

## **“Critical Familism, Civil Society, and the Law”**

Don Browning (University of Chicago)

*The following essay is a background statement for an oral exchange between Cornell University legal scholar Professor Martha Fineman and me. This exchange was the concluding panel of the Democracy and Families conference held at Hofstra Law School, March 14-15, 2003. The new proposals for revising family law that recently have come from the American Law Institute (ALI) are the context of these remarks. These proposals would provide new default laws covering co-habitation and make social parenthood, rather than marriage, the center of family law. Some people, however, believe that this would effectively de-legalize marriage. Professor Fineman’s position is close to this but also somewhat different. She proposes making the mother-child relation, rather than the marital relation, the center of family law. I was asked in the article below to define “critical familism,” the tag my colleagues and I used to identify the constructive position that we developed in From Culture Wars to Common Ground: Religion and the American Family Debate (1997, 2000), the summary book for the first phase of the Religion, Culture, and Family Project. It is also the central idea of the book that Gloria Rodriguez and I wrote for the American Assembly titled Reweaving the Social Tapestry: Toward a Social Philosophy and Policy of Families (2001) and my recent Marriage and Modernization: How Globalization Threatens Marriage and What to Do about It (2003). Since my charge by the conference organizers was to explain the concept of critical familism, I do not directly address either ALI or Fineman, although critical familism does indeed have implications for these emerging legal proposals that I mention toward the end of my essay.*

Critical familism is a concept that my colleagues and I developed to summarize our thinking during the first phase of the Religion, Culture, and Family Project – a research project located at the University of Chicago that deals with the possible relevance of the Western religious traditions to contemporary family issues. It is a summary of what we thought were the most abiding themes of that tradition – both Judaism and Christianity – as well as the best insights of contemporary human sciences such as sociology, psychology, and economics. It is a normative theory of family and marriage primarily intended to provide culture and civil society their ideals and practical strategies for family formation and marriage. Critical familism only indirectly has implications for family law. On the other hand, family law should do nothing to undermine this normative model and, in fact, do some things to support it. Critical familism places at the center of religiocultural aspirations and supports the equal-regard mother-father team with equal privileges and responsibilities in both the public worlds of politics and

employment and the more private realms of home, child rearing, and intergenerational care.<sup>1</sup>

Critical familism is “critical” in that it attempts to expose, critique, and reform distortions of social, economic, and political power which function to block or undermine the free formation and support of the equal-regard mother-father partnership. It believes that the principles supporting such critique can be found within both the Jewish and Christian traditions and gleaned from insights drawn from contemporary moral philosophy. Even though critical familism fully acknowledges that marriage is not always chosen by everyone for the purposes of procreation and child care, as an institution with certain cultural, social, and legal entitlements and responsibilities, marriage should be defined primarily with its child rearing tasks envisioned as central.

Critical familism has a variety of other names in the current literature. Sociologist Brad Wilcox in a recent review of the family strategies of the mainline churches refers to it as “progressive familism” in contrast to “traditional familism” of the 1950s or “expressive liberationist” approaches.<sup>2</sup> Sociologist William Doherty, partially influenced by critical familism, has developed a perspective on family issues that he calls a “critical pro-marriage” point of view with implications for cultural, social, and legal reform.<sup>3</sup>

Critical familism is not primarily a legal theory, although it has implications for the law. It is basically a cultural strategy – indeed a religiocultural strategy – to be carried principally by the institutions of civil society. It envisions the task of reconstructing family and marriage along its theoretical lines as a complex cultural work that requires a delicate set of collaborations between civil society, government, market, and the specialized field of family law.<sup>4</sup>

### **Religious Thinking and Public Discourse**

Critical familism believes that family theory informed by religious traditions has a right to contribute to public policy. It holds this because of the often overlooked symmetry of religious and so-called secular thought. Let me explain. Critical familism holds that all moral, political, and legal thinking – as expressions of practical wisdom (phronesis) – are complex interweavings of several dimensions of thought. These include deep metaphors conveying fundamental views of reality, general principles of moral obligation (e.g., utilitarian, ethical egoism, Kantian, the golden rule, neighbor love), assumed theories of premoral goods that satisfy central human needs, theories of natural and social-systemic patterns and constraints, and finally assumptions about preferred concrete practices, rules, and social roles.<sup>5</sup> These five dimensions of practical wisdom can be uncovered through a process of empirical reconstruction of concrete instances of actual practical thinking in ways similar to how Jürgen Habermas uncovers his three validity claims.<sup>6</sup> This is to say that a careful analysis of concrete instances

of practical reason invariably demonstrates assumptions and judgments at these different levels.

