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RELATIONSHIPS BETWEEN FAMILY AND GOVERNMENT

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I. INTRODUCTION

The relationship between family and government has become obscure. The concept that government should not attempt to define or restrict relationships that merit legal treatment as “marriages” and “families” has become very popular among academics in the United States and many other nations. As Bruce Hafen, former Brigham Young University Law School Dean and family law professor writes, “the trend in most countries today is toward letting people decide for themselves how and when to form and dissolve marriages and child-parent ties.”¹ Other family law scholars have noted the “privatization” of family law² and the diminution of moral discourse in family law in the past three decades.³ The prevailing viewpoint among scholars seems to be that government should accept as “marriage” or “family” any relationship that the parties wish to call a “marriage” or a “family.”⁴

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1. Bruce C. Hafen, *Bridle Your Passions: How Modern Law Can Protect the Family*, VITAL SPEECHES, Aug. 1, 1997, at 633, available in 1997 WL 10024439, at *1 [hereinafter *Bridle Your Passions*].

2. Jana B. Singer, *The Privatization of Family Law*, 1992 WIS. L. REV. 1443, 1446 (1992).

3. See Carl E. Schneider, *Moral Discourse and the Transformation of American Family Law*, 83 MICH. L. REV. 1803, 1808 (1985).

4. See Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests*, 81 MICH. L. REV. 463, 464 (1983). During the Baltimore session of the 1980 White House Conference on the Family, a proposal that

Scholars, lawmakers, and judges assert that principles of equality or privacy require the state to treat all relationships the same; for instance, giving no special preference to marriage over non-marital cohabitation.⁵ The Governor of Hawaii stated that the state should “quit the business of issuing marriage licenses altogether.”⁶

These ideas are based upon the assumption that the definition or structure of the family has no significant effect upon society. This article challenges that assumption and proposes that there is a relationship between the structures and forms of family relations that a society fosters, encourages, or restricts, and the social and political welfare of that society. Further, the article also suggests that a reciprocal relationship exists between a society’s political structure and family welfare.

Recent and dramatic transitions from socialist and communist government systems to a democratic government system in many Central and Eastern European countries provides an exceptional opportunity to reconsider the relationships that exist between families and governments.⁷ These transitions call forth the following questions: Why should emerging democratic governments that have many other critical issues to address (e.g., economy, education, health, redevelopment, crime, foreign relations, etc.) be interested in regulating families? How do family forms and relations affect government, and vice versa? Why have most governments, across time and culture, focused on regulating the family? The short answer to these questions is that family matters and the quality and strength of the family directly supports the strength of a nation. Indeed, a nation’s values and strength are but the sum total of the values and strength of its families.

This analysis may be categorized as conservative because it favors preserving special legal preferences and protections for marriage and for marriage-based families. Labels such as “liberal” and “conservative,” however, are relative and, when used in an international or transcultural context, are misleading and of little value. For instance, thirty years ago in the Philippines, divorce was illegal. Marriages could only be dissolved by annulment, which was a very difficult and expensive process that rarely occurred. The consequences of such a rigid and narrow divorce regime were tragic for many families.⁸ To prevent tragic consequences to families, divorce laws

“family” should be defined as “two or more persons who share resources, responsibility for decisions, values and goals, and have commitment to one another over time . . . lost only by two votes among 761 delegates.” *Id.* (citing *All in the Family*, TIME, June 16, 1980, at 31).

5. See generally EVA RUBIN, THE SUPREME COURT AND THE AMERICAN FAMILY 16-19 (1986).

6. Bruce Dunford, *Hawaii Lawmakers Pondering Whether to Legalize Gay Marriages*, ASSOCIATED PRESS, Jan. 21, 1996, available in 1996 WL 4407590, at *3.

7. See generally Olga Khazova, *Commonwealth of Independent States: Family Law in the Former Soviet Republics: A Year Without the Union*, 32 U. LOUISVILLE J. FAM. L. 445 (1993-94); and Miroslava Gec-Korosec & Vesna Rijavec, *Slovenia: Post-Independence Changes in Family Law Regulation*, 33 U. LOUISVILLE J. FAM. L. 485 (1994-95).

8. I recall one family, a man and a woman who had lived together, unmarried, for more

needed to be liberalized to make it possible for couples to obtain a divorce without excessive cost or procedural hassles upon proving they were separated for a year or two. At the same time in the United States, however, unilateral “no-fault” divorce laws were approaching adoption throughout the country. Those laws allowed for “quickie,” unilateral, and legalized abandonment of a spouse with no consideration for the desires or circumstances of the other spouse or the family. Additionally, they did not allow any actual examination of whether the marital relationship was truly irretrievably broken.⁹ Those “no-fault” divorce laws were as flawed and extreme as the “no divorce” laws of the Philippines. Instead of either of these extremes, divorce upon proof that a legally married couple has lived separate and apart for one to two years seems a logical compromise in both situations. Such an idea was considered very liberal in the Philippines, yet very conservative in the United States. Therefore, labels such as “liberal” and “conservative” are not helpful in comparative international family law studies.

II. FAMILY STRUCTURE AND RELATIONS AS SOURCES OF POLITICAL FREEDOM AND SOCIAL STABILITY

In the opening paragraph of *Anna Karenina*, Tolstoy summarized the truth underlying the relationship between family structure and social interest: “Happy families are all alike; every unhappy family is unhappy in its own way.”¹⁰

Individuals in happy families are likely to be good citizens; whereas unhappy, dysfunctional families can be a catalyst for many social problems and instability. Society’s interest in fostering good citizenship, promoting individual happiness, encouraging social stability, and preventing a drastic increase in social problems gives it an incentive to foster happy families.¹¹

than twenty years as a result of the strict divorce law in the Philippines. When he was very young, the man had married but that marriage quickly broke down. The parties separated and, for all practical purposes, the marriage had ceased to exist but, because divorce law was so strict, they could not obtain a divorce. Consequently, both parties entered into quasi-marital relationships. The man maintained a non-legal “de facto marriage” and he and his “de facto” wife raised six illegitimate children. She was not legally recognized as his wife.

9. See UNIFORM MARRIAGE AND DIVORCE ACT §§ 302, 303 & 305, 9A U.L.A. 181, 211 (WEST 1987); see also 24 AM. JUR. 2D *Divorce* § 2, § 251 nn.40, 41 & 43 (1998); Cynthia Starnes, *Divorce and the Displaced Homemaker: A Discourse on Playing with Dolls, Partnership Buyouts and Dissociation Under No-Fault*, 60 U. CHI. L. REV. 67, 76-77 nn.37-40 (1993); Sarah E. Fette, *Learning From Our Mistakes: The Aftermath of the American Divorce Revolution as a Lesson in Law to the Republic of Ireland*, 7 IND. INT’L & COMP. L. REV. 391, 410-11 (1997); Doris Jonas Freed & Timothy B. Walker, *Family Law in the Fifty States: An Overview*, 22 FAM. L.Q. 367, 384 (1989).

