Marriage and Family
as Christian and European Values

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Some of the most criticised parts of the provisions of the Fundamental Law of Hungary are the sentences in the National Avowal that refer to the family ('We hold that the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are loyalty, faith and love'), as well as Article L) pursuant to which 'Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children'.[1] The objections commonly focus on the link between marriage and family, the central role of such notions in social life and legal values, and the limitations imposed by them on individual self-determination.[2] It seems clear that international human rights documents use less categorical language. They tend to emphasise the voluntary nature of marriage, along with respect for established family ties. This paper seeks to provide an overview of effective international law on the matter, and argues that the Christian understanding of marriage between a man and a woman is inseparable from the European concept of society and law. In conclusion, an attempt is made to show that the wording of the Hungarian Fundamental Law reflects both the Christian and traditional European understanding of such concepts simultaneously, without violating any of Hungary's international obligations.

I Marriage and the family in international documents on fundamental rights

All the fundamental documents of international law include provisions on marriage and the family, including the protection of these institutions. The first such document

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[1]   For details on the evolution of the original wording of the Fundamental Law, see András Zs Varga, 'A házasságra és a családra vonatkozó rendelkezések változása az alkotmányozás során', *Iustum Aequum Salutare* no 2 (2012), 119–127. The provisions were amended by the fourth and seventh amendment of the Fundamental Law.

[2]   For example, András L Pap, 'Ki és mi a magyar? Az Alaptörvény preferenciái kritikai perspektívából', in Fruzsina Gárdos-Orosz and Zoltán Szente (eds), *Alkotmányozás és alkotmányjogi változások Európában és Magyarországon* (Budapest: NKE KTK, 2014), 245–264.

is the Universal Declaration of Human Right (UDHR). It is not legally binding in and of itself, but its provisions are reflected in two binding documents, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations General Assembly (XXI) on 16 December 1966. The ICCPR and the ICESCR were promulgated in Hungary by Decrees 8 and 9 of 1976, respectively. Of more contemporary relevance, the European Convention on Human Rights (ECHR), was adopted on 4 November 1950 in Rome, before the above covenants, but was only promulgated in Hungary in 1993 by Act XXXI, shortly after the change of political regime, which also includes provisions on family and marriage. The last of the fundamental documents relevant to this topic is the Charter of Fundamental Rights of the European Union (CFR), which was signed on 7 December 2000 in Nice and forms part of binding primary EU law under Article 6(1) of the Treaty on the European Union since the Treaty of Lisbon came into force on 1 December 2009. As the wording of these documents is rather similar, it seems expedient not to discuss them in chronological order (or individually), but to focus on their most important provisions.

A   The social role of marriage and family

Somewhat surprisingly, the social role and significance of the family is only mentioned in the UDHR and the two covenants, not the other documents. This suggests that the State parties, over half a century ago, proceeded with great care when they adopted these international conventions. It seems that they were not ready to adopt specific detailed rules without establishing the core meaning of these notions.

The UDHR (adopted two years after the UN Charter emphasised and made respect for human rights a binding rule of international law)[3] is a non-binding instrument. Nonetheless, it is of great significance, considering that it was adopted by all the UN Member States with only eight abstentions and without any votes against.[4] It is an instrument whose values are acceptable to all cultures and nations. Article 16 UDHR provides that men and women, without any limitation due to race, nationality or religion, have the right to marry and to found a family; they are entitled to equal rights with regard to marriage, while the family (note that it is the *family,* not its members) is the natural and fundamental group unit of society and is entitled to protection by society and the State.[5] The final part of the UDHR wording, that is, the defining provision, is repeated without any material modification in Article 23 ICCPR and, with some additional reinforcement, in Article 10 ICESCR:

[3]   Gábor Kardos, *Az emberi jogok nemzetközi védelmének általános kérdései.*
[4]   Universal Declaration of Human Rights, https://bit.ly/2P5iSky.
[5]   János Frivaldszky, *Természetjog és emberi jogok* (Budapest: PPKE JÁK, 2010), 7.

> The States Parties to the present Covenant recognize that: 1 The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.

Naturally, the UDHR and the covenants also had an impact on Hungary. They were adapted to Hungarian law by the Constitutional Court in its decision No 4/1990 (III. 4.): 'Marriage and the family is the most fundamental and natural community of citizens of society.' Their conclusions were summarised in decision No 14/1995 (III. 13.):[6]

> [T]he institution of marriage is traditionally the union of a man and a woman. This union typically is aimed at giving birth to common children and bringing them up in the family, in addition to being the framework for the mutual taking care of and assistance to the partners. The ability to procreate and give birth to children is neither the defining element, nor the condition for the notion of marriage, but the idea that marriage requires the partners to be of different sexes is a condition that derives from the original and typical designation of marriage. The institution of marriage is constitutionally protected by the State also with respect to the fact that it promotes the establishment of families with common children. This is why Art. 15 of the Constitution refers to the two subjects of protection together.

In the same decision, the Constitutional Court also clarified why defining marriage as a relationship between a man and a woman is not prohibited as unconstitutional discrimination: 'An enduring union of two persons may realise such values that it can claim legal acknowledgement on the basis of the equal personal dignity of the persons affected, irrespective of the sex of those living together. Equal treatment always has to be interpreted with respect to the social relations that are subjects of the legal regulation.' The decision also notes, possibly as the innermost core of its reasons, that '[e]quality between man and woman has a meaning if we acknowledge the natural difference between man and woman, and equality is realised with respect to this'.