Critical familism holds that the deep metaphors of all practical thinking have the status of faith-like assumptions; since such metaphors (e.g., organic, mechanistic, monistic, harmonistic, dualistic, or theistic) can be uncovered in all instances of practical thinking, the distinction between explicitly religious practical thinking and so-called secular moral, political, or legal practical thought is not categorical. Both allegedly secular and religious forms of practical rationality float on a veritable ocean of assumed metaphors about the basic structures of life, their directions, and their trustworthiness or lack of it.<sup>7</sup> This rough commensurability of so-called religious and secular forms of practical reason means that positions on family theory informed by explicitly religious sources have the right to enter into deliberations aimed to shape public policy. Of course, in contrast to confessional criteria that have their authority within their respective traditions, for explicitly religiously informed family theories to gain a hearing in policy debates, they must advance their arguments in publicly accessible ways.

This can happen when religiously informed perspectives present themselves as mixed discourses in which faith affirmations expressed in metaphor and narrative are interwoven with moral arguments about the right and the good that can be expressed in publicly recognizable forms of philosophy and social theory. Most axial religions contain clear examples of such articulate blends of religious narrative and metaphor with philosophically identifiable forms of argument about the nature of the moral and premoral goods relevant to public policy. Roman Catholicism is informed by Aristotelianism and liberal Protestantism has been variously informed by Kantianism, American pragmatism, and existentialism. Furthermore, historical research reveals that the family theories of early Christianity contained insights from Aristotelian and Stoic philosophy. Mature forms of axial religions are almost always mixed discourses blending explicitly religious metaphors and narrative with moral-philosophical arguments that sometimes merge into political and economic judgments as well. The problem of linking the deep metaphors of practical thought to its more articulate moral and premoral judgments is a challenge not only for religious thinking; it is a challenge for so-called secular practical thought as well.

Critical familism with its vision of the equal-regard mother-father partnership is grounded on a complex, mixed religio-philosophical discourse of this kind. At its most abstract formulation, the idea of equal regard is what William Frankena called a "mixed- deontological" concept.<sup>8</sup> It defines the marital contract as a complex social covenant. The covenant between husband and wife is to treat each other as ends and never as objects or means of satisfaction alone. Used as a mixed-deontological concept, it also contains a strong teleological subdimension that entails the obligation to actively work for the good of one's marital partner in all spheres of life, both private and public. The equal-regard covenant or status is a theory of mutuality and is thoroughly reversible; it applies

with equal force to both husband and wife. But because of the asymmetrical nature of male and female investments on certain matters such as procreation and child care, the equal-regard covenant does not necessarily imply moment-by-moment identical treatment, although it does require equality over the marital life cycle.

The equal-regard covenant is primarily a religiocultural ideal promoted and implemented by the institutions of civil society. It would be a guide to socialization in family, schools, and religious institutions in their various forms of marriage education, preparation, and support. Government and market should do nothing to undermine the equal-regard covenant and do what they reasonably can to support it. Law in its various forms does not have the primary responsibility for promoting it but should be seen as a source of friendly assistance.

### **Sources of Critical Familism and the Equal-Regard Covenant**

Even though at its core, the equal-regard covenant is a mixed deontological concept, it also has many sources and several levels of additional meaning adhering to it. It takes seriously what Hans-Georg Gadamer would call the “classics” of Western religious and philosophical traditions on marriage and family. For instance, it honors the Ur-myth of Genesis I that gives the dignity of the *imago Dei* (Gen. 1: 27) to both male and female and that also grants equal responsibility to both in procreation and “dominion” (generally interpreted as economic responsibility) (Gen. 1:28).<sup>9</sup> In addition to these classic texts of Judaism, Christianity, and Islam, the equal-regard doctrine of critical familism takes seriously the Aristotelian theory of friendship between husband and wife as the sharing of utility, pleasure, and virtue<sup>10</sup> — especially the Thomistic enrichment of these concepts with Aquinas’s attribution of the *imago Dei* to the wife as well as the husband.<sup>11</sup> This was a significant yet still incomplete step toward balancing Aristotle’s theory of proportional justice between husband and wife.<sup>12</sup> Critical familism also values medieval canon law and Thomistic accomplishments that made uncoerced consent on the part of both husband and wife as central to the definition of marriage.<sup>13</sup>

