

**Nancy F. Cott**  
**Democracy and the Family”**

I'd like to begin with similar statements made by two of the authors whose views I have asked you to read. The family is where we learn to be human and to be citizens,” David Frum asserts in his editorial against the legitimation of same-sex marriage. And the political theorist Susan Okin, whose book *Justice, Gender and the Family* composes the bulk of the reading for this week, says almost the same thing when she writes it is within the family that we first come to have that sense of ourselves and our relations with others that is at the root of moral development.” (p. 14) This claim underpins her argument that gender disparities in the family must be eliminated, if our society is to be characterized by democratic justice. Frum and Okin can agree on this premise, although in most other respects their opinions diverge dramatically.

This idea that democratic citizenship is rooted in family characteristics---- that as the family is, so the citizen and therefore the sovereign will be—often crops up in commentary on American society and government. There is every reason to think it was the view of the founders of the American republic. The American revolutionaries’ ideas about human nature and attendant political possibilities were very strongly influenced by the thinking of their contemporaries the Scottish moralists and their predecessor the French Baron de Montesquieu, who maintained that it was characteristic of human beings to seek companionship and to define themselves in relation to others. Among literate Americans in the late 18<sup>th</sup> century this view was widely shared. A Massachusetts magazine essayist put it, “Reason and society [i.e. sociability] are the characteristics which distinguish us from the other animals.”<sup>1</sup> This conviction, that the most reasonable and humane qualities of mankind arose in social interaction rather than in isolation, [mitigated the individualism of Lockean social contract thinking at the time, and] set the stage for American republicans to see the family, and particularly the marital relation between a man and a woman, as training grounds for citizenly virtue.

The considerable attention that American revolutionaries gave to marriage and family as fundamental sites for beneficial sociability was motivated by their concern with the people’s Avirtue” as the spring of their new government. “The foundations of national Morality must be laid in private Families,” mused John Adams (who would become the second president of the United States) in his diary in 1778, expressing a more or less common view among Revolutionary thinkers.<sup>2</sup> The United States was a political experiment, an attempt to establish a republic based on popular sovereignty in a large and diverse nation. Revolutionary leaders believed that the character of the citizens mattered far more in such a republic, than in a monarchy.<sup>3</sup> In a republic, where the people were sovereign, the government’s success would depend on the people’s virtue. “Virtue,” the political catchword of the Revolution, meant not only moral integrity (with which Adams was mainly concerned in the line I quoted) but also public-spiritedness.<sup>4</sup>

Selfish, small-minded individuals narrowly seeking their own advancement would not do: citizens in a republic had to appreciate civic obligation and wish to advance the collective good of the polity. How would the nation make sure that republican citizens would appear and be suitably virtuous? Marriage and family relations supplied an

important part of this answer. Marriage played a salutary part because it served as a “school of affection” where citizens would learn to care about others. A 1791 paean to matrimony in the *New-York Magazine*, for example, praised love for enabling man to subdue selfishness and egotism: “In detaching us from self, it accustoms us to attach ourselves the more to others... Love cannot harden hearts, nor extinguish social virtues. The lover becomes a husband, a parent, a citizen.”<sup>5</sup>

Today we don’t ordinarily or necessarily think of love, or marriage, or family relations, as leading immediately to good citizenship. Many people today rather assume that absorption in the intimate concerns of loved ones leads away from civic concerns. But political leaders of the past connected these arenas. Theodore Roosevelt, for example, who became president at the opening of the twentieth century, said “The first essential for a man’s being a good citizen is his possession of the home virtues.” In language reminiscent of the 1791 essayist I just quoted, Roosevelt associated capacities for good citizenship and good government with “the qualities that make men and women eager lovers, faithful, duty-performing, hard-working husbands and wives, and wise and devoted fathers and mothers.”<sup>6</sup>

In the mid-19<sup>th</sup> century, American political thinkers and jurists found reason to cement the connections between a particular form of marriage and family and the kind of democratic, representative government that the United States intended to be. They faced a startling challenge offered by a new religious group, the Church of the Latter-Day Saints, or Mormons. Mormon leaders, who moved their sect to the territory of Utah after being persecuted in New York and Illinois, announced in 1852 that in accord with divine revelation they were practicing polygamy. I won’t go into the tremendous efforts made by Congress, successive Presidents, and the U.S. Supreme Court, over a full half-century, to eliminate the alternative of polygamous family relations from the continent—but will simply point to some results in political discourse and public policy, where the linkage between monogamous family relations and the American form of government became more explicit.