This adaptation process, which aimed to afford specific protection for marriage and the marriage-based family was concluded by Article L) of the Fundamental Law of Hungary, arousing some controversy, as noted at the start of this paper. The development of the instruments concerning the detailed rules on marriage and family has been somewhat less spectacular, however.

B The right to marry and the equality of spouses

The right to marry freely and the equality of spouses, the first aspects of marriage to be regulated by the above instruments, were already commonly observed in Europe at the time, but were far from evident in other cultures. As noted, Article 16 UDHR provides that men and women of full age, without any limitation due to race, nationality or religion,

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[6]   See Balázs Schanda, 'Házasság és család az alkotmányjogban', in Lóránt Csink, Balázs Schanda and András Zs Varga, *A magyar közjog alapintézményei* (Budapest: Pázmány Press, 2020), 681–601.

have the right to marry and to found a family, while men and women are also entitled to equal rights with respect to marrying, during marriage and upon its dissolution. It is also made clear that marrying is a right, but not an obligation (in particular, not an obligation created by family pressure), by providing that marriage shall be entered into only with the free and full consent of the intending spouses. This approach is reflected and supplemented in Article 23 ICCPR and Article 10 ICESCR, which impose active regulatory obligations on States Parties. In essence, Article 12 ECHR repeats the wording of the UDHR and the covenants without any clarification. Such clarification is to be found in Article 5 of Protocol No 7, providing that '[s]pouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution'. It also adds that the above provision does not prevent States from taking such measures as are necessary in the interests of the children. The wording of the CFR is quite laconic; it merely provides that the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights. It seems reasonable to assume that this laconicism is due to the fact that, by the twenty-first century, the fundamental social role of marriage, as recognised in the UDHR, had changed or, more explicitly, become more limited throughout Europe. Nonetheless, it seems significant that the regulations of Member States concerning marriage are considered mandatory.

C The protection of family as a part of privacy

Compared to the previous considerations, even less deviation can be found regarding the prohibition of unauthorised interference with family affairs, which is covered by the above-mentioned instruments as part of the protection of privacy, integrity and reputation. According to Article 12 UDHR, no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Materially similar provisions are laid down in Article 17 ICCPR, Article 8 ECHR and Article 7 CFR. This fundamental wording is only supplemented by any substantive text in the ECHR for the purpose of determining the reasons and extent of any such restriction. 'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

D Protection of the social security of families

The protection of the social security of families is a field that is somewhat more detailed, but less relevant to the subject of this paper. The reason for this is

that first, this field is not purely a matter of public law; second, family relations have become less durable and even less significant from a national economic perspective (certainly when compared to previous eras) in Europe; and third, providing support for families is a major policy priority in only a handful of countries (Hungary is one of the hopeful exceptions regarding this trend), and it is often limited to providing protection and support for children. While this topic certainly seems worthy of more thorough investigation, such efforts should be presented in a separate paper. Nonetheless, it is worth noting that Article 23 UDHR provides that '[e]veryone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection'. Article 25 elaborates the right to adequate remuneration in more detail, by specifying that it includes the right to a standard of living adequate for the health and well-being of a person and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. It also provides that motherhood and childhood are entitled to special care and assistance (for all children, whether born in or out of wedlock). These rights are detailed further in the covenants, in particular in the ICESCR.

These rights are not mentioned in the ECHR, while the CFR reflects the changes in attitude and values that took place during the decades following the adoption of the covenants. The CFR merely provides in Article 33, as an abstract principle, that the family shall enjoy legal, economic and social protection, and it lays down two specific rules, one concerning the prohibition of dismissal for a reason connected with maternity, the other on the right to paid maternity leave and to parental leave (without specifying the minimum period of the latter). Following this short overview of international and European rules adopted after the Second World War, it seems clear that the protection of marriage and family is present (at least to a limited extent) in the major international instruments of fundamental rights. Consequently, it seems safe to conclude that marriage and the family are recognised and protected by international law even nowadays.

II The Christian concept of marriage and the family

The following part provides a broader overview of the roots and history of the concepts of marriage and the family in European culture. First, the role of the family at the birth and during the development of Christianity is presented. During the persecution of Christians in the first centuries, all those who participated in the life of the Church (and masses) were baptised, as, with a view to protecting the *arcanum* or *mysterium fidei,* the details of the Christian faith and the course of religious practices could not

be disclosed to non-Christians.[7] This consideration prevailed even over the need for families to break bread together, even if the Christian concept of the family (and, most of all, marriage) always remained of great significance (marriages between Christians and pagans, as well as sins affecting marital status, were subject to strict rules).[8] The presence of families with minor children at the celebration of Eucharist became a reality (and possibly common practice) after the era of persecution ended and, as children started to be baptised after birth, families of Christians became the standard. Over the centuries, the liturgy became increasingly solemn (and formal), but, as suggested by the lack of considerable historic evidence, the presence of families at masses did not cause any difficulty. Nonetheless, it seems clear that holy masses also provided a place of religious education. This is also confirmed by the Catechism of Saint Cyril and other subsequent sources.[9] Later, however, the period following the Second Vatican Council saw changes regarding the role of congregations in the Church (and liturgy), as well as the recognition of the significance of families (possibly triggered by the crisis of families).