Thomas Aquinas provides critical familism with some additional insights. Aquinas could agree with those contemporary feminists who hold that the primordial family is the mother-infant dyad.<sup>14</sup> The question for Aquinas, as it is for contemporary evolutionary psychologists, was this: *What are the conditions which led to the momentarily important cultural accomplishment of human males joining the mother-infant dyad and contributing to the provision and care for their offspring and consorts?* His answer (also parallel to that given by contemporary evolutionary psychology, but of course without its theory of evolution) contained several elements. The long period of human infant dependency, the father’s recognition and certainty that the child was his (what

evolutionary theorists call “paternal recognition” and “paternal certainty”), sexual exchange, and mutual assistance between father and mother gradually brought the human male to assist the mother-infant dyad.<sup>15</sup> These are the naturalistic foundations of matrimony which religion and culture sanction and stabilize but do not directly create.

Both Aquinas and much of contemporary evolutionary psychology assume that this was an enormous social and cultural achievement that distinguishes humans from almost all other creatures at the mammalian level. My research suggests that other medieval scholars from different faith traditions such as the Jewish Nachmanides and the Islamic Al-Ghazali also recognized something like this naturalistic archeology of the marital institution.<sup>16</sup> Marriage as sacrament for Aquinas and marriage as a one-flesh covenant for Nachmanides and Al-Ghazali gave this male connection with the mother-infant dyad the additional stability and reinforcement of sacredness. The sacred character of sacrament and covenant convert the logic of mutual advantage (the logic of costs and benefits) to the logic of mutual obligation and respect; costs and benefits are not ignored but they now become secondary. Marriage law since the Protestant Reformation, in most Western societies, has in some way recognized for most of this period the priority of the logic of sacred obligation in the marital contract and covenant.

Sacred concepts endow with intrinsic value the human arrangements that they bless. These arrangements are seen to have such intrinsic value that they are regarded as protected and sanctioned as termini for entire ranges of important but less valuable instrumental goods. Until recent decades, Western law has developed certain legal and philosophical concepts that honor understandings of marriage as sacrament (Catholicism, Hinduism), covenant (Judaism, Islam, Protestantism), “one flesh” union (Judaism, Catholicism, Hinduism, and Protestantism) without sanctioning any one model of the sacred. The concepts of “status” and more secularized versions of “covenant” are designed to serve this legal and cultural function of supporting and stabilizing this nearly unique human accomplishment of joining the father to the mother-infant dyad.<sup>17</sup>

There are additional sources for the ideal of the equal-regard mother-father marital covenant. Of course, Kant and his followers such as John Rawls and Susan Okin are sources of this concept.<sup>18</sup> But critical familism adds additional twists to the Kantian formulation. First, it holds that it is precisely the task of both husband and wife in the equal-regard covenant to promise publicly before the state, friends, extended family, and, if religious, before relevant communities of faith that they will treat one another as ends and never only as means.<sup>19</sup> Hence, the equal-regard marital covenant is also a covenant with other spheres of society beyond the husband-wife dyad. This makes the equal-regard covenant simultaneously both thoroughly private and thoroughly public. It is public in that its promises start with the conjugal couple but also include a variety of spheres beyond it. It is thoroughly private in that neither state nor market should interfere

except in emergencies and for support; both state and market must avoid disrupting or replacing the tasks of the conjugal couple as parents and lovers.

Second, in contrast to Kant, the mixed deontological logic of the equal-regard covenant implies that this public pledge also entails equally strong efforts to actualize the welfare of the other (the good of the other) as well as any offspring of their union.<sup>20</sup> But, as Kant himself recognized, his categorical imperative had its predecessors in the golden rule and the Jewish and Christian principle of neighbor love and their various analogues in other religions.

