Family Life, the Politics of the Family, and Social Transformation

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Response to Essays in PEGS Symposium on The Place of Families: Family Life, the Politics of the Family, and Social Transformation

Linda C. McClain

Why do families matter? Why is the premise that strong families are a foundation of a strong polity a staple in political rhetoric, even as the politics of the family remain divisive? I address these questions from the vantage point of political theory and law in The Place of Families: Fostering Capacity, Equality, and Responsibility. My book offers a framework for thinking about the relationship between family life and political life and often contested issues of family law and policy. I appreciate the forum this journal is providing for an exchange about my book with political theorists and political scientists and thank the contributors for their commentaries.

Canvassing the various commentaries reveals both common themes and diverse reactions. My response will first highlight interconnections and then respond to some specific points of each contributor. First, the normative vision that I advance about the place of families is rooted in core liberal and feminist principles. Professors Nancy Hirschmann, Jyl Josephson, and Mary Lyndon Shanley are in basic agreement with this normative vision. By contrast, Manuel Lopez questions whether my normative vision is either possible or good. Second, I identify providing care and fostering civic virtue as two of the basic functions that families serve in what I call a formative project of fostering democratic and personal self-government. Shanley and Josephson concur with this formative role, while Hirschmann offers skepticism about whether families produce social—rather than personal—values and whether, as they actually function, families are seedbeds of civic virtue rather than of civic vices.

Third, the need for and obstacles to social transformation is a theme common to the diverse responses. All four contributors identify certain obstacles to achieving the sort of family law and policy I champion, although they locate these constraints rather differently. Hirschmann suggests that, like other feminists, I direct my attention toward—and am overly sanguine about—the power of the state to bring about fundamental reform, while a better strategy would be for women to pressure men to change their behavior. Josephson cautions that while my arguments carefully and rationally critique conservative arguments and policies, reasonable feminist critiques simply cannot hope to prevail against arguments rooted in ideology. Shanley suggests that what is needed is nothing short of a radical (and unlikely) transformation from the ideology of consumerism and capitalism to a more socialist perspective that better recognizes human interdependency. Finally, Lopez contends that my formative, or transformative project, of promoting sex equality flies in the face of constraints dictated by our human nature, and particularly, our sexual natures as women and men.

The Place of Rights

My book, as Shanley observes, answers the question, "why do families matter?" by emphasizing the formative role of families in producing citizens capable of democratic and personal self-government and how that formative role justifies society's support of families. She comments, however, that a rights orientation would be another way to frame the issue that is consonant with my approach, but different in emphasis. Why not speak about the rights of children to the preconditions for stable family relationships and the rights of adults to form and maintain family relationships and the preconditions for sustaining these various rights? Children, as Shanley points out, have needs, vulnerabilities, and interests. For many adults, procreating and parenting are vital parts of a conception of a good life.

I agree that rights have a place. A focus on what children need and deserve—and how this translates into claims to rights—is a useful way to consider the practical as well as political significance of families. My notion of a formative project builds this into "fostering capacity." Just as I focus on capacity, Shanley (drawing on Peggy Cooper Davis's work on the legacy of slavery for current family policy) stresses the capacity to form a family and governmental responsibility to help people form and maintain parent-child relationships. Of course, it bears noting that a rights orientation does not, in and of itself, quell controversies over family law and policy. Disagreements over what kind of family children need, over how to define parenthood, and over
who should have access to assisted reproductive technology are easily framed in the language of children’s rights.

Shanley’s commentary suggests a possible reading of my book that I would reject: that families matter only because of their role in social reproduction. This might suggest that families warrant attention only because they serve the state by producing responsible future citizens. Families also matter to the persons who make up families: there are many personal goods associated with family. My book notes the personal and political dimension of the family both as individual experience and social institution.

Finally, Shanley stresses the constraints of the “neo-liberal political culture of our day,” capitalism and consumerism, and identifies the need for a radical transformation. To wit, she doubts that the vision of families that I elaborate is possible without the emergence in the U.S. of a more explicitly socialist perspective and general recognition of human interdependence. Feminists (including myself) often find instructive models in the more generous family policies of European social welfare states. At the same time, some incremental progress is possible and worth seeking.