A   *The significance of the family in the early period of Christianity*

Originating in a province of the Roman Empire that included Judea, Christianity favoured the family model to which the first followers of Jesus Christ, the apostles and other disciples, and other persons converting from Judaism to Christianity were accustomed from the very beginning. In particular, the concepts of the family, as understood by pagan Romans and the Old Testament Jewish tradition, were not especially different; both concepts involved a family unified through the prominent role of the head of family, and were based on marriage-based relations and a blood descendant.

(i)   Roman family law

Marriage *(matrimonium)* and descent played a fundamental role in Roman private law.[10] An *agnat* family included the head of the family *(pater familias),* his wife *(uxor),* men related to the father by blood, and male lineal descendants of the same family,[11]

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[7]   Henry Chadwick, *The Early Church* (Grand Rapids: William B Eerdmans, 1968), 32–33; Mihály Kránitz, *A keresztény hit kialakulása és védelme* (Budapest: Szent István Társulat, 2018), 22–24; Péter Erdő, *Az ókori egyházfegyelem emlékei* (Budapest: Szent István Társulat, 2018), 151.

[8]   See *Privilegium paulinum,* 1 Corinthians 7:12–15; *Traditio apostolica,* XV, 6–7; *Didascalia,* II–II; *Apostolic Canons,* XVII; *Canons of the Council of Elvira,* VIII–X, XV–XVIII, LXI–LXXII; *Canons of the Council of Elvira Arles,* X–XI.

[9]   Kránitz, *A keresztény hit,* 30–35.

[10]   Róbert Brósz and Elemér Pólay, *Római jog* (Budapest: Tankönyvkiadó, 1989), 148–155.

[11]   Domitius Ulpianus, *Omini nostri sacratissimi principis Iustiniani iuris enucleati ex omni vetere iure collecti digestorum seu pandectarum,* Dig. 11.4.

that is the children of the father and their wives, grand-children and adopted children, as well as the wives and children of such children.[12] Consequently, marriage-based blood relations were the basis of *agnatio*. Roman law also used the concept of *cognatio*, meaning blood relations based on descent only (not marriage-based relations). These were not limited to male lineal descendants (power-based descent), but included both male and female line descendants. Marriage was not taken into account in the context of *cognatio*, meaning that wives (or husbands, in the case of female line *cognatio*) were not considered *cognat* relatives as they were not related by blood (the latter relationship was known as affinity or *affinitas*.) These two groups of family relations overlapped. For example, children belonged to the family of their father both through *agnatio* and *cognatio* (while they belonged to the family of their mother through *cognatio* only).

Marriage and kinship also had an impact on personal status and assets through, for example, conjugal community *(consortium),* passing on the legal status of the father (Roman citizenship), and status as an heir when the father (head of the family) died *(heredes).* The requirements for entering into marriage included the capacity to marry *(conubium),* the absence of any blocking factor (obstacles to marriage), and a formal and mutual promise *('nuptias enim non concubitus, sed consensus facit').*[13] All these aspects had a clear impact on the marriage-related rules of the Catholic Church,[14] and they served as an institutional (formal) framework for the Christian concept of marriage and the family.

(ii)   The law of Israel on marriage and family

The Jewish concept of the family did not differ significantly (at least from a sociological perspective) from the Roman family,[15] in that family is based on a patriarchal monogamous marriage (that is one based on the power and primacy of the head of family) and blood descent. The differences were more content-related than formal. An important difference regarding the content of marriage was its sacral nature, meaning that marriage was considered a concept rooted in the will of God[16] (Genesis 1:28, 2:24). This sacral nature did not exclude the possibility of divorce (although it was considered an exception), so that, from an institutional perspective, the Roman and Jewish concept of marriage remained quite similar. However, such sanctity was not limited to marriage, as it also included extended groups of blood descendants. This was because descent was considered a key factor that linked a person to the Jewish people, as the people selected and distinguished from other

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[12]   The differences between marriages with complete patriarchal power *(manus),* more liberal forms of marriage, and marriage between persons who are not Roman citizens are not discussed here, as they are not related to the topic of this paper directly.

[13]   Ulpianus, *Principis Iustiniani,* Dig. 15.1.15.

[14]   Péter Erdő, *Egyházjog* (Budapest: Szent István Társulat, 2003), 503, 509–510.

[15]   Imre Kocsis, *Bevezetés az Újszövetség kortörténetébe és irodalmába, I* (Budapest: Szent István Társulat, 2014), 27–28.

[16]   Ibid. 27.

peoples by God (JHWH). This is confirmed by the family trees often mentioned in the Old Testament, the discussion of the descent of significant persons[17] and the way that descent determined the role a person might assume in society (for example, priesthood was connected exclusively to the Tribe of Levi).[18] Furthermore, the symbolism of marriage was also used to describe the relationship between JHWH and Israel[19] ('For your Maker is your husband – the Lord Almighty is his name', Isaiah 54:5).