Finally, it should be emphasized that the equal-regard marital covenant is about the conjugal couple and not necessarily the neo-local nuclear family isolated from the rest of society. The equal-regard covenant and critical familism are ecological concepts designed to define families as democracies of work and affection interacting with, contributing to, and supported by wider social and natural networks.

### **Critical Familism as Antidote to Modernization**

The ideal of the equal-regard covenant also is informed by various historical and sociological trends. The development of democratic polities and modernization in Western societies gradually has been interpreted to require something like the equal-regard covenant. The processes of early modernization drew men in the nineteenth century into the wage economy and out of dependence on farm and craft-based economies centered in the extended family.<sup>21</sup> In the twentieth century, modernization and industrialization drew women into the wage economy and away from exclusive economic dependence on husbands. These social processes decreased forced economic dependencies and have had a democratizing influence on marriage and family.

*It should be noted, however, that the concept of the equal-regard marital covenant is both compatible with modernization and an antidote to its excesses. Both husband and wife have access to the fruits of the modernizing process. But Habermas argues that the blind processes of modernization also tend to "colonize" the lifeworld of face-to-face social interactions (neighborhoods, families, and marriage) and reduce them to the cost-benefit logics and functional universalism of efficient market productivity.<sup>22</sup> The equal-regard marital covenant places strong limitation on these disruptive excesses of market forms of modernization. Although critical familism supports appropriate welfare measures, it also places strong limitations on bureaucratic forms of modernization that attempt to remedy the disruptions of families with dependency-inducing forms of assistance that actually encourage further family fragmentation. Critical familism follows the thinking of Roman Catholic subsidiarity teaching; neither government nor market should interfere with or attempt to replace the investments of kin altruism located in the mother-father*

team.<sup>23</sup> Both spheres of society – but especially government – should be willing to assist families (and indeed all families with children, be they intact yet poor, single-parent families, or same-sex families) when the need is clear and beyond remedy by other means.

### **Practical Strategies**

Since critical familism is primarily a theory and strategy for the culture-building and socializing tasks of the institutions of civil society, recommendations for concrete strategies should begin there. The first task is to both recover and reconstruct our inherited marriage and family traditions. Neither the general public nor the specialized professions of law, medicine, education or therapy understand these traditions. Most people do not comprehend the complex interweaving of Jewish and Christian teachings, Greek philosophy, Roman and German law, and Enlightenment philosophy that have gone into the formation of Western marriage and family traditions. But the retrieval and reconstruction of these traditions also will require a nuanced dialogue between them and more newly visible traditions in Western societies such as Islam, Hinduism, Buddhism, and Confucianism. Critical familism believes that neither our family culture nor our public policies should be developed in such a way as to marginalize either the classics of the Western religions that have shaped our culture or the traditions once thought to be exotic but now are part of our daily lives and may have insights to contribute.

The task of the future is to both retrieve and reconstruct all these traditions and find fruitful analogies (not necessarily identities) between them for the purposes of rough cultural consensus.<sup>24</sup> Research by both the Emory Center for the Interdisciplinary Study of Religion and the Religious Consultation on Population, Reproductive Health, and Ethics suggests that all these classic religions have significant strands that are roughly analogous to the central ideas of critical familism.<sup>25</sup> The goal of this ecumenical retrieval and reconstruction should not be to dictate either public policy or the details of family law. The purpose instead would be to help develop a loose cultural consensus to which public policy and law would be both sensitive and, indeed, respectful.

Critical familism believes that the accomplishment of the Protestant Reformation that made marriage a public institution but one that could be blessed by religious institutions should be retained. This achievement should be preserved now, however, with broad sensitivity to the variety of religious traditions that make up the American social reality.

The development of a powerful culture of critical familism requires more than historical retrieval and reconstruction. It also necessitates effective systems of socialization. Marriage is a complex intersubjective communicative process that needs advanced levels of “communicative competence.”<sup>26</sup> Furthermore, there

are analogies between the skills, privileges, and responsibilities of driving an automobile and the skills, privileges, and responsibilities of marriage and child rearing. To take the comparison further, there are similar material and economic costs and benefits to health, safety, pleasure, and utility in both marriage and driving a car. Hence, just as we train people to drive well and safely, society through its various educational and religious institutions should teach people to handle the communicative, cultural, and bio-economic realities of marriage. This is primarily a task for the institutions of civil society rather than law or government, although both can, in limited ways, support this cultural task.

