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*The Framers' Idea
of Marriage and Family*

David F. Forte

I

LEO TOLSTOY begins the story of his fated *Anna Karenina* by declaring, "Happy families are all alike; every unhappy family is unhappy in its own way."

Tolstoy may have it backwards. If we listen to the conversation of two happily married women, for example, we hear pictures of drastically different families. Each one has its own set of unique individuals with particular interactions, gifts, problems, failures, and triumphs. One has a son who is gifted in hockey (though getting him to study is a chore). Another has a daughter who has a learning disability (but they have found a school that seems to be helping her). One has a husband who is out of work (but a new opportunity seems around the corner). Another has an aunt who has just died from cancer (though she was beloved by all). One is pregnant (with her fourth child). The other hopes to take her family on a cruise (but offers to help until baby arrives).

And so it goes. Quarrels, reconciliations, jokes, tears, intimacy and distance, too many tasks, too little time, the need for prayer, the worries over money, the parties, illness, the new driver's license, the leak in the

basement, the new plantings, the car repair bill. Each "happy" family is a texture of problems and solutions, opportunities taken and wasted, sickness and recovery, points of joy and spikes of frustrations. It is not, in the unrealizable image of many, effortless bliss.

So, you might say, is every unhappy family. What is the difference? Clearly, the difference is that the happy family has developed complex interactive mechanisms to resolve conflicts and nurture the growth of each individual within the family. The unhappy family is unable to cope with the very same dissonances; it draws down the individuality of each member in the unsuccessful attempt to contain the conflicts, and often breaks under the stress of irresolution.

The question, therefore, is how the "happy" family comes to be. In talking about a happy or unhappy family, we can begin by determining just what we mean by "happiness." For Tolstoy, it was harmony, the leisure to enjoy the higher pleasures, undoubtedly including an efficient and complaisant set of servants, a comfortable dwelling, a passionate cathexis of body and soul, and an existential connection with the deepest movements of being.

It was thoroughly Romantic—and necessarily tragic.

Tolstoy was right about one central element of happiness, however. It is experienced. False is the old saw, "Happiness is not experienced, but remembered." Happiness remembered is at worst, mere nostalgia, at best, gratitude. In either case, it is a memory of what was a real experience. The experience of living in a happy family is in the doing of the tasks, among people who are emotionally, socially, and legally bonded in a singular enterprise, every member of which is needed for its success. Families are as much about "doing" as "being."

The wise lights of the founding of the American polity understood the necessary connection between the successful enterprise of the family and the successful enterprise of a free and representative republic. In the midst of the dark days of the Revolution, John Adams wrote, "The foundation of national morality must be laid in private families."¹ That grounding of national morality was crucial for Adams, for he could not conceive of a free republic without "public virtue." As he wrote in

a letter to Mercy Warren shortly before independence was declared, "public virtue is the only Foundation of Republics. *There must be a positive Passion for the public good, the public Interest, Honour, Power and Glory, established in the Minds of the People, or there can be no Republican Government, nor any real Liberty: and this public Passion must be Superiour to all private Passions.* Men must be ready, they must pride themselves, and be happy to sacrifice their private Pleasures, Passions and Interests, nay, their private Friendships and dearest Connections, when they stand in Competition with the Rights of Society."² The bridge from reining in "private passions" to producing a "positive passion for the public good" was the family's inculcation of public virtue.

Yet the Framers did not speak extensively about the family, except in personal letters, in which men like Washington, Adams, and Marshall spoke of the deepest gratitude for their domestic life. There is no allusion to marriage or family in the Constitution. It is barely mentioned in the Federalist Papers or elsewhere in the ratification debates. The reason why the founders "ignored" the family was that it was not an issue for them. It was not a social problem. On the contrary, the family was the accepted substratum of society. It was the basis of the economy, centered on the labor intensive farming enterprise, producing large amounts of offspring (which, along with immigration, the framers regarded as absolutely necessary for the future of the country), bonded vertically and horizontally with relations and religious communities.³

Today, with the family beset on all sides, hundreds of books like this one describe or defend it (while many others that attack it). But to the men and women of that generation, the family was a given: its structure, its stability, roles, and values accepted by all. The Constitution was a plan of government, not concerned with the independent government over individuals that was the family. The national government had no jurisdiction over families, and the state governments gave them legal protection.

