9, 1557)," ibid., 12:96 (consistory confirms marriage on production of marriage attestation and testimony of the two corroboration witnesses); "Case of Etienne Claude Marie Legreve (September 3, 1557)," ibid., 12:96 (same).

\textsuperscript{252} "Case of Bernard Martin and Perenette His Wife, (March 11, 1557)," ibid., 12:112.

\textsuperscript{253} "Case of Pierre DuBoisson (April 22, 1557)," ibid., 12:36.

\textsuperscript{254} "Case of Jehan Doscus of Colombier (June 5, 1557)," ibid., 12:62.

\textsuperscript{255} "Case of Jean de Personnet (January 21, 1557)," ibid., 11:100.

\textsuperscript{256} "Case of the Wife of Jehan Piedmontois (June 3, 1557)," ibid., 12:60. (June 10, 1557., 12:62. See also "Case of Antoine Phillipin (December 31, 1556)," ibid., 11:253 (man caught drinking in a married woman’s bedroom questioned about fornication but not charged); "Case of Mernet Fournel (July 20, 1557)," ibid., 12:81 (man reprimanded for continuing to visit a married woman in violation of the Council’s order); "Case of Jehan Brun (September 2, 1557)," ibid., 12:53 (man reinstated to communion after being banned for frequenting a married woman’s house and "causing scandal for the neighbors").

\textsuperscript{257} "Case of Jehan Paccart of Sillingey (April 15, 1557)," ibid., 12:32. He was readmitted to communion a few months later after confessing his wrong and being admonished. "Case of Jehan Paccart of Sillingey [sic] (September 2, 1557)," ibid., 12:92.

\textsuperscript{258} "Case of Master Symon Thyven and Jane, Widow of Jehan Liborne (September 2, 1557)," ibid., 12:49.

\textsuperscript{259} "Case of Girault of Lequiniere, et al. (March 1, 1557)," ibid., 12:28.

\textsuperscript{260} "Case of Jehan Granger of Laconex (April 22, 1557)," ibid., 12:35. See also "Case of Andre Domineque (May 20, 1557)," ibid., 12:48. Once banned from the Lord’s Supper for alleged fornication, he asked for the ban to be lifted. "He was asked to confess his faults, but he did not like to do so. For that reason, he was asked not to come back to the consistory, since he did not like to repent."

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A fornicating couple was reprimanded, and when they failed to confess their sin were sent to the Council for punishment.265 A secretly betrothed couple, now expecting a child, were banned from the Lord's Supper for their secret engagement, their fornication, and their earlier participation in the Lord's Supper while having their secret sins unconfessed.266 An unmarried man, who had already confessed to fathering an illegitimate child, was questioned whether he was now having sex with his maid. He lied innocent, and offered to dismiss the maid if the consistory recommended. The consistory at first declined his offer and banned him from the Lord's Supper instead. But, on further deliberation, they reversed themselves, accepted his offer to dismiss the maid, and dismissed him with an admonition.267

The consistory generally insisted on "shotgun weddings" for parties whose sexual experimentation led to pregnancy. The consistory recommended to the Council to order such a wedding between a woman, newly with child, and her lover, who lived in the city of Berne.268 In another case, it ordered a local man to appear for spiritual reproof and marital instructions after he had seduced and impregnated a maid with promises of marriage. Both parties were banned from the Lord's Supper for fornication; the ban was lifted after they agreed to marry. In another case, the consistory subpoenaed an unmarried and pregnant maid to testify whether a suspected fellow servant was the father of her child. She admitted that the servant had fondled her but that she did not have sex with him. The father of the child, she said, was a Frenchman who had sojourned briefly at the house but was now beyond reach. The maid was spiritually admonished for her fornication. When it was discovered she had already secretly borne an illegitimate child, she was sent to the Council for punishment "so that the city may be purged."