The market is not the primary locus for promoting critical familism. But it can make essential contributions. In addition to a broad array of family friendly provisions, business and industry should take rapid steps toward implementing what critical familism has called the 60-hour workweek option for married couples with children, to be divided between husband and wife 30-30 or 40-20. It follows that single-parents should be offered 30-hour workweek options and that work requirements for single parents on welfare should not exceed 30 hours per week.<sup>27</sup> These options should be offered with health benefits, and in the case of welfare, single parents also should receive child care, medical insurance, and transportation supports. Through the instrument of the 60-hour workweek option, critical familism simultaneously supports the modernizing process but also limits its mindless spread into family life.

This proposal reveals the radical edge to critical familism. Limiting the time and energy that parents dedicate to the wage economy is essential for shaping a society in which the privileges and responsibilities of the public and private spheres of life are equally available to all parents. This recommendation makes critical familism truly progressive in contrast to other contemporary options. The conservative political and religious right wants to contain the spread of the market into private life by retaining the 19<sup>th</sup> century solution of the divided spheres that placed men in the public realm and women in the domestic realm. Critical familism differs from liberal feminism that would give women full access to the market but has few proposals to radically contain it other than government and business support for child care. Critical familism differs from gynocentric legal feminists who emphasize the elevated status of mothering before law and government but have few proposals to limit the demands of market rationality.

### **Critical Familism and Family Law**

Finally, critical familism has proposals relevant to the law even though law and government are not its primary points of leverage for marriage and family reform. Critical familism is fully aware that the modernizing process has done much to break down old cultural pressures and economic dependencies that functioned to support stable marriage formation. As a consequence, there has been more divorce, nonmarital births, and alternative family patterns in modernizing

societies. Abundant social-science research has accumulated since the early 1990s indicating that these marriage and family disruptions have not been good for the health and well-being of either children or adults.<sup>28</sup> These negative trends are now showing signs of slowing in the U.S., although not in other parts of the world where they seem to be gaining momentum.<sup>29</sup>

Whether coming or going, these trends are serious enough to require government policies and family law to develop fair and equitable ways for handling family disruption and the strains of divorce, custody, single parenthood, and out-of-wedlock births. But in addressing these issues, law and public policy should not attempt to develop alternative family and marriage cultures that would require heroic redefinitions of inherited cultural patterns. Efforts to delegatize the marital relation and grant legal status only to parenthood, or perhaps mainly to mothers, would be ineffective and culturally destructive from the perspective of critical familism. They also would arrogate far too much cultural and social power over family matters to law and public policy.<sup>30</sup>

There are, however, steps that law and policy should take to encourage and support the equal-regard marriage and family and, at the same time, provide a range of universal supports and remedies for all families with children. Policies that would remove the marriage penalty can be recommended. The increase of child tax exemptions and child credits for all families regardless of their form is also clearly in order. Advances in marriage education have been made that are sufficiently researched to justify making it widely available to teens and young people throughout society.<sup>31</sup> Government support of experiments in marriage education, generally offered by various agencies of civil society, is consistent with centuries-old state interests in marriage as a civil institution. From the perspective of critical familism, state-mandated marriage education at the level of secondary schools, as now exists in Florida, is an acceptable idea,<sup>32</sup> as are experiments in covenant marriage now being conducted in Louisiana, Arizona, and Arkansas.<sup>33</sup> State encouragement of intersector cooperation on marriage education between religion, medicine, welfare agencies, and schools, as is being pursued in Oklahoma, is also worth studying.<sup>34</sup> Children-first legislation that would require the filing of long-term financial plans for children at the time of divorce as proposed by Mary Ann Glendon, Katherine Spaht, and William Galston have considerable merit as well.<sup>35</sup>

Finally, government should pass legislation that encourages business and industry to provide more 20- and 30-hour workweeks with benefits to make more widely attainable the 60-hour workweek for couples with children and the 30-hour week for single parents. Government should take the radical step of curtailing the spread of market demands into the intimate rhythms of families and child care.

