

Panel II

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PANEL II FAMILY LAW AND INDIVIDUAL RESPONSIBILITY

William Kristol †

INTRODUCTION

Welcome to the second panel of The Federalist Society Conference on Individual Responsibility and the Law. I am Bill Kristol, and I will be moderating this panel of four excellent panelists who will make brief presentations and a quick round of comments. Then we will open the floor for questions.

The general topic of this conference, as you all know, is individual responsibility and the law. It seems to me that virtually all previous Federalist Society conferences have focused on rights or some particular right, such as the right to free speech, or the right to freedom of religion. The organizers of this conference, on the other hand, want to remind us that with rights come responsibilities—a useful reminder. And I think it is particularly appropriate in this context to have a panel on family law and individual responsibility. For in a nation based on individualism or individual rights, the family seems to have a tenuous or difficult position. Somehow we all know that the family is more than merely a contractual arrangement or the sum of the individual parts. That is why we talk about something like “family values.” But then we run up against the fact that we are committed to individual rights first. So the tension, in a sense, between the family and the individual mirrors the tension between rights and responsibilities. And the intersection of family law and individual responsibility is, I think, an interesting place to begin examining some of the difficulties, paradoxes, and questions of living in a nation like ours that is dedicated to and based on individual rights.

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THE LEGAL STATUS OF FAMILIES AS INSTITUTIONS

Elizabeth Fox-Genovese †

Historically, our legal tradition has seen a fundamental contradiction between the family and the individual, or, to put it differently, has preferred to treat the family as a corporate unit rather than as a collection of isolated individuals. This preference accounted for Blackstone's assertion,

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and *cover*, she performs every thing. . . . Upon this principle, of an union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire by the marriage.¹

By the same token, the children born into a family were expected to fall under the authority of its head. The family, in other words, was taken to constitute a unit with a legal personality that transcended and subsumed the individual rights of its constituent members.

The subordination of individual rights within the family was never complete. Husbands were not legally represented as owning their wives or their children—although they were known to sell one or the other. In principle, our tradition insisted upon a difference between family members and slaves, although early advocates of women's rights were wont to emphasize the similarity, arguing that married women, effectively, should be viewed as slaves.² Instructively, southern slaveholders also evoked the similarities between

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¹ 1 WILLIAM BLACKSTONE, *Of the Rights of Persons, in* 1 COMMENTARIES OF THE LAWS OF ENGLAND 430 (Univ. of Chicago Press ed., 1979) (1765) (citations omitted).

² *E.g.*, ANGELINA GRIMKÉ, *Letters to Catherine Beecher, Letter XII, in* THE FEMINIST PAPERS: FROM ADAM TO DE BEAUVOIR 320-22 (Alice S. Rossi ed., 1973). For the general use of the metaphor, see BLANCHE GLASSMAN HERSH, *THE SLAVERY OF SEX: FEMINIST-ABOLITIONISTS IN AMERICA passim* (1978).

family members and slaves, not to protest the subordination of married women, but to emphasize the humanity of slavery as a social relation.³

The conjugal, or nuclear, family of our tradition has always co-existed uneasily with notions of individual rights and responsibilities, but until recently the heavy hand of what Locke called "the Customs or Laws of the Countrey"⁴ obscured the full measure of the conflict. The issue surfaced during the discussion of married women's property rights in New York state during the mid-nineteenth century. Traditionalists opposed such rights on the ground that they would inevitably disrupt Blackstone's vision of the partners to a marriage as embodied in one person—the husband. Advocates of women's rights supported these rights on the ground that married women should indeed be recognized as separate persons—and be properly equipped to protect themselves against their husbands' possible abuse or malfeasance. In the event, reform of married women's property rights primarily resulted from the efforts of a third group, which sought not to further the independence of women, but rather to bring greater consistency to the law of property and to conform that law to the social and economic realities of the developing capitalist economy.⁵

The debates over the property rights of married women foreshadowed a continuing debate over the rights of women as individuals—that is, women's natural rights. Many of those who favored the persisting subordination of women within families did so because they favored a view of the family as an island of traditional hierarchy within a swirling sea of capitalism and individualism. It is, nonetheless, instructive to note that many of those who most staunchly supported the traditional concept of the family came to oppose the persistence of slavery, which many of them perceived as both a moral outrage and a fetter on economic development.

The issue might be seen as a difference over the appropriate composition of families. The emancipation of the slaves effectively ensured the triumph of a very narrow conception of family and, however unintentionally, paved the way for the recognition of the family as little more than a contractual union of free individuals. Intuitively, many of us would insist upon the distinction between wives and children since the former first enter into the union voluntarily

³ For the general use of the metaphor, see ELIZABETH FOX-GENOVESE, *WITHIN THE PLANTATION HOUSEHOLD: BLACK AND WHITE WOMEN OF THE OLD SOUTH* 101 (1988).

⁴ JOHN LOCKE, *The Second Treatise of Government*, in *TWO TREATISES OF GOVERNMENT* § 82 (Cambridge University Press 1960).

⁵ NORMA BASCH, *IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN NINETEENTH-CENTURY NEW YORK* (1982).

whereas the latter are born into it and spend many years in a state of physical as well as economic dependence.⁶ But our own times sadly reveal that the tensions between the freedom of individuals fundamental to the market and the family as a corporate unit also affect the status of children.

But questions remain. How should we think about the individual rights and responsibilities of family members? Does the family legally constitute something more than the sum of its constituent parts? To insist upon the family as a moral or social unit will not suffice without a clear—and implicitly corporate—legal status. The arguments against untoward (however untoward is defined) state interference in family affairs normally assume the existence of an intact family. I do not wish to engage such questions as whether parents who are Christian Scientists have the right to deny medical care to a child with leukemia or meningitis. Rather, I wish to raise the question of whether the arguments apply with equal force in cases of divorce or other forms of family disintegration. Are there legal grounds for denying an abused spouse or child recourse against the abuser? Do we not assume that family members have rights as individuals? And, if we do, what legal constraints do we place upon their independent relation to the polity and the market?

The point at issue is whether family members are held accountable for behaving towards other family members as they would be obligated to behave toward any other individual or whether they are held accountable for behaving in certain ways toward other family members because of their special status as family members. Generally, this question has been framed as an inquiry into the power of fathers over other family members. Since the nineteenth century, and at an accelerating rate during the twentieth, the extreme forms of paternal power have come under increasing criticism and legal restriction. But the dismantling of that power has not led to new conceptions of the family as a corporate unit. Thus, the conception of the family as a group of individuals has followed naturally from the rejection of the view that the family's corporate identity was invested in the powers of its head. Tellingly, this rejection has also led to arguments that the concept and legal prerogatives of family relations should be extended to different groupings of individuals.