The consistory generally collaborated with the Council on cases involving more serious sexual misconduct or more recalcitrant parties. In one case, the consistory hailed before it a whole battery of witnesses who testified to the purported adulterous affair of two married parties. The consistory heard enough hearsay testimony and circumstantial evidence of adultery to cause anyone to blush, but the sole eyewitness was a young girl, whose testimony was not considered sufficient. When the consistory ordered the accused parties to confess their adultery, they both steadfastly maintained their innocence, despite threats of the ban. The consistory decided to refer the matter to the Council for further inquiry, sending along a thick file of collected testimony.269 In another case, after several witnesses testified, a man confessed to seducing a married woman. He then made light of his action, however, saying that "though he was a great sinner...the Lord was an even greater forgiver." Perhaps so, but the consistory was not so forgiving. They banned him from the Lord's Supper and sent him to the Council "in order to purge the city of such rabbles."

A man and a widow, newly engaged, were reprimanded for visiting and talking to each other "as husband and wife," and enjoined from further such contact until their wedding day.270 When the Council later reported that the couple were continuing to see each other, the consistory came down hard on the couple: "They must be punished for being sexually immoral and disobedient" the consistory ordered. Moreover, the consistory decided to investigate their actions while the widow had still been married, and if there was any hint of adultery during their courtship "their marriage should be forbidden and broken." The consistory was equally hard on a man alleged to have raped at least one of his maids and impregnated one or two others. A flock of witnesses testified against him. He denied the charges flatly. He was threatened with the ban and removal of the case to the Council for severe corporal punishment. He persisted in his denial. The consistory followed through on their threat, "leaving him to deal with his conscience."

The consistory investigated at some length the adulterous pursuits of Jean Fabri, a fellow Geneva minister, and a married woman parishioner. According to the woman's testimony, Fabri had frequented her home with some regularity, "coming into her garden and into her house." He enticed her "many times, saying that her husband was too skinny, and that she should not have children with him." Fabri also "enticed her into her bedroom and sought to kiss her and touch her." The woman had reported these attempted seductions to her husband, who apparently had banished her from their home. When confronted by the consistory, Fabri confessed that "Satan has seduced him, and he has enticed her, having conceived bad thoughts...but he never wanted to kiss her or touch

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265 Case of Jehan du Vau (September 2, 1557)." Ibid., 12:47. See also "Case of Bernadine (September 2, 1557)." Ibid., 12:34 (woman relented to communion after confessing her adultery).
266 Case of Claude, Daughter of Francois Bastard of Chastellaine (May 6, 1557)." Ibid., 12:41.
267 Case of Claude Blachet and Claude, Daughter of Francois Bastard of Chastellaine (May 20, 1557)." Ibid., 12:46.
268 Case of Michael Gilbert (March 25, 1557)." Ibid., 12:21 (the notary crossed out the following entry: "decided, first, that the Lord's Supper should be forbidden to him").
269 Case of Permette, Daughter of Bernard Denuet of Meynier (March 25, 1557)." Ibid., 12:21.
270 Case of Jacqueuse, Sister of Audrey Quad (August 12 and 19, 1557)." Ibid., 12:65, 69.
271 Case of the Maid of Pierre Mutin (May 20, 1557)." Ibid., 12:46.
272 Case of Aney Ducret and Permette, Wife of Pierre Trouillet (June 1, 1557)." Ibid., 12:32. See also "Case of Barbe, Wife of Robert Maillard (September 18, 1557)." Ibid., 12:96 (case involving detailed but conflicting testimony over her alleged adultery referred to Council for disposition).
273 Case of Michel Pointeau (September 23, 1557)." Ibid., 12:90.
275 (May 20, 1557)." Ibid., 12:48.
276 Case of Hudry Robod (April 15, 1557)." Ibid., 12:29.
her." Speaking for the consistory, Calvin denounced the entire affair as "a great scandal." Fabri was eventually stripped of his office, and subjected to imprisonment and a severe flogging. The woman was referred to the Small Council for protection from her husband during her banishment.272

Only one other case of wife abuse is reported in the consistory record of 1557. A husband was reprimanded, and temporarily banned from the Lord’s Supper, for beating his wife. He testified that "he would quit entirely and go to the Catholic Church if he could not beat his wife if she did displeasing things." Calvin, on behalf of the consistory, reprimanded him. After the man apologized for his actions and testimony, the ban was lifted, and he was accepted to the Lord’s Supper, so long as he set a good example for others.273