As indicated above, the equal-regard covenant recognizes the existence of male-female asymmetries in their respective investments in procreation and child care.

In fact, an ethic of equal regard demands additional protections for vulnerable mothers during childbirth and the early years of child care. Similarly, critical familism recognizes the need for additional cultural and social inducements for fathers and husbands to commit to child and spousal support. Because of these asymmetries, it is reasonable for culture and law to give preferential rights and support to mothers in custody matters. But this should not be done at the expense of exempting fathers from their legal responsibilities to assist in guiding and financially supporting their offspring except in clear instances of incapacity or unfitness. Of course, in some instances, these features of incapacity and unfitness may equally apply to the mother, thereby overriding legal and cultural presumptions in her favor.

But it is best for those of us who do not specialize in the law not to become buried in the legal details. It is safer for me to stay at the level of general frameworks, reasserting my belief that marriage and family matters are primarily works of culture to be addressed in civil society and only secondarily matters that can be promoted or remedied by government policy, the market, or the details of family law.

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<sup>1</sup> The basic sources of critical familism are the summary book of the first phase of the Religion, Culture, and Family Project by Don Browning, Bonnie Miller-McLemore, Pam Couture, Bernie Lyon, Robert Franklin, *From Culture Wars to Common Ground: Religion and the American Family Debate* (Louisville, KY: Westminster John Knox, 1997, 2000). Also see Don Browning and Gloria Rodriguez, *Reweaving the Social Tapestry: Toward a Public Philosophy and Policy for Families* (New York, NY: W.W. Norton, 2001). This book was the background book for the American Assembly's consultation on families held in September, 2000. Critical familism influenced the consensus statement developed by the 53 diverse individuals attending that conference published under the title "Strengthening American Families: Reweaving the Social Tapestry: The 97<sup>th</sup> American Assembly, September 21-24, 2000. The statement below may take critical familism in directions that some of my co-authors would not share. The following statement must be regarded primarily as my own. The theory of critical familism is also extended into a wider international discussion in my *Marriage and Modernization: How Globalization Threatens Marriage and What Should be Done about It* (Grand Rapids, MI: Wm. B. Eerdmans, 2003).

<sup>2</sup> Brad Wilcox, "For the Sake of the Children? Family-Related Discourse and Practice in the Mainline," *The Quiet Hand of God: Faith-Based Activism and the Public Role of Mainline*, ed. by Robert Wuthnow and John H. Evans (Berkeley, CA: University of California Press, 2002).

<sup>3</sup> William Doherty and Jason Carroll, "Health and the Ethics of Marital Therapy and Education," *Marriage, Health, and the Professions*, ed. by John Wall, Don Browning, William Doherty, and Stephen Post (Grand Rapids, MI: Wm. B. Eerdmans, 2002), p. 216.

<sup>4</sup> For the idea of marriage reconstruction as a cultural work, see Don Browning, *Marriage and Modernization*, pp. 24-29.

<sup>5</sup> For a fuller discussion of the five dimensions of practical reason see Don Browning, *A Fundamental Practical Theology* (Minneapolis, MN: Fortress Press, 1991).

<sup>6</sup> Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: The MIT Press, 1990), p. 79.

<sup>7</sup> George Lakoff and Mark Johnson, *Metaphors We Live By* (New York: Oxford University Press, 1959).

<sup>8</sup> William Frankena, *Ethics* (Englewood Cliffs, NY: Prentice-Hall, 1973), p. 43.

<sup>9</sup> Phyllis Tribble, *God and the Rhetoric of Sexuality* (Philadelphia, PA: Fortress Press, 1978), p. 19.

<sup>10</sup> Aristotle, "Nicomachean Ethics," *The Basic Works of Aristotle*, ed. by Richard McKeon (New York, NY: Random House, 1941), Bk VIII, chpt. 3.

<sup>11</sup> Thomas Aquinas, *Summa Contra Gentiles*, (London: Burns, Oates, and Washbourne, 1928) 3, ii, p. 118 (hereafter referred to as SCG.).