Until very recently, most people would have considered marital rape a contradiction in terms. If there is marriage, then there cannot be rape—although there may be an unacceptably violent exercise of marital rights. Today, many people assume that individual rights override marital rights—that behavior that is unacceptable if

⁶ For an insightful discussion positing that individual rights for children are "wrong rights," see ELIZABETH WOLGAST, *THE GRAMMAR OF JUSTICE* 28-38 (1987).

two people are not married is also unacceptable if they are married. The same could be said of child abuse. American society has always attributed some rights to members of families. Unlike early Roman society, we have never given fathers the right to kill their offspring with impunity. Even slaveholders were not legally allowed to kill their slaves on a whim.⁷ But we have, at law, and especially in sentiment, granted special rights to the heads of households or families on the premise that their responsibility for family well-being entitled them to broad discretion in the exercise of their authority.

It is difficult, if not impossible, to separate the discussion of the family from the discussion of marriage. The movement for women's political and economic equality with men has primarily targeted women's traditional subordination within the family. In attempting to free women from that subordination, supporters of women's rights, have, however inadvertently, contributed the destruction of the last vestiges of the family's corporate status. But opponents of women's rights and defenders of the family have failed no less woefully by not providing a new conception of the family as a corporate unit. Thus, discussions of women's and children's rights as members of family units invariably focus on what Elizabeth Wolgast has called "wrong rights"—their rights as autonomous individuals.⁸ I would argue that a revitalized view of the family requires a new conception of its corporate identity. Such a conception must simultaneously allow for women's full participation as parents and for both parents' binding economic responsibility to their children.

If we are to defend the rights of families as units, then perhaps we should begin by endowing them with some greater measure of permanence and a more binding mutual responsibility than that granted by a normal contract. Perhaps parents should be denied the right to divorce until their children have attained their majority or are economically self-sufficient. In the case of intolerable unhappiness, a husband and wife could separate but would not be allowed to remarry or to assume economic responsibility for another family. In pre-Revolutionary France such a separation was known as the separation of bed and board.

To be sure the enforcement of a married couple's binding economic responsibilities to each other and their children would require the cooperation of the federal government, but that is another debate. For the moment, permit me to conclude by reasserting that any serious discussion of families and individual responsibilities

⁷ On the law of slavery, see MARK V. TUSHNET, *THE AMERICAN LAW OF SLAVERY: CONSIDERATIONS OF HUMANITY AND INTEREST* (1981) and EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* (1974).

⁸ See *supra* note 6, at 28-38.

must begin with attention to the legal status of the family as an institution. A simple return to fathers of their historical power as heads of families will not suffice.

THE SEXUAL INJUSTICE OF THE TRADITIONAL FAMILY

Jane E. Larson†

As our moderator and first speaker pointed out, the premise of the title of this panel—"individual rights and family responsibility"—posits that increased individual rights for family members leads to a decline in family responsibility. We should start by defining the terms "individual rights" and "family responsibility" so that we know what we are talking about when we make that presumption. As Professor Fox-Genovese pointed out, over the last generation, it is largely women who have demanded legal and social recognition as individuals within the family (and not just as mothers and wives), and it is increasingly men who have financially and emotionally abandoned their families. It is these linked developments, largely gender-specific in character, that lead to the modern perception that families are in crisis. In my remarks today, I want to approach the question posed for this panel in a slightly reframed form. My query is, "How is men's irresponsibility to family causally related to women's assertion of individual rights?"

My contention is that the traditional family model was built on the presumption that men could be "roped" into taking emotional and financial responsibility for mothers and children only if fathers were granted virtual dominion as family head. By law and custom, fathers were made small kings in their family fiefdoms with virtually unchecked authority over their dependents. For example, under an ancient rule of family law explained in an 1868 North Carolina case,¹ wife beating was permitted on the ground that "every household has and must have a government of its own, modeled to suit the temper, disposition and condition of its inmates, and we will not intervene or attempt to control it."² Another example is that under the "modern" rule of family law still prevailing in many states, we recognize the right of a husband to rape his wife without legal consequence.³

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¹ *State v. Rhodes*, 61 N.C. 453 (1868).

² *Id.* at 457.

³ Anne L. Buckborough, *Family Law: Recent Developments in the Law of Marital Rape*, 1989 ANN. SURV. AM. L. 343 (1989).

As women have demanded justice within the family—legal equality with their male partners, shared responsibility for the work necessary to sustain the family community, and meaningful guarantees of economic support the traditional bargain has unraveled. Because women have been compelled to trade away their rights as individuals in order to get men's commitment to their families, when women turn around and claim justice within the family, it appears to be a breach of the traditional contract. Because they view women as having breached the contract, men apparently feel justified in walking away from the "deal," both figuratively and literally.

The notion that women must sacrifice individual rights in a political bargain to gain family rights as mothers sounds profoundly illiberal. I mean "illiberal" in the sense that the Federalist Society uses the term. That is, such a trade-off violates the classically liberal political vision of free and equal individuals as the foundation of society.⁴ But in fact, the sexual injustice of the traditional family has roots in classical liberal political theory that can be traced back to Rousseau.

In *Emile*,⁵ a tract on the education of young people for citizenship, Rousseau argues that if women refuse to take a subordinate role in the family, men in turn will refuse to be fathers because they will no longer enjoy what they expect to gain from family life.⁶ For women to get their children's fathers to support them, Rousseau explains, women must coax men into marriage and then must cater to their needs. Married women recognizing that dependence and subordination within the marriage relationship is necessary, should not seek independent goals, such as careers, or demand equality with the father in family governance, for this creates strife and undermines family unity.⁷

It is either refreshing or grim to note that Rousseau, as well as his modern-day defenders such as Allan Bloom,⁸ openly acknowledge that by egalitarian standards, this inequality of women within families is unjust. Yet Bloom⁹ and others, including some on this panel, continue to defend this inequality as necessary to the survival of families.

⁴ See, e.g., JOHN LOCKE, TWO TREATISES OF GOVERNMENT 287 (Cambridge University Press 1960) ("[A]ll Men are naturally in . . . a State of perfect Freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.") (emphasis omitted).

⁵ JEAN-JACQUES ROUSSEAU, EMILE 333-34 (Barbara Foxley trans., 1911).

⁶ *Id.* at 324.

⁷ *Id.* at 324-26.

⁸ ALLAN BLOOM, THE CLOSING OF THE AMERICAN MIND 115-16 (1987).

⁹ *Id.* at 115, 128-31.

