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THE CONJUGAL FAMILY

By "conjugal family" I mean the family as it evolved among societies descended from Germanic society or among the most civilized peoples of modern Europe. I shall describe its most essential characteristics as they emerged from a lengthy evolution and were laid down in our system of civil law.

The conjugal family is the result of a contraction of the paternal family. The latter consists of the father, the mother, and all generations descended from them except for daughters and their descendants. The conjugal family includes only the husband, the wife, and unmarried children who are not of age. There exist among the members of the group thus constituted kinship relations which are quite characteristic, which exist only among them and only within the limits over which paternal power extends. The father is required to feed the child and see to his education until he comes of age. In return, the child is placed under the father's domination. He disposes over neither his person nor his fortune, which is the father's to enjoy. He has no civil responsibility; that reverts to the father. But when the child attains majority as far as marriage is concerned - for despite attaining the civil majority of twenty-one years, he remains his father's ward as regards marriage - or as soon as the child is legitimately married, whenever that occurs, all these relationships come to an end. The child thenceforth has his own personality, his separate interests, and is responsible for himself. He can, to be sure, continue to live under his father's roof, but his presence is only a material or purely moral fact and has none of the legal consequences

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which it had in the paternal family. Moreover, he usually ceases to live there even before he attains majority. In any case, once the child is married, the rule is that he must start a separate household. To be sure, he maintains his ties with his parents; he owes them food in case of illness and, conversely, he has a right to a certain portion of the family fortune, since he cannot (in the French legal system) be totally disinherited. These are the only legal obligations which survive (from the earlier forms of the family), and even the second seems destined to disappear. There is nothing left that recalls this state of perpetual dependence which was the basis of the paternal family and of the patriarchal family. Since its only permanent elements are the husband and the wife, since all the children sooner or later leave the paternal household, I propose to call it the *conjugal family*.'

What is new about the internal organization of this family is that the old familial communism has been shaken apart to an extent that we have never before encountered. Until this type of family developed, communism had been the basis of all domestic societies, with the possible exception of the patriarchal family. In the latter, the preponderant position of the father had compressed the communitarian character of the family association. But this character has not completely disappeared. To be precise, paternal power results from a transformation of erstwhile communism. It is communism based no longer on the family itself, living in an indivisible manner, but on the person of the father. Moreover, in it domestic society forms a whole, the parts of which no longer have any distinct individuality. This is no longer true of conjugal society. Each of the constituent members has his own individuality and sphere of action. Even the underaged child has his own, though it is subordinated to that of his father as a result of its more limited development. The child can have his own fortune. While it is true that until he is eighteen, the father disposes of it, even this right of usufruct is not without certain obligations toward the child (see article 385, *Code Civil*). The minor can even possess goods which are not subject to this control, namely, those which he has acquired through his own work and those he has received on the condition that his parents not benefit from them (article 387, *Code Civil*). Finally, in the realm of

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personal relationships, the disciplinary rights of the father over the person of the minor are narrowly limited. All that remains of the former communism is the right of the parents of a child under age sixteen to the use of his possessions and the right, limited moreover, which the descendant has over the goods of his ancestry as a result of restrictions applied to the right of testament.

But what is even newer and more distinctive about this type of family is the ever increasing intervention of the state into the internal life of the family. One can say that the state has become a factor in domestic life. It is the intermediary which exercises the right of correcting the father when he exceeds certain limits. It is the state which, in the person of the magistrate, presides over family councils, which takes the orphaned minor under its protection when no guardian is named, which adjudicates and sometimes calls for the suspension of an adult's civil rights. A recent law even authorizes the court, in certain cases, to declare the forfeiture of paternal power. But there is one fact which, better than any other, demonstrates how great a transformation the family is subjected to in these conditions. The conjugal family could have arisen neither from the patriarchal family nor from the paternal family, nor even from a combination of the two types of family, without the intervention of this new factor, the state. Up to this point, kinship relations could always be broken off, either by the relative ... who wanted to leave his family or by the father on whom he depended. The first case is that of the agnatic family, and also that of the paternal family; the second case occurs only in the patriarchal family. With the conjugal family, kinship relations became altogether indissoluble. The state, by taking them under its warranty, has withdrawn from individuals the right to break them.

