

# THE BIOLOGICAL BASIS FOR THE RECOGNITION OF THE FAMILY

*by Scott FitzGibbon<sup>1</sup>*

## **Abstract**

The family is matter of heart and blood. It is created, in part, by physical and emotional intimacy. It projects itself through history through its biological dimension. Any reasonable definition of the family must recognize this fundamental characteristic.

“Biological dimension” here refers not only to genetic affinities, important as those may be, but to all physical connections and to all matters closely related to the physical. Thus, it includes all the activities and dispositions that, generation after generation, bring a family together in the great procreative project: the begetting and rearing of children. The biological dimension includes making love and the disposition to do so. It includes childbearing and childbirth, breastfeeding, and the maternal and paternal instincts and dispositions. It forms the center and core of what Erik Erikson and other social scientists have referred to as “generativity.”

The natural aspect of the family has long been prominently mentioned in domestic law and in international instruments. It has shaped many family law doctrines: for example, doctrines recognizing parental authority, mandating parental support, awarding custody, requiring the consent of parents to adoption, and establishing inheritance rights. The natural dimension has, however, been neglected in some modern legal authorities. Some ignore it; others deconstruct it. Academic discourse is often dismissive of the concept of nature, suspicious of appeal to nature in moral argument, and hostile to the promotion of the natural as a basis for law. Nature, according to postmodernists, has been “deconstructed,” and attributes and conditions—gender and sexuality, for example—which have been thought to be natural have been shown, to the satisfaction of such critics, to be merely “social constructs.”

This article aims to maintain the importance of the biological aspects of the family.

Many writers who eschew appeal to the natural instead emphasize choice, agreement, and contract, making those elements definitive of basic familial connections such as husband and wife and parent and child. Other authorities construct accounts of family using the elements of sentiment and emotion. Still others emphasize a functional aspect, proposing that central familial relationships are to be defined based on caregiving. A parent, it has been proposed, is someone who has contributed substantially to taking care of the child, whether or not she has begotten the child or given it birth.

This Article maintains that these projects present impoverished accounts of the family. It proposes some basic goods that the family comprises. It maintains that these goods can be well sustained only when the family is recognized, in substantial part, by reference to its biological dimension.

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