Feminism has directly challenged this political justification for the traditional family by asking why the family—with its sex-specific division of labor and the related economic vulnerability of mothers and homemakers—should be immune to the same principles of justice that govern all other institutions of society.¹⁰ Further, because women feel no inherent conflict between their identity as individuals and their identity as parents, women have made these claims for family justice *in defense of the family*, as well as in the name of women as individuals. For the family is a “school of justice,” to use the term of political philosopher Susan Moller Okin.¹¹ Children’s moral development is centered in families. In this sense, Okin argues that “[r]ather than being one among many co-equal institutions of a just liberal society, a just family is its essential foundation.”¹² Justice in the family is perhaps even *more* important than justice in any other social institution.

Thus, any discussion of family law that begins from the premise that individual rights threaten family responsibility can be true only to the extent that (1) we remain willing to allow men to make commitment to their families contingent on unjust claims to authority over other family members, and (2) we accept the view that justice is somehow incompatible with the intimacy, harmony, altruism, generosity, and love we seek in our family lives. Families *are* essential to our society, and public policymakers should be profoundly concerned with the well-being of families. It is within families that we raise children, and it is there that we seek and give the love and companionship that makes it possible for us to survive the loneliness and harshness of our lives. Personal and social well-being, now and in the future, demand that we do both things well.

To balance the claims of individual rights and family responsibility in crafting our family law, however, we need a new vision of the social contract underlying the family. Whatever the imagined practical virtues of a social vision that demanded women’s subordination as a condition for male involvement in the family, or that posited an inherent conflict between justice and the family, such a view imposes too high a cost—both in the way it undermines women as full citizens in our society, and in the way it fundamentally subverts the moral education of our children. Thank you.

¹⁰ See generally SUSAN MOLLER OKIN, *JUSTICE, GENDER AND THE FAMILY* (1989) (any adequate theory of moral and social justice must take account of the family).

¹¹ *Id.* at 17.

¹² *Id.*

THE PUBLIC SCHOOL SYSTEM AS AN INSTRUMENT OF POWER

Phyllis Schlafly†

Thank you, Mr. Chairman, and good afternoon ladies and gentlemen. In reading the statement of purpose of The Federalist Society and noting its principles, I think it is admirable to have a voice speaking out against the arrogance of the judiciary in using its power to impose liberal ideology on the rest of our society. Indeed, the Society's statement of purpose correctly points out the high-handed manner in which courts have used power at the expense of an individual's ability to control his own destiny. Many of those results have been brought about by lawyers, and it is encouraging to see many lawyers who are speaking out on the other side. Court decisions are reported and critiqued, allowing public debate in many of those areas.

There is, however, another instrument of power in our society which I believe is just as influential as the courts. This instrument of power has curtailed individuals' rights, abused authority, and violated our Constitution. It, too, is kept in power by the "system," a solid phalanx of tax-paid lawyers who have built an empire where there is no adversary system at all, no reporting, no public debate, and no media coverage. The lawyers who maintain this barricade are so intimidating that only a handful of cases has ever reached the courts. You do not even study this instrument in law school when you take a course in family law. I therefore appreciate this opportunity to lift a curtain on what I believe is a great problem in our nation today.

The monster in our midst is the public school system. It has failed to perform its prescribed function of teaching children reading, writing, and arithmetic. We do not need to belabor that point. We know that 27,000,000 people have been through the public schools in the last twenty years and cannot read.¹ We know that

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¹ Lauro F. Cavazos, *Building Bridges for At-Risk Children* PRINCIPAL MAG. (1989).

even Al Shanker, president of the American Federation of Teachers, said in a speech recently that only 6% of high school seniors can read a newspaper editorial, write a two-page essay, and complete a two-step math problem.² That means 94% of high school seniors cannot—evidence that we are not only talking about poor and minority children. We are talking about average children at average schools. This education problem has nothing to do with the spending of money. The abuses of power that I will discuss occur even more often in the wealthier schools than in the poorer schools.

Despite this failure of the school system to function as it was intended, an empire has been erected in which raw power is used to conduct daily and extensive violations of the First Amendment religious rights of children by teaching them to rely on a pseudo-god, instead of the God they have been taught to worship in the home. By pseudo-god, I mean such creatures of the self-esteem courses as Duso the Dolphin and Pumsy the Dragon.³ Children are taught the power of witches, horoscopes, and astrology. They are taught that they must accept a code of ethics (in total violation of the code of ethics they have been taught in the home) which denies authority and absolute values and teaches the child that he or she alone can decide whether illicit drugs and premarital sex are okay. Children are taught that they can make such decisions by themselves without consulting their parents, the law, or other authority.

These constitutional violations in the public schools include daily violations of the Fifth Amendment ban against self-incrimination.⁴ Minor children are forced to disclose all sorts of things that we would not allow the police department to force arrested suspects to disclose. Children are required to reveal incriminating information about themselves and their families. They are forced to submit to group psychotherapy in the public school classroom, conducted by unlicensed psychologists, in the form of teachers who have attended a half-day workshop in how to conduct counseling in the classroom. Children in the classroom are forced to read materials which the parents consider pornographic, profane, immoral, and anti-religious. The American people would never stand for any government bureau or any court forcing adults to submit to these types of violations, but these violations are committed on minor children in the public school classroom every day. You never hear of these

² Speech given at conference sponsored by the Gates Foundation in Denver, Colorado (Sept. 20-23, 1989) in *EDUCATION REP.*, Dec. 1989, at 3.

³ DUSO the dolphin and Pumsy the dragon are fictional characters in self-awareness and self-esteem building curricula designed for use with children.

⁴ U.S. CONST. amend. V.

violations because the media have chosen not to make this a national issue.

Let me give you a couple of concrete examples. They come from every state in the union, every part of the country. A typical example of the privacy-invading questionnaires children are required to complete can be seen in the questionnaire that has been given to every public school child in the State of Minnesota.⁵ It is a 189-question, one-hour survey. Let me take you through some of its most objectionable features. First, the survey asks the following privacy-invading questions: Are you a religious person? How often do you attend church? How important is church in your lives? Are your parents divorced? Were they ever married? Do you live in a home with people to whom you are not related? Next, the survey asks questions which alienate the child from his parents: Would you like to see a doctor, nurse or counselor without your parents knowing about it? Then it asks several depressing questions: Have you ever felt so sad, discouraged, and hopeless and had so many problems that you wonder if anything is worthwhile? Do you worry about dying soon, being hit by a nuclear bomb, your parents dying, your parents divorcing? Are you worried about losing your mind or memory or having a nervous breakdown? How many times have you tried to kill yourself? There are many questions about suicide. The survey continues, asking the following incriminating questions on drugs: How often do you use cigarettes, beer, wine, hard liquor, marijuana, crack, cocaine? How old were you when you started? Then, there are questions which ask the children to "snitch" on their parents: Has alcohol or drugs by a family member caused any member of your family health, job, or legal problems? The same question is asked for a whole list of drugs. Finally, the survey asks questions on explicit sex: How old were you the first time you had sexual intercourse? What kind of birth control do you use and how often? It even asks detailed questions to test the threshold of homosexual attraction.

