

BREAKING UP IS HARD TO DO: COMMENTS ON MARTHA FINEMAN'S CRACKING THE FOUNDATIONAL MYTHS: INDEPENDENCE, AUTONOMY, AND SELF-SUFFICIENCY

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Nothing evokes emotion like the term “family.” Dan Quayle raised the fraught term to new heights (or lows, depending on where you stand) during the 1992 Presidential election.¹ His tirade against television sitcom character Murphy Brown’s single motherhood reflected one moment in a larger campaign to make “family values” the new litmus test for political viability.² Like so many sound bites, this one encoded much as it worked its way through the cultural landscape. Clearly, and most explicitly, Quayle’s attack on single mothers reserved special venom for those “feminist” single mothers by choice (Murphy) and “dependent” poor, black, teenage, single mothers.³ Thus, the term “family values” vilified those who challenged—either directly or indirectly—the dominance and desirability of the father-headed, nuclear family.

Not coincidentally, the “family values” debate emerged in the context of growing discussion and examination of the multiplicity of family forms. In an era when both the feminist and the gay movements have challenged the centrality of the heterosexual

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1. See John E. Yang, *Clinton Finds New Voice of Emotion; Quayle Decries Poverty of Values; Vice President Urges Firm Hand in Cities*, WASH. POST, May 20, 1992, at A1 (arguing for the reinforcement of family values, “hard work, integrity, [and] personal responsibility”).

2. See *id.* at A1 (quoting Dan Quayle, “It doesn’t help matters when prime-time TV has Murphy Brown—a character who supposedly epitomizes today’s intelligent, highly paid, professional woman—mocking the importance of fathers by bearing a child alone and calling it just another lifestyle choice”).

3. See *id.* at A1 (stressing the importance of male role models in the home and declaring marriage as “the best anti-poverty program”). In a meeting with a dozen tenants—all of whom were black women—at the Hunter’s View housing development in southeastern San Francisco, Quayle voiced his concern of lack of males at the meeting. *Id.*

nuclear family and its desirability⁴ (by the ongoing revelations of child abuse, incest, wife battering, etc., as well as through the exposure of more mundane forms of inequity and domination), the phrase “family values” emerged as the catch-all term that attempted to set up a great and impenetrable dividing line between “us” and “them.” “Family values,” however, was not only restricted to its obvious anti-feminist manifestations; it also became a code word for a much more broad-based attack on family diversity and individual self-expression.⁵ The deeming of gays and lesbians as “anti-family” is nothing new in the history of homophobia.⁶ Indeed, both religious and non-religious justifications for discrimination have often been premised on the assumption that lesbian and gay “lifestyles” threaten the sanctity of the nuclear family by proposing and practicing sexual conduct not centered on reproduction.⁷ In addition, heterosexual fears of gay “recruitment” (“they want our children”) have always been used to whip up anti-gay hysteria.⁸ Consequently, the Defense of Marriage Act⁹ became the medium through which right-wing “family

4. Compare National Pro-Family Coalition on the White House Conference on Families, in NATIONAL ORGANIZATIONS RESOURCE BOOK (1981) (proposing that a family consists solely of “persons who are related by blood, [heterosexual] marriage or adoption”), with Rebecca Melton, Note, *Legal Rights of Unmarried Heterosexual and Homosexual Couples and Evolving Definitions of “Family”*, 29 J. FAM. L. 497, 499-500 (1991) (exploring changing social patterns that alter the traditional definition of “family”).

5. See generally Gary B. Melton, *The Significance of Law in Everyday Lives of Children and Families*, 22 GA. L. REV. 851, 884-86 (1988) (discussing family values and diverse family structures).

6. See Craig W. Christensen, *If Not Marriage? On Securing Gay and Lesbian Family Values by a “Simulacrum of Marriage”*, 66 FORDHAM L. REV. 1699, 1719 (discussing how social conservatives perceive gay and lesbian family values as antithetical to the family institution).

7. See *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986) (Burger, C.J., concurring) (commenting on the “ancient roots” of proscriptions against sodomy).

Condemnation of [homosexual conduct] is firmly rooted in Judeo-Christian moral and ethical standards Blackstone described “the infamous crime against nature” as an offense of “deeper malignity” than rape, a heinous act “the very mention of which is a disgrace to human nature,” and “a crime not fit to be named” To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching.

Id. at 196-97. But see *id.* at 199-211 (Blackmun, J., dissenting) (“If [privacy] means anything, it means that, before Georgia can prosecute its citizens for making choices about the most intimate aspects of their lives, it must do more than assert that the choice they have made is an ‘abominable crime not fit to be named among Christians.’” (quoting *Herring v. State*, 46 S.E. 876, 882 (Ga. 1904))).

8. See Recent Development, *H. Utah Senate Bill 1003 Prohibiting Specified School Clubs*, 23 J. CONTEMP. L. 268, 273 (1997) (describing the fears of Utah legislators that the formation of gay clubs would promote and recruit impressionable and “wavering children”).