This sanctity of marriage and family is also reflected in the legal texts of the Old Testament. The entire legal system is sacral in nature, regulating the relationship between JHWH and his people (see, in particular, the strictly understood law of holiness: 'Be holy because I, the Lord your God, am holy', Leviticus 19:2), which meant that legal texts regulating everyday life in detail are also considered sacred. It should be noted that the strictly understood law of holiness is closely followed by a rule on the family and Saturday, also suggesting the clearly sacred nature of the text: 'Each of you must respect your mother and father, and you must observe my Sabbaths. I am the Lord your God' (Leviticus 19:3). The importance of marriage and family is also emphasised in numerus rules of the Ten Commandments *(Decalogue)* (honour your father and your mother, you shall not commit adultery, you shall not covet your neighbour's wife; Exodus 20:12–17, Deuteronomy 5:16–21). The sacral nature of these concepts is also apparent from legal texts that were preserved in various forms and discuss marriage and the family.[20]

(iii) The Christian concept of marriage and the family

Christianity, which originated in Jerusalem and spread to all the major parts of the Roman Empire within twenty-five years, promoted respect for marriage and the family for both social and religious reasons, and it brought about significant changes regarding the religious and sacred quality of these concepts. First, descent was replaced by baptism and personal faith in the divine nature of Jesus Christ and his work as Saviour as the basis of membership in the new people of God. This change was particularly relevant for pagans converting to Christianity,[21] and it meant that membership of the Christian Church was not based on descent or birth but on a personal decision. Second, the sacred and holy nature of marriage became even more significant. According to the gospels, Jesus Christ eliminated the possibility of divorce, which was permitted under the Old Testament as an exceptional measure ('Moses permitted a man to write a certificate of

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[17]   Huba Rózsa, *Bevezetés az Ószövetség könyveibe* (Budapest: Szent István Társulat, 2016), 178, 183, 186, 241–243; Béla Szathmári, *Magyar egyházjog* (Budapest: Századvég, 2004), 383–384.

[18]   Rózsa, *Ószövetség,* 204.

[19]   More broadly, the law of holiness means chapters of Leviticus 17–26, see ibid. 6.

[20]   Ibid. 156–165; Szathmári, *Magyar egyházjog,* 394, 401, 423.

[21]   Mihály Kránitz: *Alapvető hittan* (Budapest: Szent István Társulat, 2015), 333–334; Kránitz, *A keresztény hit,* 23–24, 36–37.

divorce and send her away.' 'It was because your hearts were hard that Moses wrote you this law', Jesus replied. 'But at the beginning of creation God "made them male and female"' 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh.' 'So they are no longer two but one flesh. Therefore, what God has joined together, let no man separate.' Mark 10:4–9); furthermore, he explicitly prohibited divorce and re-marrying (Mark 10:11–12). This contrast with the former toleration of divorce is also emphasised by the two antitheses made in the Sermon on the Mount following the statements of blessedness.[22] Thus, marriage, understood as a consequence of God's will and a unity indissoluble under natural law, attained holiness.[23]

Once personal faith in Jesus Christ became the basis of membership in the Church, the nature of the internal laws of Christianity also changed. Respect for the law remained and the idea that law originates in God persisted, but law itself, as a product of human work and effort, lost its holiness.[24] Both the Roman and the Jewish people considered law to be of great importance. Respect for the law as a set of norms *per se* (that is, regardless of its specific content) is a characteristic of Roman law, which also serves as a basis for the European concept of law. For Romans, respect for the law originated in natural law, which also held, as a 'strict legal axiom', that persons are equal by nature.[25] This great respect for the law constituted the step of advancement that eventually came to define European civilisation.[26] Everyday life was regulated by law, and law, being *sacrata,* was observed with unconditional respect.[27] All these factors, as dogmas of natural law and the 'heritage of Rome', ensured that the dignity of individuals could not be subjected to state power.[28]

For reasons that are independent of Roman law, but still reflect the great respect Christians had for the law, the laws of the Old Testament were considered of great importance. This legal order included respect for human dignity (as humans were regarded as having been created in the image of God), a requirement for liberty and justice, and the concept of social responsibility (as a prototype of social rights). Similarly to their faith in and respect for a single, personal, creating and providing God (without which Christianity would be meaningless),[29] respect for laws *per se* (and not out of fear of the consequences of their enforcement) also originate in the Jewish traditions of the Old Testament.[30] These values were adopted by Christianity at first

[22] Imre Kocsis, *A hegyi beszéd* (Budapest: Jel, 2005), 84–94.

[23] Erdő, *Egyházjog,* 501–09.

[24] Géza Kuminetz, *Egy tomista jog- és állambölcselet vázlata, I* (Budapest: Szent István Társulat, 2013), 756, 759–764, 767–768.

[25] Henry Sumner Maine, *Ancient Law* (London: Joseph M Dent, 1936), 9, 11–12, 54–55.

[26] Ibid. 57.

[27] János Zlinszky, *Ius publicum* (Budapest: Osiris–Századvég, 1994), 32, 177–179.

[28] Ibid. 196–197.

[29] Mihály Kránitz, *Hidak a vallások felé* (Budapest: Szent István Társulat, 2014), 22–26; Pope Benedict XVI, *Verbum Domini,* [41].

[30] Szathmári, *Magyar egyházjog,* 392–393; Rózsa, *Ószövetség,* 156–168.

in a moral and theological sense, and later also in a legal sense.[31] When Christianity became the state religion, the concept of law as a means of limiting or defining state action became common.[32] Consequently, it seems that respect for the two legal layers of values (historic and universal), as well as law *per se,* constitutes an integral and inseparable part of the Christian tradition (and, in a broader sense, the European legal tradition).[33] Respect for laws formed part of both of its roots (that is, Roman law and the laws of the Old Testament), was as well as later being adopted into the concept of natural law[34] (and later still into the paradigm of the rule of law) without difficulty.