Schools have no business asking children such questions. A federal law prohibits this kind of interrogation without prior written parental consent, but the Department of Education will not enforce it.⁶ The lawyers form a solid phalanx to defend the public schools' right to do whatever they want with the child.

Now, let's talk about psychological counseling and psychotherapy in the classroom. In the early elementary grades, these sessions are usually called the stress classes. They say that these kindergartners, first, and second graders have so much stress—no doubt

⁵ MINN. DEP'T OF EDUC., MINNESOTA STUDENT SURVEY (1989).

⁶ General Education Provisions Act, 20 U.S.C. § 1232h(b) (1989).

caused by their parents. In the upper grades, the psychological curricula are called self-esteem courses. The trend today is to teach self-esteem instead of reading, writing, and arithmetic. This teaching includes many pseudo-religious courses. If you browse through the New Age section of your local bookstore, you will discover what these practices are, and then you will find that many of them are used in the classroom. These practices include progressive relaxation, meditation, guided imagery, visualization, and centering. All of these exercises are commonly associated with the New Age religion. These exercises might ask you to pretend you are soaring on a fluffy, white cloud; pretend you are breathing through imaginary holes in your feet; or imagine a candle floating in a dark room. Some of these practices are a form of self-hypnosis. All of them are objectionable. The counseling is done right in the classroom. We do not object to one-on-one counseling of a disturbed child by a professional. That is not what we are talking about. We do object to classroom courses in which all the children are given psychological treatment or therapy by people who do not have the slightest idea of what they are doing and are not professionally trained to provide such treatment.

Only one type of these psychological courses has made it into the national media—the courses on death and dying. A real breakthrough in the national media occurred when ABC television aired a segment following a landmark article in *The Atlantic Monthly*.⁷ The death and dying courses are very morbid and gruesome. The children are taken on trips to funeral parlors where they touch the dead bodies. They are taken into the embalming labs and into the crematorium. Many children have found this very traumatic. Several students have committed suicide after taking these death and dying courses.⁸

What is the reaction of the schools when parents say they do not like this? That is, when parents complain, “We send our children to school to learn to read and write and add and subtract. We do not want them worked on like guinea pigs.” Well, I will tell you how the majority of schools react. They say,

we have got your child and we are going to do whatever we want with your child, and your only option is to take your child out and put him in another school. And if you create any trouble about this, we will brand you as right-wing, fundamentalist, extremist, book-burning censors. We will leak ugly articles about you to the

⁷ Fergus M. Bordewich, *Mortal Fears: Courses in “Death Education” Get Mixed Reviews*, THE ATLANTIC MONTHLY, Feb. 1988, at 30.

⁸ CHILD ABUSE IN THE CLASSROOM 71, 121, 262, 266, 319 (Phyllis Schlafly ed., 1984).

press. We will treat your child badly and make him sit in the hall if you do not want him to take one of these classes.

What is the parent to do? The school is defended by a whole battery of tax-paid lawyers who have crafted school law that allows the school do whatever it wants with the child, leaving the parent with little recourse.

I hope that there will be some of you who will want to take up the battle and be a champion for the constitutional and legal rights of children in the public school classroom. They have a right to be in the classroom without having their religion, their values, and their parents put down by courses and various exercises. They have a right to be there without being made to disclose what is going on inside their family unit. Just as we have established that the atheist has a right to silence everybody else in the classroom from saying a prayer, it seems to me that the rest of the children should have a right to be in the classroom and not have their legal and constitutional rights abused by this type of behavior.

PARENTAL RESPONSIBILITY AND THE FUTURE OF THE AMERICAN FAMILY

Karl Zinsmeister †

I, like Bill Kristol and Jane Larson, would like to begin by saying I think it's terrific that within this conference on the importance of individual responsibility, the organizers included a panel on the family. Individual responsibility and family responsibility are not always the same thing. In fact I think most of us could agree that the family is one locale where non-individualist, and sometimes even anti-individualist, logic is most appropriate. Nevertheless, I want to argue that here, as in other sectors of American society, an ethic of private responsibility is the best way, and frequently the only way, of forging lasting solutions to our problems.

I believe in the power and value of spontaneously evolved social institutions—the kinds of institutions that spring up organically to fill a need without any social engineer having been involved. The traditional nuclear family is a classic example of such a spontaneously evolved institution. It sprang up to fill humanity's most urgent imperative of all: the need to produce competent offspring who can carry progressive society into the future.

Yet, after centuries of useful service, in just about every cultural and economic setting ever devised, the intact, two-parent family is now under stress. The statistics are familiar: 27% of all American children are currently born without benefit of married parents,¹ and 60% of all newly arriving youngsters will spend part of their childhood in a single parent household.² These are unprecedented developments and I suggest that they need to be interpreted not merely as neutral changes in form—as is conventionally done to-

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¹ Telephone interview with U.S. National Center for Health Statistics (December 1991).

² See, e.g., Arthur J. Norton & Paul C. Glick, *One Parent Families: A Social and Economic Profile*, 35 FAM. REL. 9 (1986).

day—but as unambiguous social decay, to be vigorously resisted wherever possible.

That, of course, is not the current establishment view. The common political attitude and the premise of almost all public policies is that any preference for one family form over another is a kind of prejudice. The influential author, Toni Morrison, gave a typical articulation of this view when she said recently, "I don't think a female running a house is a problem, a broken family. The little nuclear family is a paradigm that just doesn't work. . . . Why we are hanging onto it, I don't know."³ So long as this prevails as our official view, we are going to have serious domestic problems in this country, because in addition to its many personal and psychic rewards, the two-parent family has enormous social utility. As I have said, the main function of families is to acculturate children, to produce a productive and well-adjusted successor generation. And while having two parents around instead of one or none is no guarantee that the child is going to turn out well, it is a very, very good place to start.

There is lots of evidence for that claim. Take psychological disorders, for instance: A recent investigation of more than 17,000 American children found that youths from single parent families or step-families were two to three times more likely to have had emotional or behavioral problems than those who had both of their biological parents present in the home.⁴ This, incidentally, can be placed against the backdrop of a tripling of the youth suicide rate over the past 30 years.⁵

Consider education. A major study by the National Association of Elementary School Principals found that children from single-parent families were half as likely to be high academic achievers, compared to two-parent counterparts, and more than half again as likely to be low achievers.⁶ Students from one-parent families more frequently require disciplinary action, they are 70% more likely to be suspended or expelled, and they are more than twice as likely to drop out of school altogether.⁷

Consider income. The income potential of two-parent families is far superior to that of single-parent families. Families headed by single mothers have a poverty rate of 34% after all government

³ Karl Zinsmeister, *Growing Up Scared*, THE ATLANTIC MONTHLY, June 1990, at 53.