This is the central zone of the modern family. But this central zone is surrounded by other secondary zones which complete it. Here as elsewhere, these secondary zones are nothing but the previous forms of the family, which go back, so to speak, one degree of consanguinity. There is first the group formed by ancestors and descendants: grandfather, father, mother, brothers, sisters, and ancestors - that is to say, the old paternal family, displaced from the first rank and relegated to the second. The group thus constituted

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has preserved a fairly distinct character in our law. When a man die, without leaving an heir, his fortune is divided among his parents and his brothers and sisters or their descendants. Finally, beyond the, paternal family, we find the cognatic family - that is, the group of all the collaterals aside from those just mentioned, but diminished and weakened still further than it was in the paternal family. In the latter, the collaterals, even to the sixth and seventh degrees and sometimes even more distantly, still had very important domestic duties and rights. We noted a few examples in the last lecture. Thenceforth, their role in the family is practically nil. Almost all that remains is a contingent right of inheritance, a right which can be reduced to nothing as a result of the freedom to leave a will should there be neither descendants nor ancestors. For the first time, no more than traces of the clan remain. (The individuality of the two secondary zones seems no longer to be as distinct as in the previous types.)

Now that we are familiar with the last type of family to be formed, we can look back over the terrain covered and make explicit the results which this long evolution reveals.

The law of contraction or progressive emergence has been thoroughly verified. We have more and more restricted groups which tend to absorb the whole of family life emerged from primitive groups in the most regular manner. Not only does the regularity of this evolution result from the preceding, but it is easy to see that it is linked to the most fundamental conditions of historical development. In effect, the study of the patriarchal family has shown us that the family must necessarily contract as the social milieu, with which every individual is in direct relationship, extends further. For the more it is restricted, the better it can prevent particular divergences from appearing; consequently, only those divergences that are common

to a sufficiently large number of individuals to have a mass effect and thus overcome the collective resistance can become manifest. In such conditions, only large domestic societies are able to disengage themselves from political society. On the contrary, to the extent that the milieu becomes more vast, it leaves more free play to private divergences and, consequently, those

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which are common to a smaller number of individuals cease to be contained, can come into being and affirm themselves. At the same time, by virtue of a general law already observed in biology, differences among individuals multiply by the simple fact that the milieu is more extensive. Now, if there is one fact which dominates history, it is the progressive extension of the social milieu into which each of us is integrated. The village organization was succeeded by that of the city; the milieu formed by the city with the surrounding villages placed in a state of dependence was succeeded by nation states, which embraced various cities; nations of limited volume, like the Germanic peoples, were succeeded by the vast societies of today. At the same time, the various parts of these societies placed themselves more and more closely in contact as a result of the proliferation and increased rapidity of communication, and so on.

At the same time that the volume contracts, the constitution of the family changes.

The great change which occurred from this point of view was the progressive disruption of familial communism. In the beginning, it extended to all kinship relations; all the relatives lived in common, possessed in common. But as soon as a first dissociation occurred in the heart of originally amorphous masses, as soon as the secondary zones appeared, communism withdrew and concentrated itself exclusively in the primary or central zone. When the agnatic family emerged from the clan, communism ceased to be the basis of the agnatic family. Finally, little by little, it was confined to the primary circle of relatedness. In the patriarchal family, the father of the family was liberated from it, since he freely and personally controlled the family property. In the paternal family, it was more marked, because the familial types belonged to a lower species. However, the members of the family could have title to personal wealth even though they could not dispose of or administer it personally. Finally, in the conjugal family, only vestiges of this right remained: this development was, therefore, linked to the same causes as the preceding one. The same causes which had the effect of progressively restricting the family circle also allowed the personalities of the family members to come forth more and more. The more the social milieu extended, the less, we are saying, the development of

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private divergences was contained. But, among these divergences there were some which were specific to the individual, to each member of the family, and these continually became more numerous and more important as the field of social relations became more vast. Therefore, wherever they encountered weak resistance, it was inevitable that they reproduce themselves outside, that they be accentuated, consolidated, and, as they were the property of the individual personality, they necessarily tended to develop. Each individual increasingly assumed his own character, his personal manner of thinking and feeling. In these circumstances, communism became more and more impossible because it, on the contrary, presupposed the identity and fusion of all consciousness within a single common consciousness which embraced them. We can be certain that this disappearance of communism which characterizes our domestic law not only is not a transient, chance event but, on the contrary, that it will become ever more pronounced - unless, by some unforeseen and nearly incomprehensible miracle, the fundamental conditions which have dominated social evolution since its beginning do not remain the same.