10. LEO TOLSTOY, *ANNA KARENINA* 1 (Joel Carmichael trans., Bantam Classic ed. 1981) (1877).

11. See generally CHRISTINE BEASLEY, *DEMOCRACY IN THE HOME* 11 (1954).

The two fundamental ideas on which democracy rests are: (1) a belief in the worth, dignity, and creative capacity of every individual human being; and (2) a belief in

Robert Nisbet, a distinguished sociologist, observed:

[F]amily, not the individual, is the real molecule of society, the key link of the social chain of being. It is inconceivable . . . that either intellectual growth or social order or the roots of liberty can possibly be maintained among a people unless the kinship tie is strong and has both functional significance and symbolic authority.¹²

Another family theorist notes that “[t]he family . . . is the fundamental building block of society,” and “[t]hroughout much of human history the family has not only been the fundamental unit of socialization, but it has been the basic economic unit also.”¹³ Yet another scholar states “that the stability of the state depends upon the stability of the family.”¹⁴

A. *The Seedbed of Democracy*

Truly, “[t]he family is the very seedbed of democracy. Home is the place where we get our first ideas about [ourselves], our attitudes toward other people, and our habits of approaching and solving problems.”¹⁵ It is in the home that children learn lessons about cooperation, commitment, sharing, sacrifice, and obedience to the unenforceable, which form the foundation for self-government. Children learn from parents to adapt to shortages, care for others, be happy, love liberty, fulfill one’s duties, and learn critical citizenship and social skills of mutual respect and cooperation.¹⁶ Thus, it is not surprising to learn that children are less cooperative and more aggressive when raised in day care programs that separate them from their mothers and place them in institutional settings during the working day.¹⁷

Most adults learn the importance of, and refine the techniques of, sacrificing for others, caring for the next generation, looking beyond the present,

the value of creative participation and co-operation of all individuals within a group . . . Democracy, then, is a process which succeeds only in so far as it achieves for each and every one of its members the happiness, productivity, and creative relationships which it is his drive to seek; its success lies in its measure of harmony with the needs of man.”

Id.

12. Allan Carlson, *The Family: Where Do We Go From Here?* 32 SOCIETY, JULY 17, 1995, at 63, available in 1995 WL 12535265, at *7, *11 (construing ROBERT NISBET, *THE TWILIGHT OF AUTHORITY* 260 (1975)).

13. PROFESSORS WORLD PEACE ACADEMY, *WORLDWIDE STATE OF THE FAMILY* 1 (Gordon L. Anderson, ed., 1995) [hereinafter *WORLDWIDE STATE OF THE FAMILY*].

14. D.H.J. MORGAN, *THE FAMILY, POLITICS AND SOCIAL THEORY* 74 (1985).

15. BEASLEY, *supra* note 11, at 25. “[D]emocracy is more than a political creed or system . . . It is an active social philosophy, a way of life, the art of living together.” *Id.* at 11.

16. *See generally id.* at 12. “A basic feeling of respect for every individual human being, no matter what his age or status or personal peculiarities, is the very cornerstone of democracy.” *Id.*

17. *See Carlson, supra* note 12, at *7.

and nurturing the basics of life and community when they marry and raise children. The interconnectedness of our lives with government, especially self-government, is first learned at home. The home is the most important learning institution in a democracy. Husband and wife, as well as parents and children, learn important lessons of happy and successful living as they work, play, plan, cooperate, laugh, weep, prosper, and share each other's pains and sorrows. Trusting others and the future is nurtured—or hindered—by experiences at home. This is the indispensable prerequisite for democracy.

More than 150 years ago, the perceptive French social commentator, Alexis de Tocqueville, observed the relationship between the new democracy in America and American family life. Comparing what he saw in the new American Republic with what he had observed in the aristocratic Europe of his day, he wrote:

Certainly of all countries in the world America is the one in which the marriage tie is most respected and where the highest and truest conception of conjugal happiness has been conceived In Europe almost all the disorders of society are born around the domestic hearth and not far from the nuptial bed. It is there that men come to feel scorn for natural ties and legitimate pleasures and develop a taste for disorder, restlessness of spirit, and instability of desires. Shaken by the tumultuous passions which have often troubled his own house, the European finds it hard to submit to the authority of the state's legislators. When the American returns from the turmoil of politics to the bosom of the family, he immediately finds a perfect picture of order and peace. There all his pleasures are simple and natural and his joys innocent and quiet, and as the regularity of life brings him happiness, he easily forms the habit of regulating his opinions as well as his tastes Whereas the European tries to escape his sorrows at home by troubling society, the American derives from his home that love of order which he carries over into affairs of state.¹⁸

Given the spectacle of public scandals involving family infidelities committed by high public officials in the United States, as well as the notoriously promiscuous lifestyles of the “rich and famous” in movies and television, one might wonder today whether de Tocqueville's description of family life in America 165 years ago is still accurate.¹⁹ Of course, there are many “Americas.” If one looks to middle class “America,” with its “ordinary” men and women, husbands and wives, parents and children, grandparents and ex-

18. 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 291-92 (J.P. Mayer ed., Anchor Books 1969) (1835).

19. Recent high-profile public scandals in the United States involving severe and serial infidelity and family dysfunction cause us to wonder what tragic consequences may follow this temporary breakdown in the observance of family virtue that de Tocqueville and many others believed to be so critical for the perpetuation of democracy in America. While democratic society can adequately continue despite some moral deviation, domestic failure, and breakdown of family integrity, when the quantity of those problems become significant, the drag they create burdens all of society and undermines the processes and institutions, like cancer eats away at the organs until the body cannot function properly.

tended families, one would find de Tocqueville's observations about the love of family and family life still quite accurate.

Foreign viewpoints such as de Tocqueville's observe the importance of the family in the American political system, but this regard is not exclusive to foreign observers. The importance of the family in the American political system is celebrated within the United States as well. Throughout its history, the United States Supreme Court has discussed the importance of marriage and family. In 1878, in *Reynolds v. United States*,²⁰ the Court described marriage as central to American society. "Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal."²¹ Eight years later, in *Murphy v. Ramsey*,²² the Court declared:

[N]o legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth . . . than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.²³

Two years later, in *Maynard v. Hill*,²⁴ the Court glorified the legal status of marriage when he noted "[m]arriage, as creating the most important relation in life, [has] more to do with the morals and civilization of a people than any other institution [and] has always been subject to the control of the legislature."²⁵ For example, in 1923, in *Meyer v. Nebraska*,²⁶ the Court acknowledged that "[w]ithout doubt,"²⁷ among the liberties protected by the fourteenth amendment was the right "to marry, establish a home and bring up children."²⁸ In 1942, the Court invalidated a criminal sterilization law in *Skinner v. Oklahoma*,²⁹ stating, "[w]e are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race."³⁰ Twenty-three years later the Court reiterated its opinion of marriage as a sacred institution in *Griswold v. Connecticut*:³¹

20. 98 U.S. 145 (1878).