⁴ See NATIONAL CENTER FOR HEALTH STATISTICS, U.S. DEP'T OF HEALTH AND HUMAN SERV., PUB. NO. 178, *Family Structure and Children's Health: United States, 1988*, in VITAL AND HEALTH STATISTICS, June 1991, at 9 (figure 4) [hereinafter *Family Structure and Children's Health*].

⁵ See *supra* note 1.

⁶ See Zinsmeister, *supra* note 3, at 52.

⁷ *Id.* See also *Family Structure and Children's Health*, *supra* note 4, at 8 (figure 3).

transfers, while the comparable figure for married-couple families is 6%.⁸ As a determinant of economic standing, family status now overpowers other factors like race, education, and area of residence that used to be the primary influences on standard of living.

Consider delinquency and crime. Seventy percent of juveniles now in state reform institutions grew up in single-parent or no-parent families.⁹ A similar fraction of adolescent murderers share that background.¹⁰ The correlation between broken families and street gang membership is so close that one observer has referred to gangs as "the flower on the vine of single parent life."¹¹

The list goes on and on: in terms of the risk of welfare dependency, drug and alcohol abuse, early and promiscuous sexual activity, intra-family child abuse, or even the likelihood of serious childhood illness or injury, decayed or unformed families turn out to be substantially more dangerous places for children to grow up. In fact, it can be said that many of the social problems that plague us most darkly today—drugs, educational droop, street violence, and so forth—are not so much separate issues as shoots off a single root, namely the breakdown of intact traditional families.

We know that the intact traditional family is a culturally valuable institution, probably our single *most* valuable institution in truth. We also know that the alternatives are lousy: Efforts to provide substitute acculturation through various public or private agencies, though increasingly popular with policy makers, have a very poor track record. Whether you look at public school programs; juvenile reformatories; top university-run day care centers; collectivized child-rearing experiments in Israel, China, or the Soviet Union; the best experiences of evacuated children in war-time Britain; or anywhere else, the unfortunate fact is that other social institutions have had very little success in picking up the pieces when the natural family has failed or been dissolved.

No matter what the funding levels, the skills of the staff, or the motivation, the clear conclusion of child development clinicians—from Anna Freud to John Bowlby on up to the present—is literally that the most humdrum, average family typically does a far better job of rearing its young into well-adjusted and effective citizens than any enlightened group of professionals could in the family's breach.

⁸ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *Measuring the Effect of Benefits and Taxes on Income and Poverty: 1990*, in CURRENT POPULATION REPORTS: CONSUMER INCOME, No. 176-RD, at 41 (Table 2).

⁹ BUREAU OF JUSTICE STATISTICS, DEP'T OF JUSTICE, *SURVEY OF YOUTH IN CUSTODY* (1987).

¹⁰ Dewey G. Cornell, et. al., *Characteristics of Adolescents Charged with Homicide: Review of 72 Cases*, in 5 BEHAV. SCI. & L. 14 (1987).

¹¹ Leon Bing, *When You're a Crip (or a Blood)*, HARPERS MAG., Mar. 1989, at 51.

It is interesting to note that not even the step-family, a form closely related to the nuclear family, is able to get consistently good results. In studies of health, emotional well-being, academic success and other factors, children growing up in step-families behave, on average, much more like children from the troubled single-parent families I have just described than like children from intact families.¹² Neither substitute families nor pseudo-families nor family supplements are able to do for society what traditional nuclear families have done as a matter of course for millennia.

While there is no substitute for family integrity, it is also much too important to take for granted. As time-tested and successful as two-parent child rearing has been, it is by no means an automatic process. Family-making is hard as well as rewarding, and it is possible, I fear, for people to just stop trying. Moreover, our hard-won store of experience and understanding as to what the young need to become successful adults—a vast and precious body of cultural intuition, transmitted through a chain of parent-child relations that stretches backwards into the beginnings of human history—is never more than one generation from being lost. One broken link and the chain is no longer a chain. And when that happens, things can go awry fast.

While the unhappy social effects of family decay are now being seen in all of the modern industrial nations, the extents differ widely. I have recently done some comparative research on the Japanese family, and while certain of its aspects appear quite foreign from our perspective (fathers, for example, are often pathetically marginalized from family life in Japan), nonetheless, the basic structure of family life in that country remains quite wholesome.¹³ Ninety-five percent of all Japanese children today live in married, two-parent households. Indeed, in nearly one-third of those households, there is the additional presence of a grandparent, so Japanese children are getting tremendous doses of intimate adult care-taking. Only 1% of Japanese births today are illegitimate¹⁴ and Japanese divorce rates are about one-fourth of U.S. levels.¹⁵

We read a great deal these days about Japanese economic and social successes, and credit is generally given to factors like social discipline, industrial cooperation, low tax-rates, or a superior educa-

¹² See, e.g., *Family Structures and Children's Health*, *supra* note 4, at 8-10 (figures 2, 3, 4, 5).

¹³ Karl Zinsmeister, *Raising Hiroko*, AM. ENTERPRISE, Mar.-Apr. 1990, at 54.

¹⁴ *Id.* at 54. I've already pointed out, in the United States 27% of all births are illegitimate. See *supra* note 1.

¹⁵ Zinsmeister, *supra* note 13, at 54. Even in most European nations the divorce rate is roughly half that of the United States. See, e.g., *Divorces and Crude Divorce Rates: 1985-89*, 1989 DEMOGRAPHIC Y.B. 513-16, U.N. Doc. ST/ESA/STAT/SER.R./19.

tional system. Clearly those are all important influences. But I personally have become convinced that an even more vital factor which is rarely mentioned is the family structure that I have just described. Japan's powerfully stable and nurturing families—where children can develop into good students and good workers with fewer strains—are the deepest sources of their national miracle.

In fact, if you could somehow transplant the human output of Japan's 95% intact, child-centered families into American schoolrooms, factories, and offices for a season, you might be surprised at how solid our social institutions suddenly looked. Thanks to the efforts of Japanese parents, the human resources flowing into their society are of a quality that would make a lot of industrial and cultural orders look good.

Now obviously it is not our fate, nor ought it be our aim, to mimic the Japanese on the home front. But I suggest we would do well to recognize this: the single most effective thing public policy in this country could do to improve the functioning of our various social systems (not to mention improving human happiness) would be to stop trying to improve pseudo-families or to manufacture ersatz families, and instead go about unambiguously and unabashedly bolstering the real thing—stable, two-parent homes.