<sup>12</sup> Aristotle, *Nicomachean Ethics*, Bk. VIII, chpt. 7.

<sup>13</sup> John Witte, *From Sacrament to Contract* (Louisville, KY: Westminster John Knox, 1997), pp. 26, 32-33; James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, IL: University of Chicago Press, 1987), pp. 361-364.

<sup>14</sup> Thomas Aquinas, *Summa Theologica*, III "Supplement," (Boston, MA: Benziger Brothers, 1948), Q. 41, 1 (hereafter referred to as ST); Martha Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* (New York, NY: Routledge, 1995), p. 5.

<sup>15</sup> For references to these various moves by Aquinas, see the following texts: ST, III, Q. 41, 1; SCG, 3, ii, pp. 112-118. For analogous points made in evolutionary psychology, see Pierre Van den Berghe, *Human Family Systems* (New York, NY: Elsevier, 1979), pp. 20-21; Donald Symons, *The Evolution of Human Sexuality* (Oxford: Oxford University Press, 1979), pp. 131-136; Barry Hewlett, ed. *Father-Child Relations* (Hawthorne, NY: Aldine de Gruyter, 1992); Robert Trivers, *Social Evolution* (Menlo Park, CA: Benjamin/Cummings Publishing, 1985), pp. 203-38. For a more detailed summary of this comparison between the naturalism of Aquinas and evolutionary psychology, see Browning, et. al., *From Culture Wars to Common Ground*, pp. 111-127.

<sup>16</sup> Nachmanides, *Commentary on the Torah: Genesis* Vol. I (New York: Shilo Publishing House, 1971-1976), p. 8; Al-Ghazali, *Book on the Etiquette of Marriage*, in Madelin Farah, ed., *Marriage and Sexuality in Islam* (Salt Lake City, UT: University of Utah Press, 1984), p. 45. For extensive commentary on these texts, see Browning, *Marriage and Modernization*, pp. 118-125.

<sup>17</sup> I say that human males joining the mother-infant dyad is "nearly unique" at the mammalian level because there are a few other primates where this happens, for instance with Gibbons, but in quite different ways than with humans. See Martin Daly and Margo Wilson, *Sex, Evolution, and Behavior* (Belmont, CA: Wadsworth Publishing, 1983), p. 142.

<sup>18</sup> Immanuel Kant, *Foundations of the Metaphysics of Morals* (New York, NY: The Bobbs-Merrill Co., 1959); John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); Susan Okin, *Justice, Gender, and the Family* (New York, NY: Basic Books, 1989).

<sup>19</sup> Kant, *Foundations of the Metaphysics of Morals*, p. 47.

<sup>20</sup> For the neo-Aristotelian Janssens and neo-Thomistic statement of the meaning of equal regard closer to what I subscribe to, see Louis Janssens, "Norms and Priorities in a Love Ethics," *Louvain Studies* 6 (Spring 1977), pp. 207-288.

<sup>21</sup> Gary S. Becker, *Treatise on the Family* (Cambridge, MA: Harvard University Press, 1991), pp. 348-356.

<sup>22</sup> For descriptions of both market and bureaucratic forms of rationalization, see Jürgen Habermas, *Theory of Communicative Action II* (Boston, MA: Beacon Press, 1987), pp. 182-196; Alan Wolfe, *Whose Keeper? Social Science and Moral Obligation* (Berkeley, CA: University of California Press, 1989), pp. 52-60, 133-41.

<sup>23</sup> Pope Leo XIII, *Rerum Novarum*, in *Proclaiming Justice and Peace: Papal Documents from Rerum Novarum through Cenismus Annus*, ed. by Michael Walsh and Brian Davies (Mystic, CT: Twenty-Third Publications), para. 12.

<sup>24</sup> For a discussion of the distinctions between analogy, identities, and non-identities in correlational thinking, see David Tracy, *Blessed Rage for Order* (Minneapolis, MN: Seabury Press, 1975) and his *The Analogical Imagination* (New York, NY: Crossroad, 1981).