More significantly, the founders believed the family was the source of the kinds of individuals that could be entrusted with the maintenance of a free republic. The question was not what should be done

with the family, but whether the government would be able to reap the benefits of the already existing family structure in order to prosper.

The founders were a mixed lot, driven by passionate differences, mutual suspicions, and strong personalities.⁴ What united them was a principled practicality. It is that which moved them to form a nation and its remarkable constitution. None of the founders romanticized the family. Few if any recognized its sacramental character. What they saw in the family, as they saw in religion, was the necessary formation of character, the inculcation of virtue without which a free republic had not the slightest chance to survive, let alone prosper.

The founders understood the symbiotic connection between family virtues and civic virtues. They knew it through their study of the classics, through their imbibing of the Scottish enlightenment, through their understanding of the providential nature of the Judeo-Christian God, through their familiarity with self-governing liberty, and through their utter respect of their own human experience of living. They looked upon the family as a model in which man's selfish impulses would be contained, where the coordination of practical tasks could be effectuated, and where sentiments of affection and mutual respect could bind a people into a nation. It was the school of the family (and its religion) that taught those virtues.

II

To trace the symbiotic connection between family virtues and civic virtue, we should touch upon those sources that the framers of the republic themselves drew upon to understand what in the family was necessary to accomplish the risky venture of a free republic. To speak of the connection between "happy" families and a healthy civic culture, we should start with the Greeks who were the first to think seriously of the connection between virtue and a healthy polity.

Being men of affairs (and the wiser for it), none of the founders wrote philosophical commentaries, though they were certainly familiar with the great thinkers. They were practical Aristotelians, and were

distant from neo-Platonism that inspired the French Revolution (and, not incidentally, the French Revolution's overt war upon the family).

The founders knew, as did Aristotle, that man desires above all to be happy. According to Aristotle, happiness is not a sensation. Rather, happiness attends a being when it reaches the full actualization of its potentialities, when it reaches the final end (*telos*) of its movement through time. In other words, happiness comes to a being when it "perfects" that which was only partially realized (to which the framers of the Constitution averred, when they sought a "more perfect Union").

Aristotle taught that the "perfection" of man lies in his living well, that is, in his practice of the virtues: "But honor, pleasure, reason, and every virtue we choose indeed for themselves, but we choose them also for the sake of happiness, judging that by means of them we shall be happy."⁵ Aristotle's definition of virtue can be summarized as "the habit of acting rightly."⁶ The good life, the happy life, is kinetic. It is a life of reflective action.

Thus, when the framers in the Declaration of Independence spoke of the "pursuit of Happiness" as an inalienable right, they were speaking of what is required for a person to become fully human, to perfect his nature, and thereby experience a well-lived (a happy) life. It is the active practice of the virtues. George Washington said it in words that could have been Aristotle's: "[T]here is no truth more thoroughly established that there exists in the economy and course of nature, an indissoluble union between virtue and happiness."⁷ It is not an etymological coincidence that "ethics" (*ethos*) in Greek means "character."