Consider the pronouncements of Francis Lieber, the man generally credited with founding American political science. His major works, especially his treatise *On Civil Liberty and Self-Government* (1853), became standard American college texts. He was brought into the inner circles of the Lincoln government during the Civil War, and his words were read and quoted for many decades by politicians, lawyers and judges. To counter Mormonism, Francis Lieber enunciated that monogamous marriage was not only the basis of domestic being and family relation” but even “one of the primordial elements out of which all law proceeds,” a “psychological condition of our jural consciousness, [and] of our liberty . . . the foundation of all that is called polity.” In his mind, monogamously-based family structure, and political liberty, were inherently related—whereas polygamy was necessarily tied to coercion and tyranny.<sup>7</sup> Lieber did not acknowledge it but this contrast, lining up monogamy with a government based on consent and representation, and polygamy with despotism, had begun a century before, during the European Enlightenment, with Montesquieu.

One enduring result of Lieber’s thinking was its enshrinement in the first, and

controlling, precedent of American jurisprudence on religious freedom. This U.S. Supreme Court decision of 1878 [*Reynolds v. U.S.* 98 U.S. 145 (1879)] arose because Mormons challenged the law passed by Congress to make sure that polygamy was a crime in the territories of the United States. The Supreme Court refused to see this law—or, subsequently, later ones which disfranchised polygamous Mormons, and eventually expropriated the Church—as unconstitutional. The Court denied that the Mormons' practice of polygamy came within the First Amendment's protection of religious freedom. [The amendment protected religious belief, the Court said, but not actions that were contrary to law and public policy, such as marrying—or cohabiting with—more than one wife.]

The longevity of Lieber's and the Court's line of argument against the Mormons can be seen in David Frum's editorial of January 2000. Frum admiringly quotes from the Supreme Court's 1885 anti-Mormon opinion that “no 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.” I wonder whether Frum would endorse the rest of this decision, which justified Congress's disfranchising men who practiced polygamy. The Supreme Court found it entirely appropriate to make marital status “a condition of the elective franchise,” going so far as to say that it would be legitimate for a sovereign power to “declare that no one but a married person shall be entitled to vote.”<sup>8</sup> When Frum declares that “Americans have understood until now . . . that heterosexual monogamy is the only form of sexual organization consistent with republican self-government,” he is charting a direct line of inheritance originating with Montesquieu.<sup>9</sup>

This has been a long introduction to my subject but I thought it might be necessary, to show that particular conceptions of family relations have figured centrally in the history of American representative government. Necessary, I mean, to counter the inherited wisdom that individualism founds American democratic thinking. A lot of common wisdom roots American democracy conceptually in individualism, through Lockean social contract thinking and liberalism. No doubt earlier discussions during this semester have referred to this line of indebtedness. Evidence exists for such claims. Yet at least equal evidence exists for a political genealogy such as I have been sketching, leading from Montesquieu and the Scottish moralists to the presumption that a family unit based on monogamous marriage is the necessary basis for American representative government.