<sup>25</sup> For sample publications of the Religious Consultation on Population, Reproductive Ethics, and Health, see Howard Coward and Daniel Maguire, *Visions of a New Earth: Religious Perspectives on Population, Consumption, and Ecology* (Albany, NY: State University of New York Press, 2000); John Raines and Daniel Maguire, *What Men Owe to Women* (Albany, NY: State University of New York Press, 2001); Daniel Maguire, *Sacred Choices: The Right to Contraception and Abortion in Ten World Religions* (Minneapolis, MN: Fortress Press, 2001). For a publication that reviews "The Religious Consultation" that comes from the Emory Center for the Interdisciplinary Study of Religion, see Browning, *Marriage and Modernization*, pp. 223-244.

<sup>26</sup> Although Habermas develops the idea of communicative competence in relation to his discourse ethics and its implications for political procedures, in an era when economic dependence no longer unifies marriage, communicative competence and discourse ethics are relevant to family dialogue as well. See Habermas, *Moral Consciousness and Communicative Action*, pp. 120, 209.

<sup>27</sup> For further discussions of the 60-hour workweek for couples with children and the 30-hour workweek for single parents, see Browning, et. al., *From Culture Wars to Common Ground*, pp. 316-318, 327-328; Browning and Rodriguez, *Reweaving the Social Tapestry*, pp. 128-130; and the final consensus statement of the Ninety-Seventh American Assembly attached to *Reweaving the Social Tapestry*, p. 190.

<sup>28</sup> Major recent texts that demonstrate the social costs of family disruption are Frank Fuerstenberg and Andrew Cherlin, *Divided Families* (Cambridge, MA: Harvard University Press, 1991); Linda Waite, "Does Marriage Matter?" *Demography* 32:4 (Nov. 1995), pp. 483-507; Paul Amato and Alan Booth, *A Generation at Risk* (Cambridge, MA: Harvard University Press, 1997).

<sup>29</sup> For summaries of the new international trends, see Linda Waite and Maggie Gallagher (eds.) *The Ties that Bind: Perspectives on Marriage and Cohabitation* (New York: Aldine de Gruyter, 2000).

<sup>30</sup> For an emphasis on parenthood as the center of family law, see "Principles of the Law of Family Dissolution: Analysis and Recommendations," (American Law Institute, 2002) and June Carbone, *From Partners to Parents: The Second Revolution in Family Law* (New York, NY: Columbia University Press, 2000). For an emphasis on motherhood as the center of family law, see Martha Fineman, *The Illusion of Equality* (Chicago, IL: The University of Chicago Press, 1991) and Fineman, *The Neutered Mother, The Sexual Family*.

<sup>31</sup> John Gottman, *What Predicts Divorce* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1994) and *Why Marriages Succeed or Fail* (New York, NY: Simon & Schuster, 1994); Howard Markman, Scott Stanley, and Susan L. Blumberg, *Fighting for Your Marriage* (San Francisco, CA: Jossey-Bass Publishers, 1994).

<sup>32</sup> Pam Belluck, "States Declare War on Divorce Rates, Before Any 'I Dos,'" *New York Times* (April 4, 2000), A1.

<sup>33</sup> Amitai Etzioni and Peter Rubin, *Opportuning Virtue: Lessons of the Louisiana Covenant Marriage Law* (Washington, DC: The Communitarian Network, 1997)

<sup>34</sup> Christina Johnson, Scott Stanley, Norval Glenn, Paul Amato, Steve Nock, Howard Markman, Robin Dion, *Marriage in Oklahoma: 2001 Baseline Statewide Survey on Marriage and Divorce* (Oklahoma State University: Bureau for Social Research, 2002).

<sup>35</sup> See Katherine Spaht's discussion of this proposal in "The Family as Community: Implementing the 'Children-First Principle,'" *Marriage in America: A Communitarian Perspective*, Martin Whyte, ed. (New York, NY: Rowman & Littlefield, 2000), pp. 235-256; see also Mary Ann Glendon, *Abortion and Divorce in Western Law* (Cambridge, MA: Harvard University Press, 1987), pp. 93-95; William Galston, "A Liberal-Democratic Case for the Two-Parent Family," *Responsive Community* (Winter 1990/90), pp. 23-25; Elaine Kamarck and William Galston, "Putting Children First: A Progressive Family Policy for the 1990s," (Washington, DC: Progressive Policy Institute, 1991).