Annulment and Divorce

Disputed betrothals and marriages, as well as sexual misconduct by the unmarried and married, comprised the vast bulk of the consistory’s business in 1557. Only a small handful of cases of marital dissolution came before it—though some such cases were also heard directly by the Small Council. Two consistory cases touched on questions of desertion. In one case, a woman requested a divorce on grounds of her husband’s desertion. She introduced into evidence several letters from him attesting to his desertion. The consistory found the letters—which were apparently submitted only in translation and unsigned by the husband—"not sufficient enough to grant her a divorce at present," and ordered her to wait the prescribed one-year period.274 The woman’s case does not appear in the record again. In a second case, the consistory investigated the propriety of an Italian man’s rather aggressive courtship of a deserted wife in Geneva. The woman testified that she had been deserted for more than a year. Her suitor had brought her the news of her husband’s death. She had consulted Calvin about the propriety of courting this new gentleman, and he had apparently concurred. The woman’s sisters-in-law, however, testified that her husband was still alive and that her suitor was acting in bad faith. The consistory, on investigation, found that the gentleman suitor had indeed acted “fraudulently” in reporting her husband’s death. They enjoined him from further courtship of the woman, and “advised the Italian prosecutor to be aware.”275 A year later, the woman successfully brought an ex parte divorce action for desertion.

One case dealt with involuntary annulment of an “incestuous marriage.” Apparently, the parties had married with knowledge of their impediment, for, on discovery, the wife was whipped and banished from the city “to avoid scandal.” The husband was granted temporary domicile in the city to collect their property. Ironically, he was also told “if he wants to have her, he may go live with her,” provided they stay out of the city. If he returned to the city, the marriage would be deemed dissolved and the parties punished for their incest.276

The clear cause célèbre of 1557 was the divorce of John Calvin’s brother, Antoine from his socially prominent wife Anne Le Fevre—a case recently brought to life by Robert Kingdon.277 Antoine and Anne lived with John, in the parsonage, throughout their married lives. The relationships between Antoine and Anne, and John and Anne were perennially testy, occasionally tempestuous. Already in 1548, John Calvin had, on his own initiative, called on the consistory to investigate his sister-in-law on “suspicion of adultery” with Jean Chantenps, the son of a local noble. Jean had been frequenting Calvin’s house regularly, particularly when the Calvin brothers were away. He had brought Anne a gift of a ring, and had eaten meals there several times. What had “greatly afflicted his heart," Calvin reported, was that Jean had visited Anne under very suspicious circumstances one Sunday when John and Antoine were at church services. The following week, he had broken into her bedroom in the middle of the night. Jean admitted to "hugging" Anne lustfully, and behaving "indecently," but said she had spurred him. The consistory (having recused Calvin) conducted its investigation and pressed the parties to confess their adultery. They refused, and were referred to the Small Council for imprisonment and further investigation. No charges were ultimately brought. The case was returned to the consistory, and Anne, Antoine, and John were called to “a ceremony of reconciliation,” in Kingdon’s apt phrase—featuring Anne’s public kneeling before Antoine and John and begging their forgiveness for her untoward behavior.278

Forgiveness for one sexual offense did not inoculate Anne against condemnation for another. John and Antoine Calvin were back before the consistory in early 1557, now asking that Antoine be “given the right to divorce his wife” on account of her second alleged act of adultery.279 Anne was now charged with

272Case of Jean Fabri, Minister (March 5, 1556), “Ibid., 11:7.
273Case of Jehan Favre (January 21, 1557), "Ibid., 11:99.
274Case of Jacqueline Ood (May 6, 1557), "Ibid., 12:41.
275Case of Bernardine of Falcon, Italian, et al. (February 6, 1556), "Ibid., 10:89, and (September 9, 1557), "Ibid., 12:101.