21. *Id.* at 165.

22. 114 U.S. 15 (1885).

23. *Id.* at 45 (emphasis added).

24. 125 U.S. 190 (1888).

25. *Id.* at 205.

26. 262 U.S. 390 (1923).

27. *Id.* at 399.

28. *Id.*

29. 316 U.S. 535 (1942).

30. *Id.* at 541.

31. 381 U.S. 479 (1965).

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.³²

In *Loving v. Virginia*,³³ a 1967 landmark decision, the Court struck down a Virginia anti-miscegenation statute, stating, “[m]arriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”³⁴ Further, “[t]o deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes . . . is surely to deprive all the State’s citizens of liberty without due process of law.”³⁵ Shortly thereafter, in *Boddie v. Connecticut*,³⁶ the Court emphasized that “marriage involves interests of basic importance in our society.”³⁷ This is because it relates to States’ interest in “the stability of their social order, . . . the good morals of all their citizens, and . . . the needs of children from broken homes. The States, therefore, have particular interests in the kinds of laws regulating their citizens when they enter into, maintain, and dissolve marriages.”³⁸ Then, in 1977, in *Califano v. Jobst*,³⁹ the Court declared, “[t]he favored treatment of marriages . . . does not violate the principle of equality embodied in the Due Process Clause of the Fifth Amendment.”⁴⁰ Furthermore, in *Michael H. v. Gerald D.*⁴¹ in 1989, a plurality emphatically declared that “it is not unconstitutional for [a] State to give categorical preference to [marriage]” over the rights of an adulterous biological father.⁴² These cases illustrate what the United States has long recognized as “the family’s essential role in raising good citizens.”⁴³ In addition, family law theorists “affirm . . . the vital role that families play in preserving the fundamental liberal values

32. *Id.* at 486.

33. 388 U.S. 1 (1967).

34. *Id.* at 12 (*quoting* *Skinner v. State of Oklahoma*, 316 U.S. 535, 541 (1942)).

35. *Id.*

36. 401 U.S. 371 (1971) (invalidating requirement that indigent parties pay divorce filing fees).

37. *Id.* at 376.

38. *Id.* at 389 (Black, J., dissenting).

39. 434 U.S. 47 (1977).

40. *Id.* at 58 (emphasis added). *See also* *Zablocki v. Redhail*, 434 U.S. 374, 386-7 (1978) (holding that the government may not adopt requirements that even indirectly (economically) “significantly interfere with the decisions to enter into the marital relationship.”).

41. 491 U.S. 110 (1989), *pet. for reh'g denied*, 492 U.S. 937 (Aug. 30, 1989).

42. *Id.* at 129. “Although an unwed father’s biological link to his child does not, in and of itself, guarantee him a constitutional stake in his relationship with that child, such a link combined with a substantial parent-child relationship will do so.” *Id.* at 143 (citations omitted).

43. Anne C. Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787, 1791 (1995).

underlying the constitutional structure [of American democracy].”⁴⁴ The norms and political structure of the United States government, therefore, directly influence the structure of, and the values inculcated in the family.

The relationship between the state, social order and family structure illustrated above is not limited to the United States or western societies. In Japan, for example, family structure and cultural values that are inculcated by the family affect the successful use of informal dispute resolution in family law courts.⁴⁵ In concert with the family’s influence, a profound change in Japanese family structure began in 1947 because the pre-World War II *ie*, or *ie*, system, which was a hierarchical, patriarchal, rigid, authoritarian, powerful family model, was deemed incompatible with democracy and the desired political values of equality and liberty.⁴⁶ Consequently, “[a]fter its defeat in the Second World War . . . Japan was forced to undertake democratic reforms, both politically and socially, as a result of the governing policies of the Allied Forces . . . [and] the *ie* system which was built on a principle of inequality, was abolished” by the Constitution of 1946 and the Civil Code revisions of 1947.⁴⁷ Efforts were even made by some occupying authorities to curtail the fertility of Japanese families on the theory that “population pressures had caused or contributed to Japanese militarism and aggression.”⁴⁸ Thus, the Japanese experience, like that of other nations, exemplifies the tie between family and national systems, values, and well-being.

B. The Nursery of Individual and Social Responsibility

Family forms that underscore public commitment are an important foundation for self-government. Marriage is thus more for the community than for the individuals; the couple says their vows for the community who gather to witness them pledge their troth to each other. Likewise, family structures that bind parents to children, not with mere legal formalities, but with daily contact, living responsibilities, and ongoing relationships, enhance society. Marriage-based families, therefore, are best for children, providing the potentially optimal environment in which children may be conceived, raised, and taught the lessons of responsible living. Because stable

44. *Id.* at 1793.

45. See generally Taimie L. Bryant, *Family Models, Family Dispute Resolution and Family Law in Japan*, 14 U.C.L.A. PAC. BASIN L.J. 1 (1995).

46. See Yukiko Matsushima, *The Development of Japanese Family Law from 1898 to 1997 and Its Relationship to Social and Political Change*, in THE CHANGING FAMILY 85 (John Eekelaar & Thandabantu Nhlapo eds., 1998). “[E]very family member was subject to the control of the head of the family and in which women were always subordinate to men.” *Id.* at n.1. This system was the focus of Japanese family law for over a century, “despite the fact that neither the laws regulating the family nor the legal system as it deals with dispute resolution requires the adoption of one particular model.” Bryant, *supra* note 45, at 2.