Is there a paradox here? can both the vaunted individual, and the family unit, be the building block of American democracy? Let's look at Tocqueville, who most famously cited individualism as characteristic. In the chapter called “Of Individualism in Democratic Countries,” in Vol. 2, Part 2, Ch. 2 of *Democracy in America*, Tocqueville gave meaning to the new word individualism. He did not invoke this neologism to praise, of course, but rather to express doubt and warning about the American system as he saw it. He didn't like individualism—though he did distinguish it from another evil, selfishness (*egoisme*), which he described as “a passionate and exaggerated love of

self, which leads a man to connect everything with himself and to prefer himself to everything in the world.” Where selfishness reflected blind instinct,” Tocqueville thought, individualism was “a mature and calm feeling, which disposes each member of the community to sever himself from the mass of his fellows and to draw apart with his family and his friends, so that after he has thus formed a little circle of his own, he willingly leaves society at large to itself.”

Tocqueville’s core critique here is that individualism undermines the virtue of public life—the very virtue, as I said earlier, that the American founders thought essential to the republic’s success. I want to address not so much Tocqueville’s critique as his basic picture of individualism. The way the individual severs himself from the mass of his fellows” in Tocqueville’s words, is “to draw apart with his family and his friends.” (I should add that at the time, “friends” was frequently used to mean ‘kin,” so the reading may more accurately be to draw apart with his extended family.”) We’re not talking about the freewheeling, atomistic, gender-neutral or abstract individual here, if we look at Tocqueville’s word-sketch carefully. We’re not even talking about any and every adult—we’re talking about a male adult, a man who lives with a family around him, who is a head of household, with a wife and children and perhaps others as dependents.

Tocqueville here manifests a general characteristic of authors of the Western political tradition. That is, he speaks of the subject or citizen or individual in an impersonal way, as though this could be anyone, male or female—but upon closer scrutiny of the situations posited and illustrated, it can be seen that the observations and theories really only fit a citizen who is a man—and a man of a particular sort, who heads a household, who is a husband and father and has dependents. Clarification of this point, that the purportedly model “individual” of Western political theory has not been neutral, abstract or gender-free at all, but rather a male household head, is one of the major transformations in knowledge accomplished by feminist political scientists over the past 25 years --(led by Susan Okin in her first book, I might add). Female adults are not featured—are not even acknowledged, most of the time—when “individual” political rights, obligations, and tendencies are discussed.<sup>10</sup>

Look at Tocqueville’s chapter on “Influence of Democracy on the Family,” for another example. I did not choose this chapter for assignment, by the way—it was added by Prof. Kronman, along with the selection from John Stuart Mill—but both of these additions are useful to what I want to say. In his chapter on the family, Tocqueville doesn’t even mention relations between husbands and wives, or question how or whether democracy affects spousal relationships. The chapter only considers relations between the generations—between father and sons. Wives—women altogether—are invisible, seemingly out of range of democratic influence.

Like his countryman Montesquieu, Tocqueville does see family form as closely linked to government form. In an aristocratic society as he pictures it, no one but the father matters—the father governs the family sufficiently, acting as intermediary for the monarch. As Tocqueville sees American democratic conditions, however, no such intermediary is necessary, because each individual is governed directly; and with the father’s authority thereby reduced, a species of equality prevails around the domestic

hearth.” Tocqueville’s discussion pertains entirely to affection and interaction between father and sons in this new democratic arrangement he perceives. Even when he uses the term “children” instead of “brothers,” the context of “fraternal” consideration shows that he means only the sons. The existence of wives, daughters, sisters in the family is suppressed, and questions about how directly or indirectly women are governed in democratic society fall off the canvas.

I see no reason to accept Tocqueville’s description (if we can call it that) of the influence of democracy on the American family as any more realistic than Montesquieu’s or Lieber’s descriptions, if we can call them that, of an essential linkage between monogamous marriage and representative government. All of these are not descriptive or realistic in the sense of being empirically-based—all are, rather, ideological, politically formed hypotheses. Since these authors presented their politically formed hypotheses as descriptive observations, however, and in that guise deeply influenced subsequent beliefs and assumptions about American government and society, they are hardly to be ignored. Rather, they ought to be dealt with, and searched for whatever insights they might disclose. They offer provocation and food for thought about the development of the American political system, and the evolution of traditions still operative today.