Does domestic solidarity emerge weakened or reinforced by these changes? It is very difficult to respond to this question. In one sense, it is stronger, since the bonds of relatedness are today indissoluble; but in another, the obligations to which it gives rise are less numerous and

less important. What is certain is that it is transformed. It depends on two factors: persons and things. We retain solidarity with our family because we feel solidarity with the persons who compose it; but we also retain solidarity with it because we cannot do without certain things and because, under a system of familial communism, it is the family which possesses them. The result of the breakdown of communism is that things cease, to an ever greater extent, to act as a cement for domestic society. Domestic solidarity becomes entirely a matter of persons. We are attached to our family only because we are attached to the person of our father, our mother, our wife, or our children. It was quite different formerly, when the links which derived from things took precedence over those which derived from persons, when the whole familial organization had as its primary object to keep the domestic

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property within the family, and when all personal considerations appeared secondary to these considerations.

That is how the family has tended to develop. But if this is an accurate description, if things possessed in common cease to be a factor in domestic life, then the right of inheritance no longer has any reason to exist. It is nothing but familial communism being continued under a system of private property. If, therefore, communism goes away, disappears from all the zones of the family, how can the right of inheritance maintain itself? In fact, it regresses in the most regular manner. At first it belongs in an imprescriptible manner to all relatives, even the most distant collaterals. But soon the right of testament appears and paralyzes it as far as the secondary zones are concerned. The right of collaterals to inherit from the deceased only comes into play if the deceased has not created any obstacle, and the power which the individual exercises in this regard becomes more extensive every day. Finally, the right to leave a will penetrates even the central zone, enters into the group formed by the parents and children. The father can disinherit his children either totally or partially. There is no doubt that this regression is destined to continue. I mean that not only will the right of testament become absolute, but that a day will come when a man will no longer be permitted, even through a will, to leave his fortune to his descendants; that, since the French Revolution, he is not permitted to leave them his offices and honors. For conveying one's estate in a will is but the final and most diminished form of hereditary transmission. As of the present, there are valuable commodities of the greatest importance which can no longer be transmitted by any hereditary means; [these are, to be precise,] offices and honors. At present, there is a whole category of workers who can no longer transmit to their children the fruits of their labor, namely, those whose work brings only honor and respect rather than wealth. It is certain that this rule will tend to be generalized more and more and that hereditary transmission will tend to become more and more distinct.

From still another point of view, the change becomes more and more necessary. As long as riches are transmitted hereditarily, there are some who are rich and some who are poor by birth. The moral

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conditions of our social life are such that societies can be maintained only if the external inequalities with which individuals are faced are leveled to an ever greater degree. This does not mean that men must become more equal among themselves - on the contrary, their internal inequality continually increases - but that there should be no social inequalities other than those which derive from the personal worth of each individual, and this inequality must not be exaggerated or reduced through some external causes. But hereditary wealth is one of these causes. It gives to some advantages which do not derive from their own merit but which confer upon them this superiority over others. This injustice, which seems more and more intolerable to us, becomes increasingly incompatible with the conditions of existence of our societies. Everything converges, therefore, in proving that the right of inheritance, even in the form of a will, is destined progressively to disappear.

But, as necessary as this transformation may be, it will hardly be easy. Without doubt, the rule of hereditary transmission of property has its cause in the ancient familial communism, and the latter is in the process of disappearing. But, in the course of this development, we have become so used to this rule and it has been so closely linked to our entire organization that, were it to be abolished without being replaced, the vital source of social life would run dry. In effect, we are so well conditioned, so accustomed to it, that the prospect of hereditarily transmitting the fruits of our labor has become the preeminent force behind our activity. If we pursued purely personal ends, we would be far less encouraged to work, for our work makes sense only because it serves something other than ourselves. The individual is not an end sufficient unto himself. When he looks for his purpose within himself, he falls into a state of moral misery which leads him to suicide. What binds us to our work is the fact that it is our means of enriching the domestic patrimony, of increasing the well-being of our children. If this prospect were withdrawn, this extremely powerful and moral stimulant would be taken away as well. The problem is not, therefore, as simple as it first appeared. If it is to be possible for the ideal which we have just outlined to be realized, this driving force, which we risk losing, must be replaced, little by little, by another. We must be stimulated to

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work by something other than personal or domestic interest. On the other hand, social interest is too distant from us, too vaguely glimpsed, too impersonal for it to serve as an effective motive force. We must, therefore, be integrated into some group outside the family, one more limited than political society and closer to us. It is to this group that the very rights which the family is no longer capable of exercising will be transferred.