The Trouble With Men

Shanley and Hirschmann both question whether my affirmative vision of societal recognition and support for care as a public value has any chance of implementation, under current social conditions. Hirschmann’s critique pushes in a strikingly different direction. She questions whether the proper feminist response is to seek governmental action, rather than for wives and mothers to insist that husbands and fathers change their behavior. What, realistically, can the state offer to take the place of inadequate spousal help? Women, she contends, need to insist on change. Moreover, they may have the power to do so. She makes the intriguing observation that men’s “inessentiality” to the family becomes more apparent as government takes on certain support roles and facilitates women’s economic citizenship through policies like anti-discrimination laws. Hirschmann suggests that women should use their leverage to get the point across that if men wish to keep their membership in families, they need to “start pulling their weight.”

Hirschmann’s contention that perhaps what feminists identify as a policy problem is really a problem of power dynamics and persuasion has some merit. That men make excuses for not doing their fair share as fathers and husbands, and that women can motivate men to change is a basic premise of “how to” books such as Joshua Coleman’s The Lazy Husband: How To Get Men to Do More Parenting and Housework. So too, Hirschmann raises a pair of useful questions: how are men to be persuaded to change, and how are women to be persuaded to insist on that change?

I share with Hirschmann an interest in egalitarian marriage. The Place of Families argues that equality within marriage has an important relationship to marriage quality (endorsements for Coleman’s book seem to agree). Public policy, as Hirschmann notes, has made egalitarian marriage more possible by fostering women’s greater economic independence and, hence, greater willingness to exercise an exit option from marriage. My book identified concrete reforms in family law and developments in constitutional law that have facilitated women’s equal citizenship and repudiated the common law model of marriage as a gender hierarchy in favor of marriage as an equal partnership. Laws drafted in gender-neutral terms, like the Family and Medical Leave Act (FMLA), aim to facilitate mothers and fathers (or female and male care givers) assuming care taking responsibilities without sacrificing employment. That men take leave far less than women signals that the FMLA has been a necessary but not sufficient step to address this work/life issue. I believe that public policy has an ongoing role to play in structuring institutions in ways that encourage gender equality, but Hirschmann usefully reminds us that the state may not be an effective or appropriate catalyst to bring about certain forms of behavioral change.

Seedbeds of Civic Virtue or Vice? Or, the Private Pleasures of Parenthood

Hirschmann advances another line of critique. My book stresses the formative role of families in fostering responsible citizenship, but do families really deserve all the glowing rhetoric about being seedbeds of civic virtue? Do we really think parents are serving the state, rather than themselves, when they rear children? The pleasures (and pains) that parents derive from their children cannot, Hirschmann observes, be translated into social values. Moreover, families may simply be “seedbeds” of selfish rationalization! Do families really deserve all the privileges that the state provides them?

This skepticism about the formative role of families is a familiar argument raised by some feminist legal theorists (e.g., Mary Anne Case, whom Hirschmann cites) about whether the social reproduction argument really holds water. One argument rejects the idea that society really depends on procreation and parenthood at all: the U.S., on this view, could produce plenty of future workers simply through more liberalized immigration policies. Hirschmann’s argument takes a different form: there is no guarantee that families will produce virtuous citizens rather than intolerant ones, and therefore, it is not clear that parents are producing something that benefits their fellow, nonparent citizens.

Appeals to social reproduction, Hirschmann suggests, invite a quality control or accountability argument: if families deserve support because of what they do for the state, then what may the
eral constitutional scheme holds that parents have a fundamental liberty interest in the care, custody, and control of their children. Rhetoric about the domain of family as one of self-regarding and other-regarding actions (as Mill himself insisted). If nothing else, children are affected by the decisions and direction of their parents; society is, as well. Our federal constitutional scheme holds that parents have a fundamental parental right—and responsibility—to direct children's lives rests on a premise that the state does not have a right to standardize its children.

In liberal theory, some argue that the freedom to form, pursue, and act on a conception of the good life without governmental coercion includes the freedom to be a couch potato and to choose not to develop fully one's capacities. Liberals recognize a right to make incorrect or unwise choices. One rationale is a Millian noninterference point: so long as my being a lay-about is not harming others, this must be regarded as part of a zone of individual liberty.