The last sentence of Tocqueville’s chapter on the family can be read “through,” so to speak, to reveal a helpful nugget. He summarizes the chapter’s whole purport thus: “Democracy loosens social ties, but tightens natural ones; it brings kindred more closely together, while it throws citizens more apart.” This hypothesis of his echoes his view of individualism as distancing the individual and his family from civil society. I would translate Tocqueville’s comment to yield an additional point. It seems to me that he is hypothesizing that a democratic social order makes familial or “natural” bonds fill the gap left by the absence of established and known hierarchies (that is, the kind of hierarchies that stabilize an aristocratic order, in which everyone knows his or her place). In a democratic social order, family bonds counter individual anomie, and appear to anchor and stabilize society as well as government in a very functional way.

Tocqueville’s comment, read this way, posits the (private) family as a linchpin of (public) social order. A proposition such as this is not so far from John Adams’ rumination: “The foundations of national Morality must be laid in private Families.” This theme—of the public and civic function of families in democratic society and politics—has echoed through all of United States history, right up to the present day. Many words on the subject reverberated through the halls of Congress in 1996, the year that both the Defense of Marriage Act and on the welfare reform law called the Personal Responsibility and Work Opportunities Act were enacted.

We may commonly think of family life as “private” life—yet it is clear, upon any reflection, that families have been expected to serve a public function in the polity of the United States, and indeed compose an important part of our public order and are publicly recognized as doing so. I think that this has been the case for virtually all of American history, but I would argue that the middle of the twentieth century saw an intensification of this double, private AND public, understanding of family life. I’d like to

take some time here to talk about the era of WWII and the postwar, to explain what I mean, and try to draw out some of the consequences, which still actively condition our lives today.

World War II was a global event of unprecedented magnitude. The war was a forcing ground of new departures in many areas, including gender and racial inequalities, national values, and international relations. It brought enormous consequences on the home front. The infusion of federal dollars into war production brought the country out of the economic despair of the Great Depression, and created flush times for the ordinary worker. Military service and jobs in defense industry caused voluntary as well as forced migration, drawing people away from their homes to distant locations, far from the eyes of watchful known neighbors. Social alarms sounded about young people's excessive freedoms, about servicemen's live-for-the-day attitude, about masculinized independent women unwilling to embrace home duties, and juvenile delinquency among "latchkey children" whose mothers were at work. Americans mixed together in new locations with strangers of different regions, religions, and ethnic derivations, and this fostered a new cosmopolitanism and formed new group allegiances. A rhetoric of racial and religious tolerance and cultural pluralism came to the fore during the world war, championing the diversity of America's population in contradistinction to Nazi 'racial' distinctions.

The impact of the war on gender relations was very much noticed at the time. While twelve million men went into military service, and bore the heroic burdens of the war (for only a small number of women served in their own new branches of the military) women's employment—especially the employment of wives and mothers—reached dramatically new highs. Manufacturing industries welcomed women into what were seen as men's jobs, and the doors of higher education institutions and the professions suddenly opened much wider. Public discourse avoided re-evaluating understanding of differences between the sexes, however. Though encouraged to contribute to war production and applauded for it, women were nonetheless supposed to be replacing men only "for the duration." Even pathbreaking occupations, properly framed, need not challenge longheld convictions about women's essential identity as sweethearts, daughters, wives and mothers. As women stepped partway into men's shoes and earned man-sized pay, they were constantly reminded to retain their femininity, meaning their appeal to men.