There are lots of things that would help. A change in public rhetoric would be a good place to start. To put it simply, we need more shouts from the rooftops in support of traditional intact families. Tax policy could be a central, practical expression of this support. There is broad agreement today that our divorce laws need revision. In administering welfare, public housing, and other sorts of public aid, we would only have to return to the standard practices of about 25 years ago to make great improvement. People forget that, for instance, when most of our public housing was built, those projects did not admit unmarried parents. We have moved rapidly away from sound welfare policy without much thought of what it is we are abandoning.

A legal measure that would help is passage and enforcement of parental responsibility laws. These laws can take many forms and can be effective in all kinds of sectors, ranging from child support to gang control to education. Linking parents to their minor dependents in stronger webs of accountability could sharply improve the functioning of schools and neighborhoods.

Obviously, there will be howls from liberationists of the left and right against such a family-bolstering program. But enacted as it would be on behalf of what is currently our most aggrieved social group—children—there is justice on the side of those with the courage and conviction to press on.

There are reservations well worth considering as we examine these proposals. But in certain areas, like drug-dependent babies and the judicial removal of delinquent children from toxic home environments, I suggest we are just going to have to bite the bullet and see to it that the positive effects of collective action in support of the traditional family outweigh the negative aspects.

The logical and moral key to such cases is to think of a process under which we take seriously the social contracts that people enter into with each other,¹⁶ and when a contract is broken against the central interests of a vulnerable party—particularly when that vulnerable party is a minor child—we ought to be more willing to enforce a sanction. We have been much too interested of late in providing state *compensation* for private delinquencies, and too little interested in holding the original parties accountable on their own terms. In the future, our family policies should rigorously avoid replacing absent family members, thereby bailing them out, and concentrate instead on making irresponsible absence more unattractive.

I freely admit that, even on these social contract grounds, there will sometimes be tough cases in which a family-based social policy will require some constraints, I hope most of them voluntary, on popular adult liberties. I would justify such constraints by pointing out several things. One is that modern adults enter into family obligations in freedom, and with cognizance of the life changes that new responsibilities bring. Another is that this program is based on the expectation that parents can plan their own lives and will do the right thing. There should be no intrusion until we find otherwise—it is policing, not nannying, that would be provided. Third, early encouragements against family meltdown will almost always be less harsh and distasteful than trying to deal with the fallout later. Persons who don't like the idea of living in a land of world-high incarceration rates, record mental treatment, and policemen on every other street corner need to consider where today's real threats to individual autonomy lie. It is my belief that an exhortative effort at family bolstering will be far kinder to personal liberties than our current "liberal" regime, which disguises its intrusions, and exercises communal moral authority only when it is too late—to incapacitate the anti-social byproducts with which it must increasingly cope. Finally, I would point to the stakes involved. Families are literally the atomic particles of a society. The health of every culture directly reflects, or soon will, the health of its families. This is not, in short, an area where we can easily adjust to a looser standard of quality.

¹⁶ I mean social contracts in the general sense, not in Professor Larson's definition.

I bring you sobering news, but with hopeful possibilities. I would summarize it this way: Individual, individually responsible parents, in millions and millions of private retail choices, will be the decisionmakers who decide the wholesale fate of American society for this generation and far beyond. They deserve the whole-hearted support of our larger society, but the decisions, and the awesome authority, will ultimately be their own. Thank you.

DISCUSSION

KRISTOL:

This was a wonderful panel to have in Washington, D.C., because those of us who work here know that Washington, D.C. is full of answers—answers to questions and solutions to problems. However, these papers, I think, raised as many questions and issues as they presumed to answer or solve. And since, in this world, there are more problems and questions than answers and solutions, these papers were truer to life than much of the activity here in Washington.

I would like to emphasize that all of the papers, in considering family law and individual responsibility, seemed to focus on children. Children somehow become the focus for resolving the tension between individual rights and the well-being of families. This is striking because children were not always the focus of families. Indeed, I would argue that they have never been the focus of families. Families for ages were patriarchal. Elders were much more important than children, and obligations to elders certainly trumped any obligations to children. Children had few legal rights. Even the contemporary nuclear family appears to be characterized more by the relationship between the parents, the husband and wife, than by any obligation to children.

But I was struck that each of the panelists, in different ways, seemed to find a solution, or at least take a step away from our current problems by looking to obligations to the children. Betsey Fox-Genovese, for example, emphasized the economic obligation of presumably equal parents to their children. This obligation would significantly impinge upon the liberties of individual parents, for example, in terms of divorce law. Jane Larson focused on children by emphasizing the extent to which the family is a school of justice, with children comprising the students in this school. One would have to judge the family by its effects on the children. Phyllis Schlafly, of course, explicitly appealed to the lawyers among us to champion the legal rights of children in public school classrooms as a means of strengthening the family against external institutions that intrude upon its prerogatives. And Karl Zinsmeister defended the two-parent family, not because it is ordained by nature or by God, but because the two-parent family is justified by its utility in the rearing of children.

I am not sure what this observation means, but I was struck by the focus of all four panelists on children.

FOX-GENOVESE:

I would like to briefly address some of the implications in Karl Zinsmeister's remarks. Although I do not qualify as a liberationist, I sensed a "sleight-of-hand" that worried me because I am sympathetic to his position and I believe that these issues are deadly serious for all of us. The Japanese family works extremely well because their executives earn less than half and probably less than a quarter of what our executives earn.¹ On the other hand, their workers earn enough that women need not work and can focus on raising children.² My point is to draw attention to the relation between the socio-economic structure and the family. It is a chicken-or-the-egg phenomenon: we are looking at a world in which our need for consumption to support our economy contributes to the unraveling of the family. And I would not beg that question, if I were you.

The second issue I would like to raise again, although I have tremendous sympathies for aspects of his position, is that I sense another slight-of-hand where matters like day care are concerned. Day care is not the same thing as a step-family. Obviously, intact nuclear families are the best way to raise children. The statistic he did not give you is that our society is 4 to 73 times more violent than any other industrial society.³ Our society allows more babies to die than any other industrial society. We desperately need stronger nuclear families, but they cannot operate in isolation. France and Sweden provide day care in a variety of forms, in conjunction with tax benefits and medical assistance, to permit families to exist when women combine work with child care. In other words, the complexity of the issues involved are of the utmost importance.

LARSON:

I was struck by the agreement among the panelists that the family is a proper subject for social and political concern. The notion that the family exists in a private sphere, separated from the world of public judgment and denied ordinary tools of public support, including those available through law, was rejected by everyone who spoke here today, despite our differing political affiliations. I think we all recognize that the family performs absolutely irreplaceable social functions. As Bill Kristol pointed out, we raise children in families. But the family is a key social institution in another sense: that we get and give love and companionship is essential to human

¹ See *Bill Seeking to Put Brakes on Exec Pay*, CHI. TRIB., June 5, 1991.