But when the issue is parental direction of the lives of children, immediately we seem to move out of the simple Millian boxes of self-regarding and other-regarding actions (as Mill himself insisted). If nothing else, children are affected by the decisions and direction of their parents; society is, as well. Our federal constitutional scheme holds that parents have a fundamental liberty interest in the care, custody, and control of their children, on the premise that they will naturally pursue the best interests of their children. Rhetoric about the domain of family as one that the state may not enter suggests a shield against state intrusion. However, as The Place of Families pointed out, the family is not immune from governmental regulation. Government itself has authority to foster the healthy development of children and to regulate to pursue their best interests. One answer that my book offers to Hirschmann's concern about parents producing less-than-virtuous children is that the state properly plays a compensatory/complementary role in shaping children through measures such as education and through promoting important constitutional and public values. It is consistent with commitments of liberalism and feminism to fostering capacity, equality, and responsibility to identify an educative role for the state in informing persons intending to become parents about the needs of children and the responsibilities of parents. Indeed, I would support education of adolescents in relationship skills, family life, conflict resolution, and the like. Whether the state is the best provider of such education, or whether it should enlist the institutions of civil society to do so, is a fair question. The turn, in recent years, to public-private partnerships to carry out various formative projects illustrates this recognition of the importance of civil society.

Finally, in arguing that family members get things from each other that are not directly passed on to the state, such as laughter, love, vacations, and the like, Hirschmann questions the rationale for state compensation of parents when childless fellow-citizens will not get these positive psychic benefits. She asks if I am arguing that every adult should have and raise children, that other institutions of civil society also play a role in shaping individuals and that those forms of associational life were not important, either for families within civil society, but that was not because I believed membership in families is not the only associational good that a good society would foster. The Place of Families did not attempt to offer a general account of civil society, or of how to situate families within civil society, but that was not because I believed those forms of associational life were not important, either for their personal or public dimensions.

Marriage Partisanship, Marriage Promotion, and the Limits of Liberalism

I thank Josephson for her careful engagement with my book and for locating it in the tradition of Susan Moller Okin's work, Justice, Gender, and the Family. I am honored by her characterization of my book as a "more deeply elaborated and nuanced update" of Okin's argument. Josephson wonders, however, just
how far a liberal analysis can get when the topic is the family, since “it is in our intimate lives with others that we are least like the independent, autonomous selves of liberal ontology.” She seems to accept that liberal ontology, in the sense of a commitment to rights, is a necessary condition for human dignity and self-determination, but not a sufficient one. I agree with her. Moreover, while she views my book as primarily addressing a nonfeminist audience, such as social conservatives and persons in the marriage movement, it also aims to persuade feminists that liberalism is not an empty tool box when it comes to analyzing family. By advancing a relational model of autonomy, drawing on feminist work on the situated self, I seek to address the feminist critique of liberalism as atomistic. And in crafting an account of toleration and permissible regulation of the family that accepts core feminist points about the public significance of the problems of an unjust division of labor and of domination and abuse in the family, I seek to address the feminist critique that liberal rights are an illusion.

Concerns over problems of inequality, domination, and violence are one reason that Josephson worries that I am too much of a marriage partisan and too ready to embrace a governmental role in promoting marriage. No doubt, I could have devoted more time in my book to explicating the many feminist critiques of marriage promotion and of social conservative thought, more generally. In a sense, the book takes as a given that, for better or worse, relationship education and governmental promotion of marriage are part of the current policy landscape. It argues about how core constitutional and political commitments to equality and concerns for fostering equality within and among families should inform those policies. It criticizes the marriage movement as well as federal programs linking welfare reform to promoting “healthy marriage” and “responsible fatherhood,” both because they ignore the broader spectrum of obstacles that low-income parents face and because they are, at best, ambivalent about gender equality.

That said, Josephson and I differ on whether marriage is properly government’s business. I support, on liberal and feminist grounds, the proposition that government has a proper role to play in educating citizens with respect to family life, marriage, and relationships more generally. And I believe that government has a proper role in fostering the preconditions for persons to form and sustain family life.

Josephson also regards as naive my idea that government could provide relationship education to poor women in a way that promotes gender equality, since, on her analysis, the marriage movement’s goal is to teach gender appropriate—traditional—roles in marriage. But at least some prominent voices in the marriage movement do advocate gender equality, in terms of equal rights and responsibilities of spouses and parents.