In conclusion, it seems that canon law, the law of the Christian Church, can be considered one of the sacred studies (theology),[35] even though it is no longer considered a direct source of salvation (only as a possible means of ensuring the rightful behaviour that leads to salvation). This is emphasised by canon 1752 of the effective Code of Canon Law, pursuant to which 'the salvation of souls, which must always be the supreme law in the Church, is to be kept before one's eyes'.[36] Supported by its divine origin and the existing social background, this law provides the concepts of marriage and family with considerable and ever-increasing support and protection. This is reflected by the disciplinary rules of the Church,[37] as well as the secular rules (of the Roman emperor) adopted after Christianity was permitted and eventually became the state religion. The new rules that protected marriage, the family, spouses and other family members sought to preserve families (granting recognition of communities of slaves as families), to restrict the possibility of divorce, prohibit adultery and re-marrying, limit paternal power over family members and slaves, and, as a specifically Christian measure, restrict mixed marriages.[38] Consequently, the Christian concepts of marriage and family, founded on and protected by a threefold basis (social, legal and holy), were reinforced and remained essentially unchanged for the subsequent period of about two millennia.[39]

B   Catholic teaching on marriage and family

The Catholic concept of marriage and family faced a considerable challenge as a result of the Enlightenment. In particular, since the second half of the nineteenth

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[31]   Ferenc Beran and Vilmos Lenhardt, *Az ember útja* (Budapest: Szent István Társulat, 2012), 29–42.

[32]   Ibid. 44–46.

[33]   János Frivaldszky, *Természetjog – eszmetörténet* (Budapest: Szent István Társulat, 2001), 50–60.

[34]   Pál Kecskés, *A keresztény társadalomelmélet alapjai* (Budapest: Szent István Társulat, 1938), 110–121.

[35]   Erdő, *Egyházjog*, 53.

[36]   Ibid. 809; for a detailed analysis, see Péter Erdő, *Az élő Egyház joga* (Budapest: Szent István Társulat, 2006), 73–75.

[37]   See the works mentioned in note 8.

[38]   Pál Sáry, *Pogány birodalomból keresztény birodalom* (Budapest: Szent István Társulat, 2009), 30–49, 49–50.

[39]   Arno Anzenbacher, *Keresztény társadalometika* (Budapest: Szent István Társulat, 2001), 81–86.

century, the impact of the emergence of civil matrimonial law and the dissolvability of marriage has become critical (especially in the last decades),[40] as durable and monogamous marriage became only one of the possible forms of cohabitation. The idea of undissolvability proved unable to preserve even Catholic marriages, and the definition of marriage as the community of a man and a woman has also recently lost its exclusivity.[41] In regard to such persistent and increasing challenges, the Catholic Church was compelled to emphasise the importance of family time and time again, even though its concepts and teachings remained unchanged from the perspectives of both holiness[42] and society.[43]

(i)   The Second Vatican Council on marriage and family

The pastoral constitution *Gaudium et spes* was finally adopted by the Second Vatican Council in 1965 after a long debate on the last day before the last period of the Council was closed.[44] An entire chapter in Part II of the constitution was dedicated to emphasising the dignity of and respect for marriage and the family.[45] This chapter begins by presenting the contemporary situation, role and purpose of marriage and the family. It takes account of some of the main challenges then facing marriage and the family, such as the plague of divorce, the trend toward short periods of cohabitation without marrying and various misunderstandings concerning population growth.[46] It then reaffirms the convictions of the Church regarding the holiness (ordained by God) and sanctity (founded by Jesus Christ as a sign toward salvation) of marriage. It is of great importance that it connects marriage to family. Education and example, originating from the dignity of fathers and mothers, are also presented as means of providing general and religious education for children.[47] Next, it discusses the significance of conjugal love in

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[40]   Károly Szladits, *A magyar magánjog vázlata II* (Pécs: Ponte 1999), 310–314; Gyula Eörsi, *Összehasonlító polgári jog* (Budapest: Akadémiai Kiadó, 1975), 345; Tamás Lábady, *A magánjog általános tana* (Budapest: Szent István Társulat, 2013), 30–32; Gábor Jobbágyi, *Magyar polgári jog I* (Budapest: Szent István Társulat, 2013), 153–155, 161–164.

[41]   Jobbágyi, *Magyar polgári jog I,* 161.

[42]   Catechism of the Catholic Church, 1601–1666. The sanctity of marriage is not discussed in this paper, meaning that the following topics are not covered here: matrimonial annulment suits in general and recent changes (see Katalin Hársfai, *A házassági semmisségi perek a DC után* (Budapest: Szent István Társulat, 2013); Pope Francis, *Mitis Iudex Dominus Iesus;* Pope Francis, *Amoris laetitia.*

[43]   Cf. Kecskés, *A keresztény társadalomelmélet alapjai,* 188–201; Compendium of the Social Doctrine of the Church, 123–143; Catechism of the Catholic Church, 2196–2233, 2357–2400, 2514–2533.

[44]   John W O'Malley, *Mi történt a II. Vatikáni Zsinaton?* (Budapest: Jezsuita, 2015), 353–359, 362–367, 382, 387–392; János Goják, 'Bevezetés' in *A II. Vatikáni Zsinat dokumentumai* (Budapest: Szent István Társulat, 2007), 607–648.

[45]   Second Vatican Council, *Gaudium et spes,* 1965, 47–52.

[46]   Ibid. 47.