² Such a fact can be inferred by interpolating the statistics from *Bill Seeking to Put Brakes on Exec Pay*, CHI. TRIB., June 5, 1991, with those from *Time to Check Soaring Executive Pay?*, CHI. TRIB., June 5, 1991.

³ DEBORAH PROTHROW-STITH & MICHAEL WEISSMAN, *DEADLY CONSEQUENCES* (1991).

well-being and happiness. In our society, we do that loving and caring in intimate communities of family.

Thus, I would disagree with Karl Zinsmeister's assertion that private responsibility is the solution to family law problems. Society must support the family in a variety of ways, and our recognition that we value the family as a social institution does not mandate that we "take our hands off" it. It is a mistake to argue that we should shield the family entirely behind a veil of nonscrutiny, that we should never intervene, either to provide support to the family or to adjust the relationships of its members if they become dangerously disordered.

Privacy is one of the social policy tools we can give to families to support their functions in various ways. That is, society may choose to say that we should leave some things to people themselves. But privacy, just like intervention, is a social policy choice. It is not the necessary premise from which we start when considering the ways that society should deal with families.

I would tend to define "family" in a somewhat broader way than Karl Zinsmeister would. I think it is a fallacy to assume, as he does, that the intact, two-parent family is ordained either by nature or God, or is an essential biological or organic institution.⁴ People throughout history and across cultures have lived in a variety of family relationships. Extended families may, in fact, be more common throughout history and across cultures than the isolated two-parent family, although the two-parent nuclear family is the pre-eminent form within this society's recent history. We should be open to other family forms that exist in many of the diverse communities that make up this country, and we should be open to people forming nontraditional family relationships. It is the social utility of families that we all recognize, not any one proper form that "the family" must assume; it is the responsibility and community that the family creates that is its most important social function and its social value.

I would also comment in closing that I find it hard to imagine how libertarians could say they were "on the side of children," as Mr. Zinsmeister has claimed, when they pursue a policy of excluding a single mother (who has already been abandoned by the other parent) from public housing benefits. We have to "get real" when we talk about family policy. That is, we need to be compassionate about the social consequences that would result from such a policy. We should not impoverish and punish either children or parents left alone to raise children in difficult circumstances. Rather, our public

⁴ See Karl Zinsmeister, *Parental Responsibility and the Future of the American Family*, 77 CORNELL L. REV. 1005 (1992).

policies toward families should focus on creating incentives for family formation in the broadest sense and on supporting existing families, instead of punishing people who have failed in some sense to maintain a model form of family. On the other hand, I side with Mr. Zinsmeister when he suggests that we must aggressively pursue parental responsibility laws. I think an important policy goal for family law is to bring home—literally—the responsibilities people have as parents to their children.

SCHLAFLY:

I want to clarify one point: one of the great parental rights and responsibilities is to be the primary educator of your children. My presentation was not designed to suggest that we become children's advocates, but to urge us to respect familial supervision and control over the education of children.

I would not want you to think, as a result of our moderator's kind and generous words, that no disagreement exists among this platform, so I will add a little controversy. It is sad that women on college campuses today continue to propagate the idea that the status of a wife in America is that of a slave, that it is comparable to the way blacks were treated in this country, and that it is based on the suppression of a wife in favor of a husband. Many young women are wrongly led to believe that this inferior status exists today or did even in the recent past. British property law developed for the purpose of primogeniture; it was not based on the suppression of women, and the legal relationships of a couple hundred years ago do not have much relevance to this country today. When Alexis de Tocqueville traveled this country, he attributed the greatness of America primarily to the superiority of our women.⁵ The feminist notion that women have been kept in a subservient, enslaved role is extremely unfortunate. We need to remember that the "big mama" of women's liberation of modern times, Simone de Beauvoir, called marriage "an obscene, bourgeois institution."⁶ Americans should come to grips with the origins of feminism. It is an attack on marriage and it is an attack on the family. That is why Karl Zinsmeister's remarks were so apt and important. I was happy to hear Professor Fox-Genovese's remarks about divorce. I spoke about our Constitution and the laws that relate to education, but most of the other panelists' remarks were social commentary (except for the discussion of divorce law and its evolution over the last twenty years). The

⁵ II ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 262 (Francis Bowen ed. & Henry Reeve trans., 1862) ("[I]f I were asked . . . to what the singular prosperity and growing strength of [the American] people ought mainly to be attributed, I should reply, To the superiority of their women.")

⁶ SIMONE DE BEAUVOIR, *THE SECOND SEX* (1952).

dramatic change that started in California in 1969 and swept across our country has had a devastating effect, and hopefully we can cooperate to change this nation's divorce laws. Even people who were strong advocates of these liberal divorce laws now see the devastation that they have wrought. This is a legal matter that has had tremendous impact on this country. I hope we can work together to remedy this for the sake of the family.

ZINSMEISTER:

I will use my time to answer some of the questions that have been asked about my presentation. I will begin with the material about the Japanese family. The notion that the Japanese family is a peculiar institution, supported by a strange infrastructure, and is inapplicable to us interests me. I spent much of this past summer reading a broad range of anthropological cases, primate studies, socio-biological research, and other material on families, and I must stress today the inaccuracy of the idea, popular in universities and feminist theory, that the 1950s-style nuclear family was a historical rarity, a kind of aberration, and that current trends away from traditional two-parent families and toward more "diverse" family structures represent a return to humanity's more normal patterns of domestic organization. That is simply not the case. A look at the evidence leaves one struck by how little family structures have varied over time and place—from humans who wear animal skins and gather berries to people who communicate over satellite links, you find relatively little divergence from the two-parent norm. Humankind's judgment on the optimal arrangement of domestic affairs has been amazingly consistent. The nuclear family has been the norm since the very beginning of human history, and the jolting aberration is not the "bourgeois family" but the current pattern—where forty percent of all American children now live apart from one or both of their biological parents.⁷

The economic factors which Professor Fox-Genovese mentioned⁸ are very important in explaining some family behaviors. Excessive materialism and simple selfishness have definitely had something to do with the unhappy family trends I have described, and I am devoting attention to those subjects in my book. At the same time, I do believe that for a variety of reasons it is much harder to be a parent today than it was for the previous generation. You cannot assume today that grandma will be nearby to help out with

⁷ NATIONAL CENTER FOR HEALTH STATISTICS, U.S. DEP'T OF HEALTH AND HUMAN SERV., No. 178, *Family Structure and Children's Health: United States 1988*, in VITAL AND HEALTH STATISTICS, June 1991, at 15 (Table 1).