276See “Case of Antoine Calvin (September 27, 1548),” in Registres du Consistorial de Genève, 4:92, with analysis of these and other proceedings in Kingdon, Adultery and Divorce, 71-78; Köbler, Geffin Konstitution, 2:628-30; Seeger, Marriage, 406-67.
277See “Case of Antoine Calvin (September 27, 1548),” in Registres du Consistorial de Genève, 4:92, with analysis of these and other proceedings in Kingdon, Adultery and Divorce, 71-78; Köbler, Geffin Konstitution, 2:628-30.
278Case of Antoine Calvin (January 7, 1557), "Ibid., 11:95. In a letter to Viri, sent the same day, Calvin again reported "great grief!" For when that abandoned woman, who was then my brother's wife, lived in my house, we discovered that she had committed adultery with the hunchbacked Peter. The only consolation that we have is that my brother will be freed from her by a divorce." Calvin, Lettres, 5:208. See also Calvin’s later reflections in GO 106382.
fraternizing with one of her disabled servants—the "hunchback" Pierre as he was called in the record. As Kingdon amply reports, both the consistory and the Council investigated the case at great length, summoning several rounds of witnesses, commissioning three expert opinions, and cross-examining Anne and "the hunchback" repeatedly, sometimes together, sometimes separately. John Calvin, though again recused from the consistory's deliberations, served actively as legal counsel to his brother and seems to have had a considerable hand in crafting his brother's petition and influencing the Council's activities. Anne and Pierre were imprisoned throughout the proceedings and, in later interrogations before the Council, Anne was twice tortured in an effort to extract a confession of adultery. Neither party confessed. The testimony of sundry witnesses and the circumstantial evidence of repeated meetings and suspicious conduct by the two were enough to convince the Council to grant the divorce on grounds of Anne’s adultery. She was permanently banished from Geneva—on twenty-four-hours notice—and ultimately remarried a few years later. Antoine was released from his marriage and remarried a few years later in Geneva. 291

Patterns of Litigation

The pathbreaking work in the Genevan archives by Robert Kingdon, Cornelia Seeger, and Walter Köhler, among others, suggests that this case law of 1557 was quite typical of the Genevan law in action in the 1550s and thereafter. 292 The consistory had seized upon its new marital jurisdiction with alacrity in the aftermath of the 1555 riots in Geneva. They maintained a comparatively full docket of cases for the next two decades, addressing many of the same issues as the consistory of 1557, with similar results. 292

The consistory and Council heard numerous cases of disputed betrothals. They automatically annulled betrothals on the discovery of a Levitical impediment of a blood or family relationship between the parties, potential bigamy by one party, or obvious impotence or other sexual dysfunction of one party. Parties who sought to conceal these conditions before marriage were subject to rather severe spiritual and criminal sanctions. The consistory and Council generally annulled betrothals of minors who were immature, prepubescent, lacked parental consent, or were coerced or tricked into the betrothal—again, often sanctioning guilty parties in the process. They also generally annulled betrothals if one party contracted a contagious disease; was convicted for crime; or if the parties were separated by too great a difference of age, religion, qual-

291Kingdon, Adultery and Divorce, 79-93.
292Ibid., passim; Köhler, Gnyer Konsistorium, 2:626-645 (using cases in Cramer, Notes extraites, passim); Seeger, Marriage, 905-450.
leaders of these communities were educated in the Geneva Academy. Many later leaders were weaned on the rich corpus of Calvin’s writings that came available to them, often in local translations.

These far-flung Calvinist communities were not replicas of Geneva. Their leaders did not simply repeat in every particular the theological formulations of John Calvin and his colleagues. Indeed, while Lutheran communities in Germany and Scandinavia tended to settle into common routinized patterns by the seventeenth century, contemporaneous Calvinist communities tended to pluralize into a number of national and regional variations on Geneva themes. The nature of these variations turned in part on the temperament of their leaders, in part on the historical and theological contexts in which the local reformations occurred.

One of the hallmarks of these later Calvinist communities was both their preservation and their pluralization of Calvin’s theology and law of marriage. Covenantal theologies of marriage sprung forth in greater varieties in these early modern Calvinist communities. Geneva civil laws governing marriage formation, maintenance, and dissolution gave rise to a variety of local legal progeny. This later Calvinist legacy for marriage had a substantial influence on the civil and common laws of Protestant Europe and the colonies of North America. Dutch authorities appropriated a great deal of the Calvinist learning in their provincial and national laws on marriage, divorce, inheritance, and comparable subjects—and came to influence a number of colonists who passed through Holland on their way to North America.250 Calvinist covenantal ideas of marriage eventually transformed Anglican maritall theology and English ecclesiastical law in later Tudor and Stuart England251 and shaped even more directly the marriage laws of the Puritan and Anglican colonies along the Atlantic seaboard.252

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254Seeger, Marriage.