I have considerable sympathy with Josephson’s concerns over whether marriage promotion could be combined with protecting low-income women, men, and children from abuse and violence within families. No doubt, the consistent lobbying by feminists and advocates for poor women has made sure that marriage promotion law addresses domestic violence. Josephson is rightly concerned over whether it does so adequately. But I would note several points. First, the Department of Health and Human Services has built into the definition of “healthy marriage” the premise that domestic violence is not part of such marriage. Second, the legislation requires that marriage promotion programs indicate how they will address domestic violence. Third, one hopes that policy makers will heed the findings of researchers (commissioned by the federal government) that domestic violence is an obstacle to stable family life for some low income, unmarried parents and that marriage promotion is not appropriate in such contexts. Fourth, relationship education, to the extent it aims to train people about nonviolent means of conflict resolution, might exert some positive influence on changing attitudes and behaviors that spill into violence.

Economic inequality is another obstacle to marriage. I concur with Josephson that we should pay greater attention to how economic inequality shapes access to family life. The U.S. is experiencing a “marriage gap,” whereby marriage seems out of reach to low income and working class citizens and more readily available to the affluent because of the perception that healthy marriage requires certain economic preconditions. If so, then this is a matter of social justice that warrants attention.

Finally, Josephson raises a question posed by some other reviewers of my book: why should marriage, even the updated, more egalitarian form I support, be maintained? Why not try different approaches to governmental regulation and support of intimate affiliation? In part, my answer is pragmatic: marriage carries a symbolic and practical weight as a way of organizing intimate life. The litigation over access by same-sex couples to marriage (which I support) has brought to the fore the myriad practical benefits and protections tied to marriage. My book also proposes developing a registration system that would offer formal support and recognition for intimate relation-
ships other than marriage, including ones not involving sexual intimacy.

**Does Fostering Sex Equality Defy Human Nature and Corrupt Love and Marriage?**

Lopez argues that much of the beauty of the world up to now has been tied up with recognizing and promoting sex difference and inequality, unjust as this may be, and that the sort of transformative project I propose threatens to corrupt “our most private and precious goods, romantic love and the family.” It is hard to respond to this thesis when we seem to see the world so differently. I would situate Lopez’s critique within the context of arguments that the feminist project, generally, is a form of social engineering that does not adequately reckon with the constraints of human nature. Specifically, he asks whether my project of fostering sex equality is either possible or good. I would turn the same questions back to him and ask whether accepting and institutionalizing sex inequality is possible or good.

First, the appeal to human nature. Lopez accurately reports that my book expresses “skepticism about appeals to ‘nature’ or to ‘sex differences’ as a justification” for policies because of the historic role of such distinctions in restricting women’s citizenship. I note the emergence of sex equality as a constitutional norm and contemporary public value. Lopez seems critical of this development, suggesting we should want to know “whether the law is sound or just, and whether this norm really is good.” Fair enough. I take it that his project would be to determine what constraints our sexual natures place upon social arrangements. And then perhaps he would offer an account of how much of the current constitutional commitment to equal protection and, in family law, to equal rights and responsibilities of spouses and parents would be rejected as contrary to our natures.

Sex inequality, as a social system that allocates privileges differently to men and women, may have inspired some great works of literature, as Lopez suggests, and I yield to none in being a fan of Jane Austen. However, to interpret this injustice as a kind of beauty must surely depend upon the vantage point of the assessor. The fact that Elizabeth Bennett, witty heroine of *Pride and Prejudice*, triumphed in the marriage market by getting an adoring and wealthy Mr. Darcy (properly humbled by her good influence) does not lessen the injustice of the social system that entailed the family estate away from any female heirs and in favor of the unctuous Mr. Collins. The quiet desperation of the widow and daughters in *Sense and Sensibility*, who have to leave their family home in favor of the male heir, hardly seems a thing of beauty. That the sisters manage to marry and at least one marries financially well may show how females could triumph within the confines of the social system, but surely those sisters might have looked with envy to Emma, “handsome, clever, and rich, with a comfortable home and happy disposition,” who could declare that she had “none of the usual inducements of women to marry.” That she does marry for love, not economic necessity, and that she appears to have a relative equality with her husband who, to accommodate her father’s attachment to her, will move into her house, instead of the reverse, does not lessen the beauty or grace of the story.