While waging war, the U.S. government used visions of women's attractiveness to bolster servicemen's morale. The government cooperated with Hollywood to scatter "pin-ups" of movie stars amidst the wartime landscape. Millions of photographs of female stars were distributed, coming to adorn the walls of barracks, bulkheads of ships, and fuselages of planes. Wives and sweethearts back home eagerly participated by sending "pin-up" poses of themselves to the men at the front. A wartime bargain between American men and women was being pursued: women would retain their femininity, and men would fight to defend their own right to marry themselves to that alluring prospect, and to achieve home comforts and the promised rewards of fatherhood. The historian Robert Westbrook, whose work you are also reading this

week, has argued persuasively along just these lines: in American democracy at the mid-twentieth-century point, male citizens would more plausibly die in defense of private goods, than public allegiances.<sup>11</sup>

The war rhetoric of the U.S., while championing democratic freedom against Nazi aggression and Japanese imperialism, dwelt on the intimate, private and familial aspects of the American way of life which centered around heterosexual love and marriage. For example, the federal government produced and broadcast on all stations in 1942 a radio program called "To the Young." It featured a young male voice saying, "That's one of the things this war's about." A young female voice responded, "About us?" The man affirmed: "About all young people like us. About love and gettin' hitched, and havin' a home and some kids, and breathin' fresh air out in the suburbs . . . about livin' and workin' decent, like free people."<sup>12</sup> Government recruitment efforts, Hollywood, and the War Advertising Council harmonized as one on this theme.

In popular sentiments and popular culture the American way of life was signified and virtually constituted by marriage and family ties. Marriages and the families created thereby were private experiences so precious that they composed a public necessity worth fighting for. Ads from the Union Central Life Insurance Company, for example, pictured the war as a "fight to keep our country a safe place for the wives we love, a place where our children can grow up free and unafraid." The Eureka vacuum cleaner company assured women war workers that they were fighting "for freedom and all that means to women everywhere. You're fighting for a little house of your own, and a husband to meet every night at the door. . . . for the right to bring up your children without the shadow of fear."<sup>13</sup>

The public meaning that World War II placed on private domestic lives continued into Cold War politics. In confrontations with the Soviet Union and its socialist allies, Americans in political office and out spoke of their political economy by referring to private aspirations and gains. Capitalism and representative democracy were expressed in terms of personal choices in marrying, having children, buying a home, and gaining access to a cornucopia of consumer goods. Vice-President Richard Nixon's famous "kitchen debate" with Soviet Premier Nikita Khrushchev, which took place in Moscow at the opening of the American National Exhibition in 1959, epitomized the predominant point of view on the contrast between the two systems. The exhibit showcased American recreational and consumer goods, including a six-room, furnished and well-equipped ranch-style house. In the two leaders' verbal contest, sparked by Nixon's championing of American washing machines, the vice-president made clear that what distinguished the United States-- what it had to offer the world—was the freedom to pursue the good life at home.<sup>14</sup>

Nixon's widely-reported confrontation with Khrushchev emphasized that marriage and family and all the emotional and material comforts of home were private freedoms and at the same time public emblems, essential to the existence, image, and defense of the United States, as they had been during the world war. The U.S Supreme Court set these linkages into constitutional interpretation not long after. I find very telling an opinion written by Justice William O. Douglas, in a case that came from Connecticut, a

case brought purposely to dismantle Connecticut's longstanding prohibition on the use of contraceptive methods. I won't go into the details of the case, which was called Poe v. Ullman, and was decided by the U.S. Supreme Court in 1961. The Court's majority essentially refused to hear it, saying that because of the circumstances of the original plaintiffs, the case did not call for constitutional decision-making.

Justice Douglas dissented from the majority. He thought the Court should overturn the antiquated Connecticut law, which stipulated criminal punishment for Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception." Justice Douglas' reasoning is worth highlighting. Because the law criminalized use, Douglas said, it reached into "the intimacies of the marriage relationship," the innermost sanctum of the home." And in so doing, he contended, the law violated "the privacy that is implicit in a free society." I want to emphasize for you his crucial words "Aprivacy" and Afree society." The privacy that Douglas saw embodied in the marital relationship "emanated," he said, "from the totality of the constitutional scheme under which we live"—and that scheme was "the regime of a free society" which he contrasted directly to that of a "totalitarian regime." (The term "totalitarian," used in the 1940s to refer to both fascism and communism, had become a virtual synonym for Soviet communism by the time Douglas wrote, in 1961.) Douglas said that the level of state intervention implied in a law that would punish even married people if they used birth control was "congenial only to a totalitarian regime," not to a polity based on law and constitutional liberty.<sup>15</sup>