⁸ Elizabeth Fox-Genovese, *The Legal Status of Families as Institutions*, 77 CORNELL L. REV. 992 (1992).

the children or that the local public school is sound. You can no longer let your kids run to play outdoors and simply tell them to come back at dinner time—certainly not if you live in Washington, D.C., anyway. Social respect for people rearing children full-time is not what it once was. Being a conscientious parent today can be an exhausting, poorly-supported undertaking.

The idea, however, that the way to counteract these problems is through political programs, or through Swedish or French-style state programs, is, I think, absolutely wrong. Our fall-off in family solidarity is a cultural problem, not a political one. Mostly, it involves personal values and individual priorities. I do not believe that this issue is as complicated as it is sometimes made out to be. In some ways, in fact, it is remarkably simple and could be solved, quite literally, by a change in attitude. If we reordered our personal lives and our family loyalties, most of these problems would disappear almost overnight. Again, I concede that a tremendous amount of societal undergirding has been washed away and needs to be replaced. I will be happy to offer specifics if we have time. But for all the supports that have disappeared, there have also been many doors opened for modern parents. Families today, for instance, are wealthier than those of previous generations. In the past, a great many American families had to acculturate their children with little or no economic surplus. Today we do not have that excuse. The compensating advantages of our current situation undercut the argument that modern parents merely lack for helping programs and economic means. It is not nearly that simple.

Just as an aside, anyone who thinks that we should emulate the Swedish situation ought to read David Popenoe's recent book, *Disturbing the Nest*.⁹ He is an eminent sociologist, by no means a man of the right, and probably the leading authority in this country on the Swedish welfare state and its impact on the family. And he says the Swedish family is headed very much in the wrong direction.

Now, I want to briefly address the critical idea of not "punishing" people. It is clear we do not want to make things harder for people in the name of "helping" the family. But often the most humane path is not the one of least resistance. One small anecdote from Nick Lemann's recent book about the great migration of blacks to the North¹⁰ struck me. One of the families he follows wanted to get an apartment in a brand new public housing project in Chicago. This is only about 25 years ago. However, a rule in effect at that

⁹ See DAVID POPENOE, *DISTURBING THE NEST: FAMILY CHANGE AND DECLINE IN MODERN SOCIETIES* (1988).

¹⁰ See NICHOLAS LEMANN, *THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* (1991).

time disqualified unmarried couples from being given these apartments. Guess how these protagonists solved that problem? They got married the next day and moved in. This would still happen today, given the right circumstances, and the right help and encouragement. Of course, the further we travel down the path of family disintegration, the further we get from easy solutions. At some point, though, we have to say, "This is what we believe in, and we are going to stand behind it." Thank you.

QUESTION:

None of you have mentioned the impact that higher taxes have had on the family. In addition, no one has observed that the exclusion under today's Internal Revenue Code is just a fraction of what it was a number of years ago. We must be reminded of the basic premise that the power to tax is the power to destroy. The family has been weakened as all taxes on the family have risen state, local and federal. As the numbers of bureaucrats in this city has grown, the family and its power have diminished. Many of today's social maladies—such as poor schools and the crime rate would be solved by the incentive of lower taxes.

FOX-GENOVESE:

Specifically Congress can create tax policies that encourage families regardless of the general tax rate. There are all kinds of ways to shape tax policy to help to strengthen families.

SCHLAFLY:

Yes, indeed there are. I urge you to support Congressman Frank Wolf's Tax Fairness for Families bill which would immediately increase the tax exemption for children from its present \$2000 to \$3500 a year.¹¹ If passed, this bill would increase the exemption over the next few years to \$7000—where it ought to be if a child were worth the same today as she was 30 years ago.

QUESTION:

I have a quick question for Mr. Zinsmeister. You consider the Japanese family as a model and describe it as an ideal that you want applied in this country. But how do you deal with the fact the Japanese father is, as you describe him, pathetically isolated in the Japanese family? If the Japanese father were more integrated, would that have a positive or negative effect?

ZINSMEISTER:

I neither propose that the Japanese family is a model for the United States or that it is anywhere close to perfect. That is the whole point of my fatherhood illustration. My argument is that it is

¹¹ H.R. 1277, 102nd Cong., 1st Sess. (1991).

not inevitable, under modern industrial conditions, that people lose the ability to be child-centered. That the Japanese home remains profoundly child-centered suggests it is possible for us to be far more child-centered than we are. The role of fathers is tremendously important. It is an area where we have an opportunity for improvement on the cheap. If the average father contributed 10% more effort, energy, and time to family functioning, child welfare would improve tremendously without much cost to adult priorities. In my writing and in my own life I emphasize paternal participation in family life, and we need more of it nationally. Nonetheless, we also have to recognize that male and female roles in family life are not now, never have been, and never will be identical. Specialized roles for mothers and for fathers will always exist. We ought not insist that the male and female parents do the same things, but merely that they put in the same amount of effort.

LARSON:

Too often when we talk about “strong” families we implicitly mean patriarchal families. Our traditional model of family has been precisely that. I have argued here that we must reformulate our vision of what makes a strong family. A woman’s well-being must not be sacrificed to a far greater extent than a father’s when it comes to the well-being of children. Children should *not* pay the price for this. Instead, this is a negotiation that must go on between fathers and mothers.

FOX-GENOVESE:

I would like to add to that, since I fear there may have been some misunderstanding. I was not for one instant suggesting that the role of wife and mother is analogous to that of a slave. I said that there were women in the 19th century who used that analogy, but up until very recently marriage was a plausible career for women. In return for devoting themselves to the well-being of families and to the raising of children, they could count on a lifetime of economic support. Since the Second World War, and especially since the 1920s, this simply has no longer been true for women. To ask women to devote themselves to the family is like asking them to play Russian roulette unless you reform divorce and alimony laws. Upon divorce, a man’s income rises by 42% and that of a woman with minor children drops by 73%.¹² These dysfunctional, single parent families and the feminization of poverty usually involve women who simply cannot count on economic support from a man to help raise their children. And you can carry it on. A great deal of sexual abuse

¹² LEONORE J. WEITZMAN, *THE DIVORCE REVOLUTION: UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMAN AND CHILDREN IN AMERICA* xii (1985).

in step-families is related to women's desperation. They cannot face the world alone, and therefore, they do not hold the line the way they should on second husbands who abuse their children.

SCHLAFLY:

I hope we will start to have seminars all over the country on how to reform the divorce laws and address this situation. I agree with that approach. I do not agree with the proposition that the American family structure is based on the subservience or inferiority or second-class status of the wife. That is simply not true. There are many wonderful husbands who work long hours to support their wives. The vision of the wife as a member of a servant class is simply not the majority view and should not be told to young women.