According to Aristotle, then, one cannot find one's perfection in the practice of virtue except in a healthy polity, and he directly bases a healthy polity upon healthy family life. In his *Politics* and his *Ethics*, Aristotle declares that the polity (*polis*) is the highest form of community, but that the *polis* is made up from the relationships among families. In fact, Aristotle argues that the *polis* finds its origin in the family. Aristotle sees the family as a communal enterprise made up of individuals whose relationships are grounded in nature: husband to wife, parents to children, master to slave. The life of the family was made up of

relationships and tasks, and the latter is the cause of Aristotle's belief that slaves had to be a necessary element of the household.⁸

The relationship of master to slave was a form of despotism; that of parent to child was a form of monarchy; but that of husband and wife was friendship (*philia*). Although the passions of nature (*eros*) drew man and woman together for the purpose of reproduction, the virtue of friendship (*philia*) transcends the erotic. Though man and woman are unequal in nature (Aristotle presumes that only the man can hold "office," that is, possess a policy-making function for those under his authority and in his care), in the friendship of marriage and in their growth in the practice of virtue, they become free and equal in their humanity.⁹

The *philia* of husband and wife is precisely that *philia* necessary for the *polis* to exist. Aristotle declares that the reason why the barbarians do not possess a *polis* (but rather a tyranny) is that they possess imperfect families, where the wife is a slave (not the friend) of the husband. Aristotle regards the relationship between the family and political society in the same way the founders of the American republic did: the larger political community is based upon the smaller.

Christianity promised an even higher relationship between husbands and wives and parents and children. The highest form of love, *agape*, or self-sacrificing love, was brought into the Greek language through the Septuagint, and became the core of Christian belief of the relationship of God to man in Christ's redemptive sacrifice. In the Christian family, parents understood their relationship to their children as *agape*, as they understood their sacramental relationship to one another. Further, the essential equality of man and woman (transcending their familial roles and physiological differences) came through the development of marriage as a sacrament, wherein each spouse gives to the other the sacrament and the vow, and to be valid, it must be entirely and freely given.¹⁰ Combining freely given consent with a spiritual component, marriage was, in form, the highest form of friendship. But the early Church writers disparaged the sexual aspects of marriage, thereby denying the most intimate expression and experience of

marital *philia*. That error was not to be authoritatively corrected until the modern papacy. Furthermore, customs and social mores influenced (or distorted) "Christian" marriage. Commonly in Christian society, there were arranged marriages, the "sale" of the daughter by the father to the groom, the acceptability of physical chastisement, and child abandonment.

Nonetheless, by the time we arrive at the eighteenth century and the time of the founders, marriage and the family came to look very much as Aristotle had pictured it. In the previous centuries, Lutheran reforms had lodged marriage into the civil structure of society and made it more a concern of civil law,¹¹ but, joined by Calvin, Protestantism retained parental control over the right of children to marry. John Locke, however, saw marriage as contracted political society, and thus his image of the family as a commonwealth made up of combined individuals parallel his image of the formation of the larger political commonwealth as well.¹² Furthermore, Locke declares that parents are, "by the law of nature, under an obligation to preserve, nourish and educate" their children.¹³ Since government is instituted to enforce the laws of nature, Locke states that government should make laws that enforce "the security of the marriage bed."¹⁴

What Americans of the late eighteenth century did was to synthesize the notion of marriage as a freely entered political institution, being an organic part of the larger political society, with a Christian notion of its interior life. This gave the institution of marriage and the family more power, authority, and inner strength than at any time in history of the West. Most marriages in the latter half of the eighteenth century were not formally arranged, but (even taking into account inevitable family pressures) were freely entered into by the spouses.¹⁵ With the demise of slavery in most households over time (even in the South few slaves could accurately be said to be part of the "household"), the tasks of the family fell to the parents and the children, and the integration among them grew even more close than in Aristotle's time because all were involved in making sure that the joint venture of family succeeded. Indications are that nuclear families grew in loyalty and intimacy in

America during the late seventeenth and late eighteenth centuries. True, Protestantism had jettisoned the "sacramental" equality of the two spouses, but the contractual equality that was worked out in the day-to-day tasks of the family was even stronger. Nevertheless, the legal personality of the family resided in the husband alone, as the married woman became, under the law, *femme covert*, and lost control over her property. In sum, the founders' experience of the family mirrored its classical description.