Lopez voices concern that love of equality can corrupt and degrade romantic love and the family. Feminist reformers, rather than seeing beauty in inequality, saw the corruption of domination, the despotism that John Stuart and Harriet Taylor Mill condemned. The reforms of family law over the last century have targeted forms of inequality that flowed from the common law model of marriage. Where Lopez might see beauty, reformers saw hierarchy and tyranny in a legal model of marriage that legally suspended wives’ civil existence and gave husbands legal authority to physically chastise wives, control their movements, manage and dispose of their property, demand their household services and earnings, and be exempt from the law of rape. Courts and legislatures rationalized the husband’s authority over the wife and their separate spheres by reference to their different natures and different destinies.

The contradiction between revolutionary principles of equality and liberty and the common law model of marriage was evident from the founding. As my book recounts, the evolution of the model of companionate marriage stemmed in part from a premise that marriage should be based on a model of mutuality rather than hierarchy. As separate spheres ideology yielded to the family law reforms of the late 20th century, an ideal of marriage as an equal partnership emerged. Gender-based classifications came to be seen as rooted in outdated or archaic stereotypes and the U.S. Supreme Court stressed that the “pedestal” onto which women were placed by these various restrictions was more of a cage. Is Lopez arguing that dismantling this legally sanctioned hierarchy has been a wrong-headed project? There was nothing “natural” about this hierarchy: it was legally and socially constructed. If Lopez is questioning the soundness of this jurisprudence, how far does his critique reach? How will studying human nature tell us whether it is proper to have laws allocating to husbands the right to choose the family’s domicile or to manage family property or whether such laws should yield to a model of equal rights and responsibilities?

No doubt, the appeal to sex difference as an explanation, if not justification, for many social practices continues. Lopez does not discuss the recent interest in brain science and in differences between male and female brains, but it offers a good illustra-
tion of the challenge of drawing normative implications from sex difference. Recent sex scandals involving male politicians have sparked discussion about reasons for marital infidelity and pointed to the brain chemistry of “alpha males.” But even if these claims had some foundation, would they justify or excuse such conduct?

Finally, to clarify what my project is and is not: Lopez links my argument that sex equality is a core value to general “transformative political projects to establish sexual equality in defiance of nature,” including a host of social changes tied to the 1960s and 1970s. Merely because my theory draws on liberal political theory does not link it to this host of social phenomena associated with a liberalizing of social attitudes about sexuality. Rejecting conservative sexual ideology that assigns women the role of sexual gatekeepers does not mean I simply champion male “modesty” by analogy to the female modesty championed by proponents of reviving courtship. My point is that it is wrong to assign women a special responsibility to control male sexuality, just as it is wrong simply to assume that men have little to no control over their sexual conduct. Whatever men’s nature, it is appropriate for society to inculcate norms of respect for bodily integrity and to encourage men and women to deal with each other with mutual respect. The fact that, from an evolutionary perspective, male sexual jealousy may be an adaptive behavior, which, when taken too far, spills over into lethal violence against women hardly means that society may not attempt to prevent and punish such violence.

Even some of the most ardent marriage promoters argue that the advent of pair bonding and the institution of marriage are momentous steps in human development, rather than simply a natural state. As such, they are fragile achievements, and require constant tending and shoring up by the forces of civil society and law. An appeal merely to human nature, including sexual nature, simply will not do the work that Lopez suggests it can when it comes to marriage.

Conclusion: On Persuasion and the Place for Marriage in (New) Life Scripts?

I will conclude with two brief points: one on persuasion and the second on life scripts. It may be, as Josephson argues, that efforts at reasoned argument fail to persuade when addressing convictions rooted in ideology. Nonetheless, a premise of The Place of Families is that it is possible to take the shared intuition that families matter and attempt to find some common ground on political values. This is not easy work, but it worth attempting.

Second, it is undeniable that life scripts about marriage: family are in transition. On the one hand, marriage retain special significance in law and culture for its symbolic mean and tangible consequences. On the other, people are departing many ways from the conventional script of love, marriage, family and baby carriage. As William Galston recently observed, for many people today, getting married and having a child—by contrast to getting an education and securing employment—do not signify achieving adult status in the way they did for young people in earlier generations. As the place of marriage changes, society will face new challenges concerning family life, the politics of the family, and family policy.

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Endnotes