[47]   Ibid. 48.

detail, including the fruitfulness of marriage, the relationship between conjugal love and respect for human life.[48] Finally, the text returns to the need (and reasons) for caring for marriages and families, including the tasks of pastors in this field.[49]

It seems clear from this constitution that marriage and the family are considered by the Council to be of great importance due to both biological necessity (ordained for the procreation and education of children) and its holy nature (ordained and, in individual cases, arranged by God): 'By their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children, and find in them their ultimate crown.' The text of the constitution expands on this:

> [N]ow the Saviour of men and the Spouse of the Church comes into the lives of married Christians through the sacrament of matrimony. He abides with them thereafter so that, just as He loved the Church and handed Himself over on her behalf, spouses may love each other with perpetual fidelity through mutual self-bestowal. Authentic married love is caught up into divine love and is governed and enriched by Christ's redeeming power and the saving activity of the Church.[50]

Furthermore, the last part of this Chapter imposes various tasks on all persons concerned with marriages and children, such as parents, civil authorities, other Christians, pastors, priests, religious scholars, scientists and other organisations, related to support for and education of marriages and children. In conclusion, it seems quite clear that the Church pays great attention to the loving community of fathers, mothers and children living in marriages and families. The family and marriage are thus not merely natural phenomena or a form of cohabitation approved and expected by society and the Church; it is a loving community entrusted with a mission:

> Finally, let the spouses themselves, made in the image of the living God and enjoying the authentic dignity of persons, be joined to one another in equal affection, harmony of mind and the work of mutual sanctification. Thus, following Christ who is the principle of life, by the sacrifices and joys of their vocation and through their faithful love, married people can become witnesses of the mystery of love which the Lord revealed to the world by His dying and His resurrection.[51]

(ii) The impact of *Gaudium et spes*

The teachings of the Council turned out to be fruitful. While in *Humanae vitae*, an encyclical letter of 1968, Pope Paul VI primarily assessed issues related to procreation, sexuality outside of marriage and contraception, his assessment was based, among other considerations, on the relationship between marriage and parental

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[48] Ibid. 49–51. The considerable debates sparked by this issue at the Council were eventually concluded by Saint Paul VI in his Encyclical Letter *Humanae vitae* issued four years after the Council, see O'Malley, *Mi történt?*, 389–390.

[49] *Gaudium et spes*, 52.

[50] Ibid. 48.

[51] Ibid. 52.

responsibility.[52] In order to approach man in a holistic manner, Pope Paul VI relied on the constitution of *Gaudium et spes*[53] when he reiterated and elaborated the essential features of marriage, such as procreation and parental responsibility, which must be consistent with God's plans.[54]

In 1981, thirteen months after the Sixth Synod of Bishops on the Christian family, Pope Saint John Paul II issued *Familiaris consortio*, an apostolic exhortation providing a summary of the results of the synod and various related matters.[55] Pope Saint John Paul II clearly understood that the traditional role of the family was being suppressed: 'The historical situation in which the family lives therefore appears as an interplay of light and darkness'; the Synod identified:

> [T]he spread of divorce and of recourse to a new union, even on the part of the faithful; the acceptance of purely civil marriage in contradiction to the vocation of the baptized to 'be married in the Lord', the celebration of the marriage sacrament without living faith but for other motives; the rejection of the moral norms that guide and promote the human and Christian exercise of sexuality in marriage.[56]

The exhortation describes the theological significance of marriage and family with a level of clarity and detail that exceeds that of the synod's constitution ('The Plan of God for Marriage and the Family'; 'Marriage and Communion Between God and People'; 'Jesus Christ, Bridegroom of the Church and the Sacrament of Matrimony; 'Children, the Precious Gift of Marriage'),[57] concluding that '[t]he Church thus finds in the family, born from the sacrament, the cradle and the setting in which she can enter the human generations, and where these in their turn can enter the Church'.[58] Thus, the mission of marriage is clear: It must remain close and lead future generations to God. After discussing in detail the various tasks to be performed by fathers, mothers, married couples and children to carry out this mission, it provides a lengthy assessment of the educational role of the family:

> For Christian parents, the mission to educate, a mission rooted, as we have said, in their participation in God's creating activity, has a new specific source in the sacrament of marriage, which consecrates them for the strictly Christian education of their children: that is to say, it calls upon them to share in the very authority and love of God the Father and Christ the Shepherd, and in the motherly love of the Church, and it enriches them with wisdom, counsel, fortitude and all the other gifts of the Holy Spirit in order to help the children in their growth as human beings and as Christians.[59]

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52 Pope Paul VI, *Humanae vitae*, 1968, 1–2.
53 Ibid. 7.
54 Ibid. 9–10.
55 Pope Saint John Paul II, *Familiaris consortio*, 1981, 1–3.
56 Ibid. 6–7.
57 Ibid. Title of Part Two and 11–13.
58 Ibid. 15.
59 Ibid. 38.