III

Beyond the distant influence of the ancients, however, there were two other significant intellectual influences on how the founders perceived the family as the source of the kind of virtue that would sustain a free republic: the inheritance of the Scottish enlightenment and a Protestant notion of the role of a providential God.

Excepting Montesquieu (who praised the English), the founders had little affinity to the Enlightenment of the European continent. Their ideas and experience found more congruence in the ideas of David Hume, Francis Hutcheson, Adam Smith, and John Locke, even in the face of significant disagreements among and within that tradition. The connection between each of these thinkers and the various members of the founding generation would take more than a monograph apiece even to explicate, but I trust the reader will permit me to summarize the fundamental principles the founders drew from that philosophical tradition: utility, sentiment, and voluntary association.

Hume established utility as a fundamental standard of human action.¹⁶ He grounded the virtue of justice, for example, in the need for a practical solution to human life in a world of scarce resources and imperfect persons. "Reverse, in any considerable circumstance, the condition of men: Produce extreme abundance or extreme necessity: Implant in the human breast perfect moderation and humanity, or perfect rapaciousness and malice: By rendering justice totally *useless*, you thereby totally destroy its essence, and suspend its obligation upon

mankind."¹⁷ Hume declared that the conventions of positive law were the only basis on which to allocate resources and resolve differences peacefully.

Hume's position was congenial to the American colonists' political and economic experiences. Through the economic, religious, and political conflicts of the seventeenth century, the American colonists had come to appreciate the practical mechanisms for adjusting (primarily through English law and local assemblies) the inevitable differences among the populations of each colony. Despite the frontier, land remained a scarce resource, engendering perpetual conflicts between creditors and debtors. Mistrust and friction among religious sects was a constant. Ultimately, Americans drew upon the principles of justice in English positive law to mediate their differences and create stable societies.

Through Hume, but more particularly through Hutcheson and Smith, Americans also understood the experience of moral coordination among persons and groups through the sentiments of sympathy and benevolence. As Adam Smith puts it in the start of his *Theory of Moral Sentiments*, "How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it."¹⁸

Americans lived that sentiment in the intersection of familial and religious communities that they developed in the New World. Communities created mechanisms for mutual assistance. More importantly, Americans found the sentiment of justice, that is, a shared sense of right and wrong (Smith's "impartial spectator") articulated through family mores and, outside of the family, through the legal system. The social mechanism was again the shared experience of the English common law, through which Americans resolved the conflicts between individuals, families, and groups with opposing property interests. The very litigiousness of the colonists evidenced a shared sentiment of mutual restraint under the rule of law.

Finally, to the Americans, not only did John Locke's views on the family articulate their own evolving sense of the institution, but his

seminal work on politics exemplified the colonists' understanding of self-government through voluntary association as a natural right. In eighteenth century English law, "liberty" was a legal term of art. It did not mean the unhampered autonomy of the individual. On the contrary, when the King granted charters to corporations or colonies guaranteeing, among other things, their "liberties," it was a grant of self-government to the voluntary association.

A marriage, therefore, was a voluntary association of a man and woman, who contracted in liberty to create the independent legal and civic entity of the family. This resulted in an ongoing enterprise, in which all parties learned the practical arts or virtues of living together, bound together with sentiments of mutual assistance, for the purpose of survival and prosperity of the venture.

It would be remiss of me, however, having mentioned Montesquieu by the by, not to give his place among the founders due credit. Montesquieu wrote that different forms of government have underlying principles that govern how the ruled interact with the rulers. For instance, the underlying principle that governs despotism is fear. There the governed follow instructions and laws out of fear of what will happen if they do not obey their despot.¹⁹ However, when the form of government is a republic, the underlying principle is virtue where the people live truthfulness, fidelity, frugality, and other civic virtues. More pertinent to our inquiry, Montesquieu declared that educating individuals in the public virtue necessary to maintain a republic had to come from the family.²⁰ Montesquieu insisted that for a republic to survive, it must foster a particular kind of republican virtue, which the Anti-Federalists insisted could only be had in small independent republics. Thus, the debate over the Constitution centered on whether the new government would, by its size and power, corrupt the body politic, or whether, as Madison argued in *The Federalist*, Number 10, the extensive republic would in fact, frustrate passions and allow public virtue to have its way. Both the Anti-Federalists and the Federalists relied upon the family as a school of virtue. Their difference was over what form of government would build upon those virtues and what form would contrive to frustrate and corrupt them.