Marital and domestic privacy, in other words, emblemized the people's liberty, and the very scheme of the United States as a free nation, a constitutional democracy. Justice Douglas here initiated modern constitutional doctrine on privacy rights, by fusing the protection of marital intimacy to the political principles of American democracy.<sup>16</sup> His 1961 dissent foreshadowed the holding in *Griswold v. Connecticut*, the 1965 decision that did free birth control for married couples from state interference. When the Supreme Court struck down Connecticut's ban on birth control in the *Griswold* case, because it invaded the "innermost sanctum" of the marital bedroom, the court found "fundamental" rights of privacy,<sup>17</sup> marital choice, and family creation implied in the constitution's guarantees of liberty.

There followed from the *Griswold* case a very significant line of decisions which altered the landscape of personal lives for my generation and yours. The constitutional rearticulation of marriage as a fundamental right in *Griswold v. Connecticut* case formed an important background to an equally historic case two years later, *Loving v. Virginia*. That decision closed the long history of race-based prohibitions on marriage, by striking down Virginia's law that made it a felony for a white and a non-white person to get married. The Supreme Court had held back from ruling on this flashpoint issue when given opportunities in 1955 and 1964, but in the aptly-named *Loving* case in 1967, the court definitively rejected the century-old argument that had allowed such bans on marriage across the color line to stand. The old argument said that prohibitions of this sort imposed equally on both races—but the Supreme Court in 1967 associated these bans with the intent to maintain white supremacy, which was

insupportable in view of the Fourteenth Amendment's guarantee of equal protection of the laws. Marital intimacy was not the deciding point in *Loving v. Virginia*, but the opinion reiterated clearly that marriage was a "fundamental freedom."<sup>18</sup>

Of the subsequent decisions in this doctrinal line, the most controversial has been *Roe v. Wade* (1973) which decriminalized abortion in the first trimester of pregnancy, on the reasoning that constitutional privacy rights protected a woman's decision whether or not to bear a child. The aim of constitutional guarantees of privacy in *Roe*, as in the other cases, is individual liberty: personal, marital and familial privacy is conceptually and rhetorically linked to consent, free choice, and liberty of person, revered goals of our constitutional scheme. Recent legal arguments and judicial reasoning favoring the extension of marriage to same-sex couples have taken the same tack. Same-sex couples in the courts have underlined the association of marriage with private liberty and consent. An Alaska judge in 1998, taking this approach, called the "Right to choose one's life partner" constitutionally "fundamental," a right of privacy that should receive governmental protection even if it resulted in choice of a partner of the same sex. This judge wrote that "Government intrusion into the choice of a life partner encroaches on the intimate personal decisions of the individual." He continued, "The relevant question is not whether same-sex marriage is so rooted in our traditions that it is a fundamental right [i.e. the point *Frum* denies] . . . but whether the freedom to choose one's own life partner is so rooted."<sup>19</sup>

Advocates of legal emphases on the private character of family formation and family relations intend the emphasis to achieve greater freedom for individuals and to further precepts of democratic justice. Would you imagine that Susan Okin, who argues for bringing political and philosophical considerations of justice into family life, would endorse the developments I've sketched? I would think so. The liberty to use contraception, to enable women to control the reproductive consequences of their sexuality, to marry whomever one chooses, have certainly been sought by feminist thinkers such as she. Yet the view of family interactions on which these liberties are premised—the view of families as private and therefore relatively insulated from the intervention of state or public authorities--- is not consonant with Okin's wish to step in and alter what she sees as conditions of injustice stemming from inequality between husband and wife.