The wording is clearly new. In previous centuries, the family was the natural social reality of society and the Church, and it carried out, almost independently, its tasks related to the procreation of life and education. However, such tasks had become somewhat less self-evident by the end of the twentieth century. By that time, marriage and the family had become an obligation undertaken voluntarily and against the spirit of the age, and it included the (voluntarily undertaken) mission of education and Christian education as a 'Specific and Original Ecclesial Role'[60] and a ministry of evangelisation.[61]

The rather specific analysis and practical guidance of *Familiaris consortio* is reflected in the 1983 Code of Canon Law[62] and in the 1997 Catechism.[63] About twenty-five years after the Code, the 'Compendium of the Social Doctrine of the Church', an even more detailed and general document commissioned by Pope Saint John Paul II, was produced in 2004. It discusses the social and religious role of the family in a separate chapter.[64] The document is of a more general nature, as it is not limited to the matter of family, and it is not intended for Catholics only.[65] However, it is also quite specific, as it discusses practical considerations (for example, in terms of education and cooperation between family and society). About a decade later, its impact is also quite clear: The Church must emphasise family values, and it must support families in the light of such values.[66] The latter effort has not subsequently proved easy to maintain. The existence of such difficulties is confirmed by the fact that the calling and mission of the family was discussed at two synods in the following years. 'The Pastoral Challenges of the Family in the Context of Evangelisation', an *instrumentum laboris* issued in 2014 by the Third Extraordinary General Assembly of the Synod of Bishops, was tasked with analysing a clearly confrontational situation between the Catholic concept of family and the reality of society. Thus, it is not by accident that, according to one of the final conclusions of this document, the family is threatened by fundamental challenges that are hard to resist, even though the task of evangelisation is also entrusted to families, and the Church must support families in that regard.[67]

The same issues were considered one year later in 'The Vocation and Mission of the Family in the Church and in the Contemporary World', the final report of the Fourteenth Ordinary General Assembly of the Synod of Bishops.[68] After describing

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[60] Ibid. 50.
[61] Ibid. 52–53.
[62] Cf. *Codex iuris canonici,* Canons 1055–1065.
[63] Catechism of the Catholic Church, 2196–2233, 2357–2400 and 2514–2533.
[64] Compendium of the Social Doctrine of the Church, 123–143.
[65] Ibid. 17–19; Letter of Cardinal Secretary of State Angelo Sodano.
[66] Péter Várnai, 'Jegyeseknek a családról a zsinat után', in István Pákozdi (ed.), *Öt évvel a lelkipásztori zsinat után* (Budapest: Vigília, 2013), 130–143.
[67] III Extraordinary General Assembly of the Synod of Bishops, *The pastoral challanges of the family in the context of evangelization* (Vatican City: Vatican, 2014), 60–61.
[68] XIV Ordinary General Assembly, *The Vocation and Mission of the Family in the Church and in the Contemporary World,* 2015.

socio-cultural and anthropological challenges and tensions to which families are exposed and which weaken and endanger families in the twenty-first century, the document provides a short overview of the Church's teaching, with particular regard to the period following the Second Vatican Council and the role of individual popes. Finally, it seeks to offer guidance for pastors and families in performing their common mission of evangelisation by pointing out practical considerations and discussing various general and Christian aspects of education. The final part of the document describes this role with utmost clarity: 'Through Baptism, the Family of the Church is missionary by nature and increases her faith in the act of sharing that faith with others, above all, with her children. . . . The family is thus an agent of pastoral activity.'[69] Pope Francis issued *Amoris laetitia,* his apostolic exhortation, in light of the above instrument.[70] The *exhortation* emphasises the divine origin, beauty and mission of marriage and the family, without ignoring the challenges faced by families. In Chapter 6, it reaffirms the conclusions of the last two synods, that is, the family is an actor in evangelisation and is the primary place of education. The family is an indispensable means of and actor in catechesis and religious education.[71]

C   The Hungarian Catholic Church on marriage and family

The challenges to marriage and the family and the need to support these institutions were also noted by the Hungarian Catholic Church, and it sought to provide support and answers to such questions. The first circular letters of the Hungarian Catholic Bishops' Conference on social matters were published in the light of the results of the Second Vatican Council and the instruments of Pope Saint John Paul II shortly after open speech became possible following the change of political regime.[72] These include the Circular letter on opening the International Year of the Family of 1993, the Circular letter on closing the International Year of the Family of 1994, and the Circular letter for happier families of 1999.[73] The former circular letter took an expressly pastoral approach. It states that '[t]he Christian family is an attestation of God, who is love. It is an attestation that God is the archetype of the human family as the unity of the Holy Trinity, . . . an attestation of God, who is love and who gave His Son for the world so that we receive His gift in the Holy Spirit and a new life is planted in our hearts', and that the Christian family is the subject of and an actor in

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[69]   Ibid. 92–93.
[70]   Pope Francis, *Amoris laetitia*.
[71]   Ibid. 199–258.
[72]   Magyar Püspöki Konferencia, *Pásztorlevél a magzati élet védelméről*, 1992; Magyar Püspöki Konferencia, *Igazságosabb és testvériesebb világot!*, 1996.
[73]   Magyar Püspöki Konferencia, *Körlevél a Család Nemzetközi Éve megnyitására*, 1993; Magyar Püspöki Konferencia, *Körlevél a Család Nemzetközi Éve befejezése alkalmából*, 1994; Magyar Püspöki Konferencia, *A boldogabb családokért*, 1999.

evangelisation, as a profession and attestation of faith. The Encyclical letter of 1994 follows a similar approach. However, it also emphasises that 'the fundamental task of the family is to serve life, and that task is closely linked to the task of education', and it also notes the crisis the concept of the family is facing as a result of social changes (as well as mentioning the term 'civilisation of death' used by Pope Saint John Paul II).