9. See Defense of Marriage Act of 1996, Pub. L. No. 104-199, § 2, 110 Stat. 2419 (codified at 28 U.S.C. § 1738C) (clarifying that the Full Faith and Credit Clause of the Constitution does not require that same-sex marriages be recognized by other states and defining marriage for purposes of federal law as the union of one man and one woman).

values” were expressed.¹⁰

No arena of social policy deserves more attention from the astute mind of feminist legal theorist Martha Albertson Fineman than our increasingly vexed and anti-feminist policies around issues of family and dependent care. Our adamant refusal to provide even a modicum of social support to care for the dependent and their caretakers does little to strengthen the relationship between the state and family. The abysmal state of American day care illustrates governmental neglect of the welfare of children.¹¹ Government has instead relegated the care of children to unsupported (largely female) individuals who are expected to provide this care within the confines of a privatized family.¹²

The emergence of the “family values” debate iterates the relentless theme of American individualism, an individualism in which privileged (largely white) males get the freedom to be individuals (e.g., those putative free agents unfettered by dependent care) by relying on the unremunerated, unacknowledged, and devalued labor of “individuals” (largely women) who are expected to provide this work and to receive the “unintended consequences” (limited job mobility, lower wages, social diminution, poverty) with equanimity. Those on the left (including feminists), however, have only timidly countered the family values discourse. Those on the right have chimed in to concur with Quayle, bemoaning the sorry state of family life in the United States while attempting to put a kinder, gentler face on patriarchal familism.¹³ Others have toed a more discrete liberal line, arguing for “family diversity” and taking issue with the tenor of the attacks and the definitional frameworks (e.g., how we define “good” families), rather than the deeper ideological structure of the argument.¹⁴ I remember a wonderful conversation with a feminist

10. See Anna Dubrovsky, *Same-Sex Marriage: A Struggle for Equal Rights*, PITTSBURGH POST-GAZETTE, Sept. 10, 1996, at A1 (describing the debates sponsored by Pennsylvania’s State Representative C. Allan Egolf over the Defense of Marriage Act and declaring that same-sex marriages are “repugnant to traditional family values”).

11. See *Brief Analysis No. 248: Day Care: Children vs. Government* (visited Oct. 6, 1999) <<http://www.public-policy.org/~ncpa/ba/ba248.html>> (indicating that state and local regulation of daycare facilities has reduced the supply of family daycare homes).

12. See Peter Pitegoff & Lauren Breen, *Child Care Policy and the Welfare Reform Act*, 6-WTR J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 113, 115 (1997) (finding that the elimination of AFDC entitlement for poor families will result in the loss of federal entitlement to child care support for families on welfare, thus creating a gap which states will either fill or leave many low-income families without adequate child support).

13. See Barbara Dafoe Whitehead, *Dan Quayle Was Right*, THE ATLANTIC, Apr. 1, 1993, at 47 (arguing that diverse family forms harm children and undermine society).

14. See Shoshana Bricklin, *Legislative Approaches to Support Family Diversity*, 7 TEMP. POL. & CIV. RTS. L. REV. 379, 380 (1998) (discussing various legislative campaigns in support of family diversity rights).

theorist and cultural critic—herself a central figure in the 1960’s radical feminism movement—in which we both expressed our desires to articulate a more “in your face” position on “family values.” She argued, and I concurred, that feminists should proudly claim our contributions to the destruction of the patriarchal nuclear family instead of meekly arguing the “diverse” family line.

So it was with great anticipation that I approached Martha Albertson Fineman’s, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*,¹⁵ primed as I was by both an admiration for its author and a desire to radically rethink family/social life. Fineman’s work has always been compelling both for the detail it offers into the variegated relations between state, civil society, gender, and family and for the freshness with which it offers challenges to those very relations. In her ground-breaking and controversial book, *The Neutered Mother*,¹⁶ Fineman provocatively argued for the disassociation of parenting with partnering and pointed out the deleterious effects of a conflation of these two.¹⁷ In this book, she claims that what should be socially valued and socially supported are relations of inevitable and real dependency (that between parent and child, or the ill and their caretakers)¹⁸ and that our social supports should provide real and substantive resources for the necessary and inevitable act of caretaking, not for the supposed union of two nondependent adults (marriage).¹⁹ As a gay activist and scholar, I am drawn to Fineman’s critique of the “sexual family” and her argument that the conflation of parenting and partnering lies at the heart of mutually determining inequities within gendered institutions such as the family and the state.²⁰

In *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, Fineman continues with the line of thought developed in *The Neutered Mother*, but perhaps for a different audience. While *The Neutered Mother* spoke eloquently to feminist social and legal theorists, this piece is of a different nature, less emboldened to make large and

15. Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER, SOC. POL’Y & L. 13 (2000).

16. MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995).

17. *See id.* at 227-31 (describing a new legal category of family centered on dependency that would be protected and preferred by the state).

18. *See id.* at 227-28 (calling the notion of the natural family a failure for failing to balance “the demands for equality and the contemporary manifestations of . . . dependency”).

19. *See id.* at 228-30 (arguing for the dissolution of marriage as a legal category and the equalization of all sexual relationships).

20. *See id.* at 145-66 (elaborating on society’s assumption of a sexual family, which stands as an institution of “horizontal” intimacy based on romantic heterosexual affiliations).