Another dimension of legal change in the past generation, and one driven by feminists most directly, has been to open up the family to public scrutiny—in order to control domestic violence, abuse, or rape. Legal developments in prosecution of domestic battery, of child abuse, and of marital rape are premised on conceptualizing the family as not altogether an intimate, consensual zone, and not altogether an inviolable "innermost sanctum." In order to protect vulnerable wives and children from being overpowered physically by the men in their homes, feminists wanted public authority to exercise some surveillance over private intimacies. The doctrine of domestic privacy, allowing the home to be curtained off from the public, could easily work to maintain superior power in the hands of an abusive man. If domestic violence was going to be prosecuted and if a husband's exemption from rape charges for

coercing his wife into sex was no longer to be accepted, then the zone of domestic privacy had to be opened up and the notion that “a man’s home is his castle” dismantled. Similarly, abusive women at home were not to be left to wreak destructive fury.

As I have tried to emphasize throughout, there is obfuscation or slippage in thinking of the family as simply private, because the public value and political function of the family are also essential to its characterization and its uses in the United States. Families in fact have a double character, providing the arena for most people’s private lives while also entailing legal and public status, rewards, and obligations. If the family does have this public function, then should public authority leave families alone? Susan Okin doesn’t seem to think so. Her perspective on justice compels delving into families’ internal allocations of power and resources in order to work effectively toward a just democratic polity and society. In her view, we can’t continue to make the mistake of the Western political tradition, of silently meaning the male citizen when we say citizen, rendering the women in families invisible. She sharply questions whether families whose internal constitutions embody injustice and inequality between husband and wife, or between mother and father, can produce citizens who will be committed to equality and justice.

The emphasis on family privacy (such as that in recent constitutional doctrine) is meant to advance individual liberty claims. But this emphasis may neglect differential power among family members. An alternative emphasis on the public face and function of families can pursue equality claims (such as Okin calls for), by warranting public intervention into families’ internal allocation of resources. The goals of freedom and of equality do not always point toward the same choice of action. Conflicts between these goals plays out in family life as elsewhere. Given traditions of familial bonds and inequalities, it is not easy to resolve how both freedom and equal status—we might put these together and say equal freedom—can be achieved inside families, any more than it is easy to say how both freedom and equality can be achieved outside. It does seem, though, that this “inside” and “outside” are not so separate in their constitution as our common parlance tends to make them.

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<sup>1</sup>. See Henry F. May, *The Enlightenment in America* (NY, Oxford, 1976), 282, 342-47; Jay Fliegelman, *Prodigals and Pilgrims: The American Revolution against Patriarchal Authority* (NY, Cambridge, 1980), 24; Diana J. Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (London, Rowman & Littlefield, 1995), 25-31. Quotation from "A Conjugial Love," *Massachusetts Magazine* (1792).

<sup>2</sup>. Entry of June 2, 1778, in *Diary and Autobiography of John Adams*, ed. Lyman Butterfield (Cambridge, Harvard UP, 1962), 4:123.

<sup>3</sup>. In this they drew on Montesquieu's *Spirit of the Laws*, which categorized all governments as republics, monarchies, or despotisms, each with a distinctive source of sovereignty and a characteristic principle prompting the people to act conformably. Concern for honor drove monarchy; fear made despotism work. See Anne M. Cohler, *Montesquieu's Comparative Politics and the Spirit of American Constitutionalism*, (Lawrence, KS, Univ. Press of Kansas, 1988), esp. 12-17; Diana J. Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (London, Rowman & Littlefield, 1995); Mary Lyndon Shanley and Peter G. Stillman, "Political and Marital Despotism: Montesquieu's Persian Letters," in *The Family in Political Thought*, ed. Jean Bethke Elshtain (Amherst, U Mass. P., 1982), 66-79.

<sup>4</sup>. See Gordon Wood, *The Creation of the American Republic* (N.Y., Norton, 1969).

<sup>5</sup>. "A Conjugial Love," *New York Magazine*, June 1791.

<sup>6</sup>. TR, *The Free Citizen*, ed. Hermann Hagedorn (NY, TR Assoc., 1956), 30-31.

