The AMERICAN FAMILY and the STATE

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Foreword by
ROBERT NISBET

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FOREWORD

The American Family and the State is an important work of scholarship in its own right. Its value, however, is considerably enhanced by its publication at this particular time, when a kind of renascence is taking place in studies of the position of the family in the modern welfare state. American scholarly interest in the family was for too many years confined largely to the internal, the interpersonal, and psychological aspects of the family; the structural relation between family and other institutions, including the state, tended to be ignored or else swept under the ever spreading welfare carpet.

The great virtue of this book is its structural approach to both family and state, and its frank, extremely perceptive, and wide-ranging observations of the conflicts, potential and actual, that so often threaten any harmonious institutional relation between state and family. Under the intent and rhetoric of ministering to the family, of reinforcing it in society, the state often winds up actually damaging the family as a repository of vital authorities and functions. As this book makes very clear, there is conflict rather than consensus of purpose in many of the state's ostensibly compassionate ventures (and their immediately supporting agencies) in the realm of kinship.

There is a long history behind current tensions and conflicts between family and state. The family is much the older of the two institutions. Kinship was for a very long time man's only form of social

organization. Everything important in society flowed directly from one or other of the statuses of sex, age, and genealogy. Family—in the wide sense of the word—was the sole nexus between the individual and nature, world, and cosmos. It and its folkways were the indispensable protection against the uncertainties of life. It was the family that made possible the individual's entry into the world, that controlled every phase of his life thereafter, and that committed him at death to his ancestors.

The first great crisis in the kinship order was not—with all due respect to the Freudians—the uprising of the sons against the fathers out of lust for the mothers. It was, as nearly as we can deduce it from such evidence as there is, rather the revolt of the sons against the fathers over the issue of war, more specifically, over the kind of organization and power necessary for the sons to fight efficiently against external enemies. Kinship society, by structure and stratification, can be admirable in meeting the problems of life in peacetime. It is far from adequate, however, when it must confront the needs of defense and attack in war.

Of all who have written on this important point, the learned English jurist Edward Jenks, writing at the turn of the century, has shed the most light. The family, Jenks observed, is constructed of principles diametrically opposite to those inherent in the state. The family originated as regulator of procreation and of all the consequences, social, economic, religious, of the assimilation of the young into the social order. The state, on the other hand, originated in war, more specifically, in the warrior chief and the war band that was mobilized whenever external attack threatened. Kinship society tends everywhere to be cellular, with the group instead of the individual the irreducible unit of society. Caste, flowing from genealogy and age, is dominant over the more contractual forms of relationship. Law is little more than custom and tradition as interpreted by the old and wise in the community. Finally, kinship society is exclusive by nature; there is no lust for numbers; suspicion and apprehension face every stranger, and indeed every newcomer beginning with the newly born.

Military organization, Jenks pointed out, is, and must be if it is to be successful, founded on contrary principles. Youth, not age, is requisite for effectiveness in war; the relation between the warrior and the war chief is inherently contractual—even if the warrior has been conscripted—in the sense that it is limited to the duration of the war and is explicit in matters of booty and other types of reward. Not

tradition but *command,* reaching from the top directly down to each warrior, is the heart of the military system of control. Any intermediate groups are strictly tactical, without legitimacy of their own. Far from being cellular, military organization can be said to be individualistic in that each soldier is by design a replaceable part. There is an inherent secularizing proclivity to the war band through its wresting of its individual members, however briefly and infrequently, from their sacred kinship and religious ties.

The war band is the seed of the political state. Everywhere the state, as we first encounter it in history, is simply the institutionalization, and projection to wider areas of function and authority, of the command-tie that in the beginning binds only the warrior-leader and his men. To be sure, states from the beginning have taken on the trappings and nomenclature of family and of religion—a tribute to the lingering loyalties of subjects to family and cult. But the trappings notwithstanding, the essential core of the state is the military bond.

"The war chief and his band," writes Jenks, "are the earliest form of the state. At first, no doubt, they are considered as temporary institutions; but successful institutions have a tendency to become permanent. . . .

"The two institutions, the Clan and the State, stand thus face to face with each other. Linked together against external attack, they are pledged to the deadliest internal warfare. . . . The leading characteristics of the Clan are a caste organization, a respect for the autonomy of its constituent groups, and exclusiveness. The principles of the State are precisely the opposite—encouragement of individual ability by the offer of splendid rewards, an insistence on absolute and direct obedience by every one of its members to its acknowledged head, and willingness to purchase ability wherever it can get it."[1]

The kind of conflict described by Jenks is a vivid aspect of the history of each of the great civilizations that appeared on the world scene about 5,000 years ago—China, India, Sumer, Egypt, and somewhat later Greece and Rome. The sagas, epics, and legends are almost entirely recordings, celebrations actually, of great deeds done by the heads of great families, by military commanders, and by individual soldier-heroes. Homer offers us the picture in his *Iliad* and *Odyssey* of a Greek society just beginning to face the pangs of conflict between

1. Edward Jenks, *Law and Politics in the Middle Ages* (New York: Henry Holt, 1898), pp. 308–9.

its age-old kinship structure and the pressing needs of war. Eventually the political state won out. In Athens this victory was dramatized by the famous Cleisthenean Reforms, which abolished the ancient kinship structure and brought in the city-state built from the start on sovereignty, individualism, and a preponderance of contractual ties. Kinship status withered.