However, the long circular letter of 1999 (consisting of 153 sections and drawing on all the documents mentioned above, as well as some other synodic and apostolic documents)[74] takes quite a different tone. It was not addressed to Christians only, but to 'all benevolent men'. In its first part (Sections 1 to 50), it provides, instead of an analysis of the Christian concept of marriage and the family, a detailed assessment of the social reality of Europe and Hungary. Its conclusion is quite unsettling: Both concepts show signs of crisis as a result of challenges to marriage and the family.[75] For this reason, the second part (Sections 51 to 87) describes the distinctive social values of marriage and the family, which are not present in any other forms of cohabitation. The last part (Sections 88 to 153) focuses on the teachings of the Catholic Church. In line with its fundamental approach, it states that 'the Church also reflects on marriage and family from the perspective of God's plan of creation and salvation'. It reiterates the teachings of the two previous circular letters and other documents of the Church (marriage is a sacrament and is undissolvable; the family is a depiction of the Holy Trinity), emphasising that the family itself constitutes a household Church *(Ecclesia domestica)*[76] and the first school of Christian life, which is the fundamental cell of the Church[77] and which is responsible for passing on the Gospel. Various sections (119 to 133) discuss the pastoral care of families, noting that providing such care is not entrusted to the clergy exclusively but that families themselves should participate in such care (the word education is used in the text 23 times). The introductory part of the circular letter reiterates that, according to Pope Saint John Paul II, the family is the 'primary and fundamental way for the Church' and the basis of social courtesy.[78]

Naturally, the Circular letter of 1999 was not the last document of the Hungarian Catholic Bishops' Conference on this matter, and it was followed by other significant instruments.[79] As a result of the circular letter, an international

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[74]   Charter of the Rights of the Family, 1983; Congregation for the Doctrine of the Faith, *Donum vitae,* 1987; Pope Saint John Paul II, *Evangelium vitae,* 1995.

[75]   It should be noted that the letter also criticises state action (legislation in particular); the Fundamental Law (effective as of 2012 as a new written constitution) gains a particular significance in this light.

[76]   Magyar Püspöki Konferencia, *A boldogabb családokért,* 99; cf. Catechism of the Catholic Church, 1657.

[77]   Magyar Püspöki Konferencia, *A boldogabb családokért,* 99; cf. *Gaudium et spes,* 52.

[78]   Magyar Püspöki Konferencia, *A boldogabb családokért,* 153.

[79]   Magyar Püspöki Konferencia, *Az élet kultúrájáért,* 2003; Magyar Püspöki Konferencia, *Nyilatkozat a bevezetés előtt álló abortusztablettáról,* 2005; Magyar Püspöki Konferencia, *Nyilatkozat a művi meddővé tételről,* 2006; Magyar Püspöki Konferencia, *Állásfoglalás a bejegyzett élettársi kapcsolatról,* 2007; Magyar Püspöki Konferencia, *Közlemény a bejegyzett élettársi kapcsolatról szóló törvényről,* 2009.

conference was organised in 2001 (on education for happier families).[80] Similarly to the circular letter, the conference was not addressed to Catholics exclusively but sought to engage in a dialogue with society (the State and government authorities). Its closing document confirms that 'the primary place of education for family life is the family itself, and this role could not be replaced by any other actor without shortfall. . . . Families themselves must take a role in shaping the family-friendly attitudes of society. . . . Direct life experience is the most effective means of shaping the personality of a person'.[81]

III Conclusions

As a brief summary of the historic, social, religious and legal considerations presented above, it seems that the social structure and setting of European culture has always been based on the durable (even though not always undissolvable) cohabitation of a man and a woman since its very beginnings. Of course, this does not exclude the existence or even acknowledgment of other relationships (possibly between persons of the same sex), and it certainly does not mean that marriage, as the basis of family relations, is always free of troubles. However, it certainly means that all other rules, social norms of behaviour and traditions are explicitly or implicitly based on this fact.[82] It seems clear that, for one and a half millennia, Christianity was a factor that determined the concept of society. This influence was presented in this paper (even if the sacral fundaments that constitute fundamental components of this matter were omitted on purpose). In conclusion, it seems clear that Christian thought on marriage and the family, itself based on the Roman concept of society and law that adopted and followed the intertwined (and inseparable) Jewish concepts of religion and society as described in the Old Testament, fundamentally determined what is known as European culture today. This close relationship is also reflected in the approach taken by international law over the last roughly five decades, ever since the UDHR, even though it has attempted to deviate from its roots in the last few decades;[83] it remains to be seen if such attempts will remain unsuccessful (as these material cultural components eventually prevail)[84] or whether it will give rise to a different culture in the long run.

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[80]   József Radnai (ed.), *Neveléssel a boldogabb családokért* (Budapest: Országos Lelkipásztori Intézet – Corvinus, 2001).

[81]   Ibid. 12–13.

[82]   János Frivaldszky, 'Család (katolikus, természetjogi szemmel)', in *Magyar politikai enciklopédia* (Budapest: Mathias Corvinus Collegium – Tihanyi Alapítvány, 2019), 98–100.

[83]   Sarolta J Molnár, *A házasság intézményének perspektívái* [PhD dissertation] (Budapest: PPKE JÁK, 2018).

[84]   János Frivaldszky, 'A házasság és a család jogfilozófiai szempontból', in Imre Balásházy, Gyöngyi Major and Péter Farkas (eds), *Boldogabb családokért és ifjúságért* (Budapest: L'Harmattan, 2018), 165–216.

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