IV

A third primary intellectual source of the founders' sense of the role of the family in a free republic lay in eighteenth-century American Protestantism. American Protestantism was in no sense univocal, but it nonetheless defined man's relationship to God and the relationship between men.

A constant theme was the notion of a providential God. This was the God who, in his great act of creation, brings order out of chaos.²¹ This was the Creator who endows men with "certain inalienable rights."²² This was, in Washington's words, "that Almighty Being who rules over the universe, who presides in the councils of nations; and whose providential aid can supply every human defect."²³ This was the God whose mercies one can only strive to be worthy of. "The propitious smiles of heaven can never be expected on a nation that disregards the eternal rules of right and order, which heaven itself has ordained." The task of ordering the handiwork of God was entrusted to man. And it was the beneficent ordering of human relationships out of the ever-imminent chaos of self-regarding passions that was the family's task.

A further insight of American Protestantism was the religiously based obligation to respect human freedom. As Madison wrote in his famous *Remonstrance*,

Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence. The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. . . . It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if member of Civil Society, who enters into any subordinate Association must always do it with a reservation

of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign.²⁴

That liberty is manifest in the freedom of each person to decide with whom he or she shall create a marriage and family. But much more important and directly relevant to the family was the affirmation of the limited role of government in the lives of the people.

Unlike the French notion of democracy as "the will of the people," the American standard is the "consent of the governed." Just as even accepting one's relationship to the Supreme God can only be done by free consent, the standard affirms that "the governed" had a life outside of politics, and that the government could only enter into that life with the consent of the people. The very ratification process of the Constitution affirmed the principle.

Combining with the colonists' tradition of self-government, their rights under their colonial charters, their privileges under the common law, their understanding of natural law, and the Lockean principles of the social compact, the religious sense of liberty compelled that the only legitimate government was a limited government. The family was an independent entity that did not gain its legitimacy from the government. The fundamental notion of limited government allows the most local government, the family, to govern itself, in co-ordination with other families in local communities.

Lastly, American Protestantism affirmed that man was not perfectible. Perfect men do not need to be trained in the virtues. Only imperfect men need learned character. The Protestant notion of original sin, usually translated in eighteenth-century language as the self-regarding passions, meant that without the training given by families and religion, the darker sides of our human natures would have free rein. Self-government meant not only the right to enter into voluntarily associations with others, it also meant the duty to govern oneself.

The founders were, however, practical realists. The family was a necessary but not sufficient condition for a free republic. As fine an institution as the family was for the inculcation of civic virtues, it pos-

sessed a kind of Westphalian sovereignty. The family (headed by the husband) ruled itself, and it recognized in other families the right to rule themselves. But in the experienced independence of the family, those who were not of the family were outsiders. They could be joined together in an alliance for common interests, and that alliance could be turned against other alliances as well. This was the source of the framers' dread of "factions," which Madison defined as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens or to the permanent or aggregate interests of the community."²⁵

A family might inculcate the necessary civic virtues, but each person remained free to choose his path. He may still give in, even occasionally, to the self-regarding passions. The framers understood that the nature of man was thus permanently mixed. They were no social engineers, as the French in their revolution tried to be. But the framers were political craftsmen. It was in their ken to create a political structure that gave free opportunity for the virtues to flourish and not one that would corrupt the citizens into destructive self-regarding behavior. In consequence of the hard lessons of experience, the framers crafted the entire complex and nuanced mechanisms of separation of powers, separated sovereignties, and limited government, to frustrate the self-regarding designs of men, leaving them open to practice of virtues of cooperation, honest dealings, and the sentiment of attachment to the whole, virtues that they were trained in by their families.