Roman society—on which we have such an abundance of exact and careful records—is one long saga of conflict between the immemorially established *patria potestas*, the sacred and imprescriptible sovereignty of the family in its own affairs, and the *imperium militiae*, the power vested in military leaders over their troops. Under the Republic, at least down to its final couple of centuries, a strict rule, imposed by the senate, required all returning soldiers to halt outside the city's walls, disband, and change into civil dress before entering the city. There was, obviously, no disposition on the part of the senate—its true name the Conscript Fathers, each of whom was the sovereign of his own family—to allow any of the strength and aggressiveness native to the army to spill over into civil society.

But the tragedy of Rome lay precisely in this spilling over of the *imperium* onto the sacred *patria potestas* of civil, kinship society. As many historians of Roman law have pointed out, the history of that law is one of successive recoils of the *patria potestas* before the advancing might and popularity of Rome's legions, cemented together by the *imperium*. When Empire replaced Republic toward the end of the first century B.C. and when Augustus Caesar became the first emperor, the *imperium* became triumphant for good over the *patria potestas*. The next two centuries of Roman social history are dominated by the successive invasions of the state bureaucracy into traditional kinship society—specifically into the realms of social control, education, social welfare, religion, marriage, even birth and death. By the fourth century, Rome had become the first all-out totalitarian society in world history, its sole foundation the army, its sovereignty no more than the relentless expansion of the military *imperium* over all elements of Roman society, its population now a vast aggregate of legally free, socially separated individuals instead of the "little republics" and the "smaller patriotisms" that the famed Roman family system had once projected.

The eventual fall of the Roman Empire in the West was preceded, as historians beginning with Gibbon and Montesquieu have continually stressed, by several centuries of manifest decline. Rome's steady

centralization of power, collectivization of social functions, ubiquitous bureaucracy, and militarization of more and more centers of Roman life—all inevitably resulted in a population that would increasingly become a vast mass characterized, as a great deal of the literature of the time attests, by epidemic rootlessness, fragility of community, and alienation. By the fifth century, the once-proud Roman family had been ground down by the twin forces of centralization and atomization into the kind of frail, functionally depleted, and impotent group that we are coming to know only too well in widening parts of the United States today. By the time the Justinian Code was compiled in the sixth century in the West, the Roman family's once large place in law had dwindled to but a shadow of its former glory.

But history is a panorama of pendular swings and cyclical rises and falls. The disappearance in the West of nearly all the powers, authorities, functions, and trappings of the Empire did not for long leave anything like a vacuum. A totally new form of society developed, one that was formed in almost equal measure of survivals of Roman polity and of the kinship-based institutions of the Germanic peoples who so thoroughly inundated all of Western Europe. Where the Roman Empire had luxuriated in, and eventually been corrupted by, centralization of power, the European society that stretches from about the seventh century down to the fifteenth is notable—or notorious, depending on viewpoint—for its decentralization, its localism, its divisions of authority, and its profusion of groups and associations enjoying a wide measure of autonomy (at least by the standards of imperial Rome and of the later modern European states).

Family and state wax and wane inversely to each other, as I have stressed, and there is no mystery in the fact that the family—all the way from household group through the clan, the kindred, and even wider kinship groupings—prospered in terms of assertion of its natural authorities and functions, not to overlook social cohesion. The idea of the state is a weak and wavering idea throughout the Middle Ages. The so-called Holy Roman Empire was, as someone observed long ago, neither holy, Roman, nor an empire. Roman political concepts were periodically drawn from the texts to emblazon some feudal government, but the contrast between rhetoric and reality was very broad.

From the weakness of the state, and of principles of centralization in church as well as polity, it followed that group and associational life would flourish. By the twelfth century a whole profusion of novel

groups was evident: guilds, village communities, monasteries, universities, fiefs of every kind and description. The principle of representation is essentially a medieval invention; so is parliamentarism, and so also is trial by juries of peers. Inevitably the kinship tie would flourish in this general atmosphere of localism, intermediation, decentralization, and absence of a strong and bureaucratic state.