47. Matsushima, *supra* note 46, at 90.

48. Lynn D. Wardle, “Crying Stones”: A Comparison of Abortion in Japan and the United States, 14 N.Y.L. SCH. J. INT’L & COMP. L. 183, 195 (1993).

marriage-based families are best for children and their parents, they are also best for society, as the costs and consequences to society of unformed, unstable, broken, and dysfunctional families are enormous, as well as tragic. Two social scientists, for example, recently reviewed current literature, as well as their own research, and noted:

If we were asked to design a system for making sure that children's basic needs were met, we would probably come up with something quite similar to the two-parent family ideal. . . . While we recognize that two-parent families frequently do not live up to this ideal in all respects, nevertheless we would expect children who grow up in two-parent families to be doing better, on average, than children who grow up with only one parent.⁴⁹

They observed also that "children who grow up with both parents are more successful in making the transition from adolescence to adulthood than children who grow up with only one parent."⁵⁰

Similarly, the health, longevity, income, and life satisfaction of married men and women is generally and consistently higher than for divorced, separated, and often even single adults.⁵¹ Family sociologist Dr. David Popenoe has declared,

[s]ocial science research is almost never conclusive . . . [y]et in three decades of work as a social scientist, I know of few other bodies of data in which the weight of evidence is so decisively on one side of the issue: on the whole, for children, two-parent families are preferable to single-parent and stepfamilies.⁵²

Society has an interest in fostering family structures that produce such positive and socially-beneficial results—results that avoid lost productivity, reduce tax expenditures for medicines, health services, and social security, and prevent, to some degree, the social costs of dysfunctional behavior of struggling adolescents from broken homes. Thus, society has a direct and measurable interest in fostering good, happy marriages and stable, loving families.

Of course, there are limits on the extent to which the law and society can control human behavior. Laws reflect as well as shape human values. This is especially true of family law. "Family law is deeply rooted in the consciousness of the people, their morals and religion, their culture and social values, as well as their politics."⁵³ The normative substance and structure

49. SARA S. McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT—WHAT HURTS, WHAT HELPS* 38 (1994).

50. *Id.* at 39.

51. See Barbara Dafoe Whitehead, *Dan Quayle Was Right*, *ATLANTIC MONTHLY*, Apr. 1993, at 47, available in LEXIS, News Library, ATLANT file, at *22.

52. *Id.* at 47, 48 & 84, available in LEXIS, News Library, ATLANT file; see also David Popenoe, *The Controversial Truth: Two Parent Families Are Better*, *N.Y. TIMES*, Dec. 26, 1992, at 21, available in LEXIS, News Library, NYT file, at *2.

53. Matsushima, *supra* note 46, at 85.

of a nation's laws, particularly its laws defining and regulating family relations, manifest or at least provide some measure of the family structures and family values of that particular society. Enlightened law reform reflects the finest traditions of family life while encouraging and enhancing improvements in the quality and nature of family relations, family stability, and family functions. The skillful use of law to protect, strengthen, and improve family life in any society requires an inspired blend of understanding the culture and family relations, deference to tradition, and vision of possibilities for improvement that go far beyond naked "social engineering."

III. THE INFLUENCE FAMILY INSTABILITY AND DYSFUNCTION HAVE UPON SOCIAL DISINTEGRATION, POLITICAL INSTABILITY, AND AUTHORITARIANISM

It is beyond dispute that the negative consequences of divorce and single parenting are enormous—both for children and society in general. Distinguished social scientists, Jean Elshstain and David Popenoe, summarized several recent research studies and found that "[t]he most important causal factor of [recent declines in American] child well-being is the remarkable collapse of marriage, leading to growing family instability and decreasing parental investment in children."⁵⁴ The detrimental effects of family disintegration in the United States are many and varied but the most significant are poverty, high-risk personal behaviors (premarital sexual behaviors, abortion, drug use, etc.), disadvantaged socialization, and increased criminal activity.⁵⁵

A. Poverty

Among the most profound advantages of marriage is basic economic security for children, and one of the most predictable consequences of divorce and single parenting is poverty. Marital status is more closely associated with avoiding child poverty than any other factor. One study reported that more than half of the increase in child poverty in the United States between 1980 and 1988 "can be accounted for by changes in family structure during the 1980s."⁵⁶ In addition, "[c]hanging family structure also accounted for 48 percent of the increase during the 1980s in deep poverty, and 59 percent of the rise in relative poverty among U.S. children."⁵⁷ Many studies have shown

54. Hafen, *Bridle Your Passions*, *supra* note 1, at *5.

55. See, e.g., Lynn D. Wardle, *The Potential Impact of Homosexual Parenting on Children*, 1997 U. ILL. L. REV. 833 (1997); and DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* 1, at 25-48 (1995).

56. David J. Eggebeen & Daniel T. Lichter, *Race, Family Structure, and Changing Poverty Among American Children*, 56 AM. SOC. REV. 801, 806 (1991). The study further indicated that, "[I]n the absence of changes in children's living arrangements since 1960, official child poverty would have increased only slightly after 1970, i.e., from 13.7 to 13.8 percent." *Id.*

57. *Id.* at 807-08.

that children in single-parent families are many times more likely to be living in poverty than children living with both a mother and a father.⁵⁸ William Galston, who served as a domestic policy advisor to President Clinton, agreed that “[i]t is no exaggeration to say that a stable, two-parent family is an American child’s best protection against poverty.”⁵⁹ Thus, “[a]s a matter of public policy, if not of morality, it pays for society to approve of marriage as the best setting for children.”⁶⁰ Statistics show that “[t]he one-parent family is six times more likely to be poor than the two-parent family,”⁶¹ and there is a well-documented trend of the “feminization of poverty” that results from divorce.⁶² Adults as well as children suffer from family disintegration, and state welfare costs soar.

B. High-risk Behaviors

Separation of children from their father is “the most harmful demographic trend of this generation ... [and fatherlessness] is the engine driving our most urgent social problems, from crime to adolescent pregnancy to child sexual abuse to domestic violence against women.”⁶³ Children raised in

58. See, e.g., National Commission on Children, *Beyond Rhetoric: A New American Agenda for Children and Families* 253 (1992) (“Children who live with only one parent, usually their mothers, are six times as likely to be poor as children who live with both parents.”); William J. Doherty, *The Best of Times and the Worst of Times: Fathering as a Contested Arena of Academic Discourse*, in GENERATIVE FATHERING 217, 221 (3 Current Issue in the Family, 1997) (“In 1993 . . . 66.3% of all [children] living with mothers who had never married were living below the poverty line, as compared to 10.6% of children living in two-parent families.”); and Eggebeen & Lichter, *supra* note 56, at 806-07 (changes in family structure account for one-third of the increased child poverty between 1960 and 1988, and nearly 60% of the rise in child poverty during the 1980s).

59. ELAINE CIULLA KAMARCK & WILLIAM A. GALSTON, *PUTTING CHILDREN FIRST: A PROGRESSIVE FAMILY POLICY FOR THE 1990S* 12 (1990) see also Coverdale, *Missing Persons: Children in the Tax Treatment of Marriage*, 48 CASE W. RES. L. REV. 475, 502 (1998).

60. Michael Novak, *Families: The Best Anti-Poverty Plan*, WASH. TIMES, Feb. 5, 1993, at F1.

61. Kenneth F. Boehm, *The Legal Services Program: Unaccountable, Political, Anti-Poor, Beyond Reform and Unnecessary*, ST. LOUIS U. PUB. L. REV. 321, 354-55 (1998); see also John F. Coverdale, *Missing Persons: Children in the Tax Treatment of Marriage*, 48 CASE W. RES. L. REV. 475, 481 (1998).