What can this group be? Will matrimonial society do? We have, indeed, seen it grow in the most regular fashion; it has been consolidated and become more and more coherent. The importance it assumes in the conjugal family marks the apogee of this development. Not only has marriage become almost completely indissoluble in this type of family, not only has monogamy become just about complete, but it presents two new characteristics which demonstrate the force it has assumed with time.

In the first place, it has completely ceased to be a personal contract and become a public act. A (magistrate) presides over the contracting of the marriage. Not only does the ceremony have this public character, but if the constituent formalities are not accurately fulfilled, the marriage is not valid. And we know that no legal act assumes solemn forms unless it assumes great importance.

If, from another point of view, we pass from the external conditions of marriage to the organization of matrimonial relationships, they present us with a peculiarity without parallel in the history of the family. This is the appearance of the system of community property between spouses, whether this community is all-encompassing or limited to acquisitions. Indeed, community is the rule of matrimonial society. It can be qualified, but it exists with full legitimacy if there are no contrary conventions. Thus, while communism was retreating from domestic society, it appeared, in matrimonial society. It is not the latter destined to replace the former in the function we have been discussing, and isn't conjugal love the force capable of producing the same effects as love of the family?

Not at all. For conjugal society, taken by itself, is too ephemeral for that. It does not provide us with sufficiently vast perspectives. In order that we be bound to our work, we must feel that it will survive

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us, that some portion of it will remain after us, that even when we are no longer around, it will serve persons whom we love. We quite naturally have this feeling when we are working for our family, since it continues to exist after us. But conjugal society, on the contrary, dissolves with death in every generation. The spouses do not survive one another very long. As a result, they cannot be for one another an object sufficient to tear them from the search for fleeting

sensations. That is why marriage alone does not have an influence on suicide comparable to that of the family.

There seems to be only one group close enough to the individual for him to adhere tightly to it, yet durable enough for him to aspire to its perspective. That is the occupational group. In my view, only it can succeed the family in the economic and moral functions, which the family is becoming more and more incapable of fulfilling. To extricate ourselves from the state of crisis which we are passing through, the suppression of the rule of hereditary transmission is not enough. Men must gradually be bound to professional life and must establish strong groups of this kind. Professional duty must assume the same role in men's hearts which domestic duty has hitherto played. This is the moral level already attained by the entire elite which we have discussed, and this proves that this transformation is not impracticable. (Moreover, this change will not be accomplished in an absolute manner, and there will long remain a great many vestiges of the old laws. Parents will always be encouraged to work by the desire to feed and raise their families, but this driving force would not, by itself, be sufficient to) [disperse and eliminate the family. On the contrary, the occupational group is, in its essence, a perpetual entity.]

A few words on the secondary effect of marriage. In the paternal family, free union is maintained alongside marriage; but in the conjugal family, the former is almost wholly rejected. [It no longer gives rise to any legal regulation.] The more the family is organized, the more the marriage has tended to be the sole condition of kinship.

[The] causes [of this fact are as follows.] Marriage establishes the family [and, at the same time], derives from it. Therefore, any sexual union which is not contracted in the matrimonial form

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disturbs the familial duty and the familial bond and, from the day when the state itself has intervened in family life, disturbs the public order. From another point of view, this reaction is necessary. There is no moral society in which the members do not have obligations toward one another. When these obligations attain a certain degree of importance, they take on a legal character. Free union is a conjugal society in which these obligations do not exist. It is, therefore, an immoral society. And that is why children raised in such conditions present such great numbers of moral flaws. It is because they have not been raised in a moral environment. The child can have a moral education only if he lives in a society all the members of which have a sense of their obligations toward one another, for without this there is no morality. Also, (to the extent that the legislator and morality itself are concerned with this problem) the tendency is not to make free unions of all marriages, but to make marriages, of at least an inferior sort, of all unions, even free ones.

These are the general conclusions which can be drawn from this course. The family has developed by becoming concentrated and personalized. The family continues to contract, and, at the same time, relations continue to assume an exclusively personal character as a result of the progressive disappearance of domestic communism. While the family loses ground, marriage, on the contrary, becomes stronger.

Quelle:

Emile Durkheim (1978). *On Institutional Analysis*, Chicago and London: The University of Chicago Press, S. 229-239; originally published in *Revue philosophique* 90: 1 - 14.

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