Lord Acton wrote: "Modern history tells how the last four hundred years have modified the medieval conditions of life and thought." Or, in other words, the pendulum of history swings. From approximately 1500 down to 1800 in the West, the historical record is one of a waning of medieval decentralization and pluralism and a regeneration of the Roman imperial idea of the state, adapted of course to post-medieval political and social realities. By the seventeenth century the dominant position of the state in Europe was once again assured; systems of national law, national economy, national religion, and national culture were firmly emplaced. The historic rights of village communities and towns, of monasteries and guilds, of the old aristocracy, and inevitably of the kinship sphere—given all the other curtailments—perceptibly lessened in number and power.

The history of political theory between 1500 and 1800 offers us an almost perfect mirror of what was going on institutionally in Western Europe. Jean Bodin, commonly credited with the earliest utterance of the doctrine of national political sovereignty, writing in the sixteenth century (with one foot in the medieval past, the other in the future), took care to give maximum rights to family and other surviving medieval groups. There is little trace of either Roman law or an atomistic version of natural law individualism in his *Commonwealth*. When we come to Hobbes in the next century, a major change is evident. For Hobbes there is little room left in his *Leviathan* for social groups, which he likens to "worms in the entrails of natural man." Natural law, Hobbes declares, has in it no place for groups other than the state itself and for component elements other than the natural individual. Relax the absolute power of the state and human beings are threatened instantly by return to the dread, fearsome state of nature. Even the family is given but a precarious status by Hobbes; its authority is no more than that conferred by a "tacit contract" between parents and children, one subject to the overweening power of the state. Large families are frowned on by Hobbes because of their notable proneness to subversion and civil discord. Hobbes's *Leviathan* is a masterpiece of desocialization.

It was Rousseau, however, who carried political absolutism to its greatest lengths and who also founded, willy-nilly, the totalitarian mystique of politics. Legitimacy is given the state by what Rousseau called the *General Will,* the kind of collective will that is possible once the people conceive themselves as first and foremost *citizens* and thereby freed of traditional identities, constraints, traditions, and non-political values. The General Will is, Rousseau insists, absolute, imprescriptible, and capable of penetrating the deepest recesses of each individual citizen. Around it will be formed a "civil religion." Citizens whose behavior violates the tenets of the civil religion are subject to banishment or even the death penalty. The prime objective of the General Will is that of remaking not only social organization but human nature itself; this can be done, Rousseau assures us, only by the individual's abdicating, or being forced to abdicate, all of his traditional social roles, thus leaving his inner being "free" to belong completely and irrevocably to the sacred General Will. Individuals are thus "forced to be free."

Even the family must be destroyed, for it is, of all groups lying between man and state, the most recalcitrant when the state seeks to fuse itself directly with the individual consciousness. It is, Rousseau writes, the family preeminently that instills in us love of property and possessions, and pride that becomes the window to inequality; it is the family that prevents our easy acceptance of unity and uniformity over diversity.

"Should the public authority, by taking the place of the father, and charging itself with that important function, acquire his rights by discharging his duties, he would have the less cause to complain, as he would only be changing his title, and would have in common under the name of *citizen* the same authority over his children as he was exercising separately under the name of *father.*"[2]

In that paradigm for totalitarianism, social man is subsumed forever by political man. The most ancient form of the social bond is negated in behalf of the political state, itself as we have seen the child of war and of military command. Both Leninism and Hitlerism aimed essentially at fulfillment of Rousseau's ideal of an order freed forever of all influences, beginning with the family, that would by their pres-

2. Jean-Jacques Rousseau, "Discourse on Political Economy," in *The Social Contract and Discourses,* ed. and trans. G. D. H. Cole (New York: E. P. Dutton, Everyman's Library, 1950), p. 309.

ence militate permanently against the total state. Hence the stripping of the family of as many of its natural functions and authorities as possible, in order to demean it, and the incessant movement by the state to push into every household reminders of the supreme power of the state.

We do not, fortunately, face that kind of war against the family in the United States and the West generally. The war we do face is not, however, free of a certain degree of hostility to the family, hostility that stems from the well-founded belief among certain zealous political reformers that the strong family, by its very existence, is the natural ally of the social differences and economic inequalities which the modern reformer so often abominates. Because of that hostility and because, too, of sheer ignorance among bureaucrats and other political power-holders of the functional and structural requirements of the stable family, a very considerable amount of ostensibly democratic and liberal legislation, in areas of taxation, protection of individual rights, responsibility for the child, and, not least, the administration of welfare for the indigent and socially deprived has had the effect of actually weakening the already beset and beleaguered kinship community. In short, the oldest and most universal of institutional conflicts, that between state and family, continues in even the most democratic societies on earth in this century.

I am confident that the attentive reading of this fine and salutary study of state and family will carry us, administrators, politicians, and ordinary citizens alike, a long step forward in understanding the indispensability of the family to democracy and also the complexities that attend the family's relationship to democracy.

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