<sup>7</sup>. Francis Lieber, "The Mormons. Shall Utah Be Admitted into the Union?" *Putnam's Monthly*, V (March 1855), 234; and see Cott, *Public Vows*, 114-16.

<sup>8</sup>. *Murphy v. Ramsay* 114 U.S. 15, 43, 45 (1884)-- a unanimous decision. The same lines of this decision were quoted on the floor of Congress during debate on the Defense of Marriage Act, by Dave Weldon of Florida, *Congressional Record*, 104th Congress, 2d sess., vol. 104, pt. 2, July 12, 1996, p. 7493.

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<sup>9</sup> The French Enlightenment thinker who so influenced the American founders posited that the "general spirit, the mores, and the manners" of a society, including household arrangements and relations between the sexes, materially shaped political values and the potential for a given sort of government to sustain itself. And Montesquieu thought monogamy based on consent the form of "domestic government" [i.e. household relations] most in the spirit of a government of laws. See Cott, Public Vows, 20-22.

<sup>10</sup> Susan Moller Okin, Women in Western Political Theory (Princeton, Princeton UP, 1979).

<sup>11</sup> See Robert Westbrook, "'I Want a Girl, Just Like the Girl that Married Harry James': American Women and the Problem of Political Obligation in World War II," American Quarterly 42 (Dec. 1990), 587-614; and "Fighting for the American Family: Private Interests and Political Obligation in World War II," in The Power of Culture, ed. Richard W. Fox and T.J. Jackson Lears (Chicago, U Chicago, 1993), 195-221.

<sup>12</sup> Quoted in Elaine Tyler May, "Rosie the Riveter Gets Married," in Lewis Erenberg and Susan Hirsch, The War in American Culture (Chicago, U Chicago, 1996), 137.

<sup>13</sup> Quoted in Westbrook, "Fighting for the American Family," 201-02.

<sup>14</sup> Elaine Tyler May, Homeward Bound: American Families in the Cold War Era (NY, Basic, 1988), 16-18, on the "kitchen debate"; Sonya Michel, "American Women and the Discourse of the Democratic Family in World War II," in Behind the Lines: Gender and the Two World Wars, ed. Margaret Randolph Higonnet et al., (New Haven, Yale UP, 1987).

<sup>15</sup> Poe v. Ullman, 367 U.S. 497 (1960), quotations from 519-22.

<sup>16</sup> Preceded by Prince v. Massachusetts 321 U.S. 158, at 166 (1944).

<sup>17</sup> Griswold v. Connecticut 381 US 479 (1965) at 486, 495 (Goldberg's concurrence). See Thomas C. Grey, "Eros, Civilization and the Burger Court," Law and Contemporary Problems 43:3 (1979-80), 83-100; Martha Minow, "We, the Family: Constitutional Rights and American Families," JAH 74:3 (Dec. 1987), 959-83.

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<sup>18.</sup> Loving v. Virginia, 388 U.S. 1 (1967). Cf. Naim v. Naim, 197 Va. 80, 87 S.E.2d 749 (1955); McLaughlin v. Florida, 379 US 184 (1964). The opinion in Loving notes, p. 6 n. 5, that 16 states still prohibit and punish marriage on basis of racial classification -- Ala, Art, Del, Fla, Ga., La., Miss, Mo, NC, Okl, SC, Tenn, Tex., W. Va. Maryland repealed its law after Loving case was initiated. See Peter Wallenstein, "Race, Marriage and the Law of Freedom: Alabama and Virginia, 1860-1960s," Chicago-Kent Law Review 70:2 (1994), 371-437, on the background to Loving.

<sup>19.</sup> Jay Brause and Gene Dugan v. Bureau of Vital Statistics, Alaska . . . Peter Michalski, Judge of Superior Court for the State of Alaska, 3d Jud. District, Feb. 27, 1998 [1998 WL 88743, Alaska Super.], case 3AN-95-6562.