

Discussion

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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.