In 1994 35% of children under the age of six living with only their mother were at less than 50% of the poverty threshold, whereas only 4% of those living with both parents were that poor. In the same year, 60% of children under the age of six living with only their mothers were at or under the poverty line, whereas only 13% of those living with both parents fell into this category.

(citations omitted). See also Kathleen M. Keller, *Federalizing Social Welfare In A World of Gender Difference: A History of Women’s Work In New Deal Policy*, 8 S. CAL. REV. L. & WOMEN’S STUD. 145, 148 n.9 (1999). “Once of the marked social trends of twentieth century American has been the increasing impoverishment of women.” *Id.*

62. Kathleen M. Keller, *Federalizing Social Welfare In a World of Gender Difference: A History of Women’s Work in New Deal Policy*, 8 S. CAL. REV. L. & WOMEN’S STUD. 145, 148.

63. BLANKENHORN, *supra* note 55, at 1. For more on the subject, see *id.* at 26-42.

single-parent families exhibit higher teen childbirth rates.⁶⁴ Additionally, “a significant number of teenage drug users are raised in single-parent homes.”⁶⁵ Even after “controlling for [such] factors as low income, children growing up in [single-parent] households are at a greater risk for experiencing a variety of behavioral and educational problems, including . . . smoking, drinking, early and frequent sexual experience . . . and, in the more extreme cases, drugs, suicide, vandalism, violence, and criminal acts.”⁶⁶

C. Disadvantaged Socialization

Lack of parental time and direction is a common affliction of children of divorce and out-of-wedlock birth. Children raised in single-parent homes are at an “increased risk for experiencing a variety of behavioral and educational problems, including extremes of hyperactivity or withdrawal, lack of attentiveness in the classroom, difficulty in deferring gratification, impaired academic achievement, school misbehavior, absenteeism, . . . [and] dropping out [of school].”⁶⁷ Divorce is also associated with many emotional problems, problems with self-esteem, and difficulties with social relationships.⁶⁸ Surveys of child well-being repeatedly show that children living apart from their fathers are far more likely than other children to be expelled or suspended from school, display emotional and behavioral problems, have difficulty getting along with their peers, and get in trouble with the police.⁶⁹ Children in single-parent families generally receive less parental time and direction and less competent child-rearing than those in two-parent homes.⁷⁰ “They perform less successfully in educational activities, [and] have more social adjustment problems”⁷¹

64. See *id.* at 45-46. “Adolescent childbearing is inextricably linked to the decline of fatherhood—not only because more and more adolescent boys are willing to impregnate girls without the slightest intention of becoming an effective father but also because more and more adolescent girls are growing up without a father in the home.” *Id.* at 46.

65. Rhonda E. Denton & Charlene M. Kampfe, *The Relationship Between Family Variables and Adolescent Substance Abuse: A Literature Review*, 114 ADOLESCENCE 480 (1994) (citations omitted).

66. Urie Bronfenbrenner, *Discovering What Families Can Do*, in REBUILDING THE NEST: A NEW COMMITMENT TO THE AMERICAN FAMILY 34 (David Blankenhorn, et al., eds., Milwaukee, 1990).

67. *Id.* at 34, in REBUILDING THE NEST: A NEW COMMITMENT TO THE AMERICAN FAMILY 34 (David Blankenhorn, et al., eds., Milwaukee, 1990).

68. See FRANK F. FURSTENBURG & ANDREW CHERLIN, *DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART* 62-70 (Cambridge, MA; Harvard Univ. Press, 1991); and Paul R. Amato, *Children's Adjustment to Divorce: Theories, Hypotheses, and Empirical Support*, 55 J. MARRIAGE & FAM. 23 (1993).

69. See Whitehead, *supra* note 51, at *14; and BLANKENHORN, *supra* note 55, at 30.

70. See Whitehead, *supra* note 51, at 47, available in LEXIS, News Library, ATLANT file, at *22 (asserting that a growing body of social-scientific evidence demonstrates that children raised in single-parent families are worse off than children in two-parent families in many areas of well-being).

71. *Id.* at 66.

D. Crime

The relationship between adolescent (especially male) criminal behavior and family deterioration from dysfunction has long been known. Researchers have frequently observed that boys raised by fathers rarely commit crimes while fatherless boys commonly commit crimes.⁷² According to a 1990 study commissioned by the Progressive Policy Institute, the “relationship between crime and one-parent families” is “so strong that controlling for family configuration erases the relationship between race and crime and between low income and crime.”⁷³ The likelihood that a young male “will engage in criminal activities doubles if he is raised without a father, and triples if he lives in a neighborhood with a high concentration of single-parent families.”⁷⁴

Such statistics are of great concern, as American society “is becoming an increasingly fatherless society.”⁷⁵ In 1995, an estimated forty percent of all children in the United States resided in fatherless homes, and it is predicted that more than one-half of all children in America will spend a “significant” part of their childhood (before they turn eighteen) living apart from their fathers.⁷⁶

Recent studies in Europe replicate and validate the conclusion that the behavior and lifestyle choices of teenagers are associated with family structure.⁷⁷

[E]ven after controlling for their generally better material circumstances, young people living with both parents at fifteen were . . . less likely than

72. BLANKENHORN, *supra* note 55, at 30.

73. *Id.* at 31 (quoting ELAINE CIULLA KAMARCK & WILLIAM A. GALSTON, PUTTING CHILDREN FIRST: A PROGRESSIVE FAMILY POLICY FOR THE 1990'S 14 (Washington, D.C.: Progressive Policy Institute, Sept. 1990)).

74. Boehm, *supra* note 61, at 355; see also Larry Cata Backer, *Medieval Poor Law In Twentieth Century America: Looking Back Towards a General Theory of Modern American Poor Relief*, 44 CASE W. RES. L. REV. 871, 905-06, n.91 (1995) (quoting Personal Responsibility Act, House Report 4, 104th Cong., 1st Sess. (1995)).

[T]here is one unmistakable lesson in American History: a community that allows a large number of young men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any set of rational expectations about the future—that community asks for and gets chaos. Crime, violence, unrest, unrestrained lashing out at the whole social structure—that is not only to be expected; it is very near to inevitable.