v

What are the civic virtues that the framers expected that the family would impart? A modern observer catalogues what virtues are necessary in men and women for a free republic to succeed: courage, loyalty, law-abidingness, fidelity, personal responsibility, self-restraint, tolerance, adaptability, leadership, duty, craft.²⁶ After averting to a "degree of depravity in mankind," Madison averred that "there are other qualities in

human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form."²⁷

Perhaps the man who most incarnated these virtues was George Washington. In his prayer to the Almighty, Washington begged for those virtues for himself and his countrymen.

And also, that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations and beseech Him to pardon our national and other transgressions;-- to enable us all, whether in publick or private stations, to perform our several and relative duties properly and punctually; to render our National Government a blessing to all the people by constantly being a Government of wise, just, and constitutional laws, discreetly and faithfully executed and obeyed; to protect and guide all sovereigns and nations (especially such as have shewn kindness unto us); and to bless them with good governments, peace, and concord; to promote the knowledge and practice of true religion and virtue, and the increase of science among them and us; and, generally to grant unto all mankind such a degree of temporal prosperity as he alone knows to be best.²⁸

It is obvious that without these virtues, a society will tip towards chaos. The reason that well-functioning families are so successful for forming persons possessing such virtues is that a family does create order out of chaos. The fact is that men and women are different, that parents and children are different, that each person has an independent personality, that each has self-regarding desires, and that they are all placed under one roof with the vow of fidelity, constancy, peace, and mutual assistance. It is an extraordinary institution that can accomplish that. As Allan Carlson describes it,

Marriage, in turn, creates a new household. When gathered together, these form the second institutional tier in natural social life and the one on which all political life is built. The household will

normally encompass the wedded man and woman, their children, and aged or unmarried kin. Successful households are the natural reservoir of liberty. They aim at autonomy or independence, enabling their members to resist oppression, survive economic, social, and political turbulence, and renew the world after troubles have passed. Complete households have the power to shelter, feed, clothe, and protect their members in the absence of both state and corporate largesse. Such independence from outside agency is the true mark of liberty, making possible in turn the self-government of communities.²⁹

The daily life of the family has strains, conflicts, and pressures. And every day, the family resolves those strains, conflicts, and pressures. The family is the most important conflict-resolution mechanism in all of society. As a phenomenological matter, the daily life of the family consists in the resolution of conflict. Within the well-functioning family, the child learns the rules of justice, the nature of authority, trust and reliance; he learns the techniques of negotiation, the constraints on sexuality, the adjustment of desires, the making of choices within scarcity, the meaning of sacrifice, and the healing that comes from forgiveness. From these accomplishments come persons of character.

The pressures and attacks on the family are well documented. The social disruptions and personal hurts to those who grow up outside of a stable marriage are equally well documented. But there are signs that character forming marriage and family is growing in strength, at least among those who do wed. Two million children are now schooled at home. There are growing numbers of educated mothers, in particular, who stay home with their children. In many parts of the country, whole neighborhoods are filled with children living with intact families. The sense of intimate friendship between husband and wife is now a central part of marriage. Among middle class and working class parents, civic culture is growing. Nearly every day or night in every suburb, parents are coaching sports, attending recitals or plays, going to church, volunteering with the Scouts, or assisting teachers at schools. While there

is much to be concerned over, particularly in the short term, there is also much in the longer term to give us hope.

Marriage is not idyllic, and because it is not idyllic, some think traditional marriage and the family are a failure. But marriage and the family are successful precisely because they are not idyllic, as human existence is not idyllic. And to those who resolve conflicts and overcome differences with love, to those who nurture each other and console those who suffer, the family can produce not just character, but joy.