Id. (quoting Daniel Patrick Moynihan, *Defining Deviancy Down*, 62 AM. SCHOLAR 17, 26 (1993)); see generally M. ANNE HILL & JUNE O'NEILL, UNDERCLASS BEHAVIORS IN THE UNITED STATES: MEASUREMENT AND ANALYSIS OF DETERMINANTS (New York, City University of New York, 1993);

75. BLANKENHORN, *supra* note 55, at 1.

76. *Id.*

77. See Helen Sweeting, Patrick West, & Martin Richards, *Teenage Family Life, Lifestyles and Life Chances: Associations with Family Structure, Conflict with Parents and Joint Family Activity*, 12 INT'L J.L. POL.'Y. & FAM. 15, 38-39 (1998).

those from "step" and/or lone parent households to be heavy drinkers, have experience of drugs, of heterosexual intercourse, [lack] school qualifications, to be unemployed or, among young women, to have experienced pregnancy.⁷⁸

As the English author G.K. Chesterton famously observed, we should "regard a system that produces many divorces as we do a system that drives men to drown or shoot themselves."⁷⁹ A social system that drives or easily facilitates parents to divorce each other and handicap their children is extremely dysfunctional. Society, therefore, has a profound interest in strengthening the family structure and maintaining stability in order to prevent a host of social problems that can so cruelly afflict the younger rising generation of its citizens and so severely burden the rest of society. "[T]he laws of society ... [are] designed to secure its peace and prosperity, and the morals of its people ... are not interfered with."⁸⁰ These societal interests give the government motivation to regulate the form and structure of marriage and the family.

IV. POTENTIAL EFFECTS OF POLITICAL AND SOCIAL STRUCTURE ON FAMILY RELATIONS AND STRUCTURE

There is a reciprocal relationship between families and society (including law and government); they influence one another. This becomes obvious by examining the disastrous effects of war to see how government policies can immediately and profoundly affect families.⁸¹ Unwise economic policies similarly affect family welfare. For example, policies that devalue or discourage social contributions made by mothers and housewives can deprive a generation of the quality of parenting that prepares them most effectively for individual security, productivity, and responsible citizenship.⁸² Additionally, unwise fertility policies can create demographic implosion in just one generation. For example, the United Nations (UN) Population Division recently issued a report predicting that "virtually all the countries of Europe are expected to decrease in population size over the next fifty years."⁸³ It notes that

78. *Id.* (family time and conflict with parents accounts for some of the difference for some of the factors, but those are also associated with family structure).

79. Hafen, *Bridle Your Passions*, *supra* note 1, at *5.

80. *Davis v. Beason*, 133 U.S. 333, 342 (1890). "Bigamy and polygamy . . . tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society, and receive more general or more deserved punishment." *Id.* at 341.

81. See generally Petar Sarcevic, *War and Disintegration of the Family*, 1 J. L. & FAM. STUD. 109 (1999).

82. See generally Anders Agell, *Should and Can Family Law Influence Social Behaviour?* in THE CHANGING FAMILY 125, 131-33 (John Eekelaar & Thandabantu Nhlapo eds., 1998).

83. Catholic Family and Human Rights Institute, *Replacement Migration: Is it a Solution to Declining and Aging Populations?* (visited Mar. 21, 2000) <<http://www.c-fam@c->

sixty-one nations now fall below fertility replacement and this number is expected to increase by another nineteen nations in the coming years.⁸⁴ The UN study predicts that, over the next half century, the median age of the Japanese population will increase from forty-one years to forty-nine years, and the percentage of Japanese elderly (over sixty-five) is expected to climb from seventeen percent to thirty-two percent.⁸⁵ The UN also predicts that, in Italy, the median age is expected to climb from forty-one years to fifty-three years, and the percentage of the population over the age of sixty-five will grow from eighteen percent to thirty-five percent.⁸⁶ Thus, it comes as no surprise to learn that the “President of the European Commission[] has warned that by 2025 nearly a third of Europeans will be collecting pensions as a result of falling fertility rates and . . . aging European populations.”⁸⁷

The First Lady of the United States, Hillary Clinton, writes “[i]t takes a village to raise a child.”⁸⁸ The presence or absence of interest or commitment of the “village” (i.e., agencies of the government and community) in the welfare of the family profoundly affects the quality and success of family relations and family life. For example, the degree to which a government protects the privacy of the intact and functional family influences family welfare. By recognizing and respecting parental authority, the law may erect a barrier against the state’s power to shape children and standardize child rearing.⁸⁹ Similarly, by protecting children against child abuse and serious neglect, the state underscores the community interest in, and validates the individual’s social worth, even as a child, and fosters a sense of belonging.⁹⁰

Totalitarian governments tend to isolate families and destroy natural communities that might foster competing loyalties.⁹¹ One of the most terrible manifestations of such regimes is the separation of parent and child. Centrifugal forces teach children to distrust and betray their natural protectors,

fam.org/index_1.html>.

84. *See id.*

85. *Id.*

86. *Id.*

87. *See id.* (visited May 11, 2000).

88. *See* HILLARY RODHAM CLINTON, *IT TAKES A VILLAGE AND OTHER LESSONS CHILDREN TEACH* (New York, Simon & Schuster 1996).

89. *See* Anne C. Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787, 1857-58 (1995).

In the liberal view, the recognition of parental rights prevents the state from enforcing its own conception of the good family life . . . By ensuring that the primary constitutive force in the child’s life is not the state, parental authority diminishes the threat of governmental control over the substantive values and beliefs that shape individual identity.

Id. at 1858 (citations omitted).

90. *See generally* DAVID J. PELZER, *A CHILD CALLED ‘IT’ passim* (1995).

91. *See generally* Stanley Diamond, *The Rule of Law Versus the Order of Custom*, 38 SOC. RES. 42, 45 (1971).

parents, and siblings.⁹² The distrust bred can destroy a generation. In fact, hostility to the family may be the inevitable tendency of all government. Sociologist Jack Douglas notes, “bureaucracies may begin with fervent expressions of intentions to aid the family, but regardless of good intentions, they must wage war on the family in order to build their own power.”⁹³

Case studies of the dynamics of repression can be taken from many accounts written during and after the fall of totalitarian regimes in Central and Eastern Europe. For example, the great Czech writer, Vaclav Benda, wrote insightfully about the corrosive effect of totalitarian government upon citizenship and family openness in his famous essay, *Catholicism and Politics*, published shortly after the *Charter 77 Declaration*.⁹⁴ He observed that under the communist government in Czechoslovakia “the overwhelming majority [of citizens] retreated from civic life into the close circle of family and friends [into] a ghetto, [and made] a voluntary resignation of openness and universal sharing of responsibility.”⁹⁵ Benda described his country and communism since 1968 as “callous, gloomy and all-consuming [with] the spirit of deception and deceit and eternal fickleness [and] mass exodus into private life and utter indifference to . . . official pseudo-politics.”⁹⁶

Inept and oppressive family policies can create tension between family and government, thereby disrupting the natural harmony between the family and democracy.⁹⁷ High taxation imposes economic hardship on families, leaving them with less disposable income to meet the financial needs of family members.⁹⁸ Welfare programs in North America and Western Europe provide substantially richer rewards for unmarried mothers than for mothers married to low income fathers. Such programs provide strong incentive for poor women to give birth out of wedlock and become single parents (two sources of enormous social problems), which encourages long-term welfare dependency.⁹⁹ Government policies designed to encourage women to enter the labor market or to slow population growth often penalize childbearing

92. See generally WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH* 252-56 (1960).

93. Jack D. Douglas, *The Ultimate Costs of the Retreat from Marriage and Family*, in *THE RETREAT FROM MARRIAGE* 55, 57 (Bryce Christensen ed. 1991).

94. See Vaclav Benda, *Catholicism and Politics*, in *THE POWER OF THE POWERLESS* 110-24 (John Keane ed., 1985).

95. *Id.* at 116.

96. *Id.* at 116-17.

97. See David Brown, *The Role of the Family in Democracy: Obstacle of Necessity* 5 (Centre for Cultural Renewal 1997) <<http://www.centreforrenewal.ca/disc6.html>>.

98. See David A. Hartman, *The Welfare State: The Destruction of the Traditional American Family*, Mar. 22, 1989, in *VITAL SPEECHES*, Vol. 63, No. 17, June 1997, at 529, available in 1997 WL 10024456, at *5-7.

99. See *id.* at *4; see also Allan Carlson, *The Family: Where Do We Go From Here?* SOCIETY, Vol. 32, No. 5, at 63, July 17, 1995, available in 1995 WL 12535265, at *6; see generally Larry Cata Backer, *Medieval Poor Law in Twentieth Century America: Looking Back Towards A General Theory of Modern American Poor Relief*, 44 CASE W. RES. L. REV. 871, 901-07 (1995).

and child-rearing.¹⁰⁰ The willingness of couples to have children—to assume the personal and financial responsibilities of parenting—appears to be affected by the government's structure, as indicated by the world-leading rates of abortion in Eastern Europe during the era of communist repression and poverty.¹⁰¹

The American Civil War, World War I, World War II, and Stalin's repression in the U.S.S.R. also brought dramatic changes to families and family values, increasing the number of incomplete families and unmarried mothers.¹⁰² Similar social devastation has occurred in the Balkans where civil war has flared off and on for the past decade.¹⁰³ As one academic commentator has written:

Societies have a need to survive. So do individuals in family groups. The two levels of need not only may not coincide, they may be in direct opposition to each other. The need to protect the total society by means of war results in the death of individual family members. Tax policies, and the allocation of societal resources for defense or for the benefit of one particular class in a total society, may deprive many families of the possibility of providing adequate physical care, intellectual growth, and emotional security for their members.

It is for this reason that the universality of the family has been explained in terms of its role in fulfilling human rather than societal needs. People do not ordinarily live their lives to fulfill abstract societal goals. If families do fulfill these goals, they do so coincidentally and incidentally. The process of fulfilling the needs of family members, in fact, can be potentially destructive to the total society.¹⁰⁴

Indeed, it has been said that:

There are very few aspects of state legislation that do not have direct or indirect impact upon the family . . . and very few practices of state officials that do not, again directly or indirectly, have some kind of family dimension. At a more theoretical level, political philosophies have constantly been informed by, and make reference to, current understandings of the family and family relations, from Tudor theories of patriarchy (Schochet, 1975) to the *Communist Manifesto*. To speak of the politicisation of the family is therefore, to this extent, misleading; it only has mean-

100. See Jean L. Pyle, *Women, the Family, and Economic Restructuring: The Singapore Model? (A Family and Economic Transformation in Developing Countries: Impacts and Strategies)*, 55 Rev. Soc. Econ. 215, *1-6 (1997) (1997 WL 17333522); Anders Agell, *Should and Can Family Law Influence Social Behaviour*, in THE CHANGING FAMILY 125-38, (John Eekelaar & Thandabantu Nhlapo eds., 1998); see also STEVEN MOSHER, *BROKEN EARTH: THE RURAL CHINESE* (Free Press 1983).

101. See generally MARY ANN GLENDON, *ABORTION AND DIVORCE IN WESTERN LAW* 23-24 (1987); Stanley K. Henshaw et al., *The Incidence of Abortion Worldwide*, 25 INT'L FAM. PLAN. PERSP. 30 (1999).

102. See WORLDWIDE STATE OF THE FAMILY, *supra* note 13, at 1; see Sarcevic, *supra* note 81.

103. See generally Sarcevic, *supra* note 81.

104. BETTY YORBURG, *FAMILIES AND SOCIETIES, SURVIVAL OR EXTINCTION* 134 (1983).

ing with reference to a possibly greater degree of openness and explicitness about such matters than has been customarily or recently expected.¹⁰⁵

Alexis de Tocqueville wrote of the “influence of democracy on [the family],” and opined that the equality of democracy had mellowed and improved relations between generations.¹⁰⁶ He added,

I think that, in proportion as manners and laws become more democratic, the relation of father and son becomes more intimate and more affectionate; rules and authority are less talked of; confidence and tenderness are oftentimes increased, and it would seem that the natural bond is drawn closer in proportion as the social bond is loosened.¹⁰⁷

He further opined that “[d]emocracy also binds brothers to each other . . . Under democratic laws all the children are perfectly equal, and consequently independent: nothing brings them forcibly together, but nothing keeps them apart . . .”¹⁰⁸ In sum, he believed that “[d]emocracy loosens social ties, but it draws the ties of nature more tight; it brings kindred more closely together, whilst it places the various members of the community more widely apart.”¹⁰⁹

“In an important sense, the state is a key agency in telling or reminding us what the family ‘is.’”¹¹⁰ Thus, there is a symbiotic relationship between family and state.

105. D.H.J. MORGAN, *THE FAMILY, POLITICS AND SOCIAL THEORY* 58 (1985).

106. 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 229 (New York, Schocken 1961) (1835).

107. *Id.* at 233.

108. *Id.* at 234.

109. *Id.* at 236.

110. D.H.J. MORGAN, *supra* note 105, at 73. Ideas about the relationship between family and society span the political spectrum. “Marxist theory [was] always . . . critical of the hierarchical structure of capitalist family life.” Inga Markovits, *Family Traits*, 88 MICH. L. REV. 1734, 1743 (1990) (book review), *citing* Frederick Engels, *The Origin of the Family, Private Property and the States*, in *THE MARX-ENGELS READER* 744 (Robert C. Tucker ed., 2d ed. 1978). Engels compared wives to repressed proletariats and husbands to oppressive capitalists. Marxist theory urged as “the first premise for the emancipation of women . . . the reintroduction of the entire female sex into public industry.” *Id.* Marxists preached of liberation from “the economic foundations of monogamy,” and introduced in Soviet law unilateral divorce, equated “de facto” marriages and formal marriages, and abolished illegitimacy. *Id.* at 1744-45 (citations omitted). Early Soviet family law theorists believed man to be the product of social circumstance, viewed marital breakup as a matter of social not personal failure, emphasized minimal morality, and the importance of personal gratification. *See id.* at 1746. Many of these same assumptions underlie contemporary western capitalist and socialist family law in North America and Western Europe. “[T]he transformation of modern capitalist family law corresponds—feature for feature—to the family law ideals of early Soviet socialism.” *Id.* at 1743.

V. CONCLUSION

There are important reciprocal networks of relationships between family, society, and the state that exert important influences on one another. The government needs to foster and encourage marriage-based families, as opposed to “alternative,” non-marital cohabitant, or same-sex families. Nuclear families, too, deserve special governmental protections similar to the extended family but to a lesser degree. Further, intergenerational families that raise children and care for their elders need to be recognized and protected by government. Reciprocally, families must try to foster accountability, openness, and good government. These premises are essential to promoting political structures and the values associated with freedom and responsibility, improving the social conditions and values associated with opportunity and order, and for enhancing individual liberty and human development.

Bruce C. Hafen stated it well when he wrote, “I urge a renewed legal model that unapologetically defines the family, marriage, and child-parent ties to express the community’s interest in family stability, and especially its interest in children.”¹¹¹ He further noted, “[f]amily law traditionally acted as a bridle on human passions, stating expectations, steering us toward long term relationships of loving commitment. Without that bridle, both our passions and our principles run wild, harming both individuals and society.”¹¹²

The challenge in a liberal democracy is not to resist the changing environment, but to resist the forces that tend to pull the family apart and to promote policies that assist families to instill their own important values from generation to generation.¹¹³ Our laws can foster either intergenerational family commitment or centrifugal individualism; the former builds family ties, the latter destroys them. As de Tocqueville wrote:

What is called family pride is often founded upon an illusion of self-love. A man wished to perpetuate and immortalize himself, as it were, in his great-grandchildren. Where family pride ceases to act, individual selfishness comes into play. *When the idea of family becomes vague, indeterminate, and uncertain, a man thinks of his present convenience; he provides for the establishment of his next succeeding generation and no more.* Either a man gives up the idea of perpetuating his family, or at any rate he seeks to accomplish it by other means than by a landed estate.¹¹⁴

It is impossible for individuals to preserve and foster family bonds without some sacrifice of personal desire, and without learning to control the urge for immediate self-gratification. Families are demanding investments, requiring that we replace our selfishness with loving investment in the well-

111. Hafen, *Bridle Your Passions*, *supra* note 1, at *2-3.

112. *Id.* at *3-4.

113. See generally WORLDWIDE STATE OF THE FAMILY, *supra* note 13, at 1-2.

114. 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 49-50 (Phillips Bradley ed., Alfred Knopf 1972) (1835) (emphasis added).

being of others. Family qualities, therefore, correlate with strength and promise in society, for it is the ability to postpone or sacrifice immediate gratification for the good of the community that is the primary characteristic of stable, productive free societies.

We must beware of the potential neo-imperialism of some international agencies and organizations. Recently, individuals and organizations that favor radical deconstruction or reformulation of the family are yet unable to achieve their aims through local domestic law-making processes. They have turned with increasing frequency to international bodies to try to externally impose comprehensive political reforms through international law agencies.¹¹⁵ Thus, recent United Nations conferences in Beijing, Cairo, Istanbul, Nairobi, Geneva, and New York City have proposed a host of radical deconstructionist proposals, such as abortion-on-demand, gay, lesbian, bisexual, and transsexual “family” relations, as well as other extremely dangerous and anti-family proposals.¹¹⁶ With the prestige of international agencies and international law, sometimes thoughtless proposals are embraced that, if taken seriously, could have disastrous consequences for families around the world.¹¹⁷

Grave threats to the family today come not just from domestic and international efforts to restructure and dismantle the family. Equally profound threats come from within society, through the simple neglect and breakdown of the family. Spouses who abuse and demean one another and parents who abuse or neglect their children undermine the institution of family. In pursuit of the golden illusion of career fulfillment and prosperity, some mothers in affluent countries at times practically abandon their children and their maternal responsibilities to them. Likewise, many fathers essentially become absentee parents as they single-mindedly pursue their material success, which deprives their spouse and children of the most important possession—a meaningful family life. Their children grow up as orphans of affluence—orphans of the pursuit of materialism. Sadly, these parents sell their birthright and their children’s legacy for the proverbial “mess of pottage.”¹¹⁸ Their self-centered behavior weakens the fabric of society.

115. See Richard G. Wilkins, *International Law and the Family*, Remarks at the International Conference, *The Family: At the Center of Human Development*, Manila, Philippines (Mar. 27, 1999) (transcript in author’s possession); see also Kathryn O. Balmforth, *Human Rights and the Family*, Remarks at the World Family Policy Forum (Jan. 15, 1999) (transcript in author’s possession).

116. See Kathryn O. Balmforth, *Hijacking Human Rights*, Remarks at the World Family Policy Center (1999) (transcript in author’s possession); see also Richard G. Wilkins, *Preserving Fundamental Values in a Changing World* (transcript in author’s possession).

117. See generally *NGO Family Voice*, (last visited Oct. 20, 2000) <<http://www.ngofamilyvoice.org>>.

118. “Mess of pottage” is an “allusion to Esau’s selling of his birthright to his own brother Jacob for a mess of pottage (Gen 25:29-34). It is defined as “something valueless or trivial or of inferior value.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1418 (1971).

Fathers must selflessly return to their role as providers and protectors of their families, and mothers must return lovingly to nurture their children. Exigencies will arise and exceptions will exist, but for the sake of our generations, we must turn the hearts of parents toward their children and the hearts of children toward their parents; this transformation can only occur when family relationships are valued above the personal goals of fame and fortune.

In many countries, government policies appear to take marriage and families for granted. Moreover, societies that fail to support and protect families make similar mistakes as countries that, for example, take the environment or natural resources for granted and fail to protect them, or take education and literacy for granted and fail to encourage and provide for continued learning. The disintegration of family, environment, and education occurs rapidly but recovery from such losses does not.

In nations that neglect and continue to undervalue marriage and family, tragedies are merely a generation away. Families matter. We must make them a priority in our countries, our laws, and our own homes. As citizens and as governmental officers, we must do all that we can to promote laws and policies that are designed to preserve, foster, and strengthen marriage and to protect the marriage-based family as the basic unit of society.

