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*335 THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY (LINDA C. MCCLAIN) CAMBRIDGE, MA: HARVARD UNIVERSITY PRESS, 2006

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In the world envisioned by Professor Linda **McClain** in *The Place of Families*, a metaphorical intersection exists where two apparently parallel streets might cross, at least on a diagonal. The streets are liberalism and feminism. Where they cross, families, government, and institutions of civic society would be at work nurturing growing children and supporting loving adults. Professor McClain's project is to examine whether the intersection can occur and, if it can, on what terms. Professor McClain explains in depth how liberals and feminists have differed deeply on the proper places for government and families. She argues that both liberalism and feminism must make more of a place for families and that the objections of both can be answered so long as the center of the intersection is the formative project of fostering capacity, equality, and responsibility. After exploring her foundation, McClain applies her thinking to a group of issues affecting contemporary American families, including welfare reform, marriage promotion, same-sex marriage, cohabitation, reproductive rights, and sex education.

In brief, fostering capacity means, in terms of children, promoting civic virtue and providing material care. For adults, fostering capacity involves their intimate associations and their opportunities to enjoy intimacy and family life. Both families and government foster capacity. Government must become involved in fostering capacity, in McClain's view. When it does, government should "be guided by respect for relevant public values, such as sex equality and orderly social reproduction, and by principles of toleration and respect for individual intimate association" (p. 8). Fostering responsibility means allocating to individuals the opportunity to make personal decisions about sexual intimacy, marriage, reproduction, and parenting (p. 8). Fostering equality means attending to the equality of members of a family in respect of each other, particularly with regard to sex and gender. It also requires attending to the equality of families with respect to other families, whether on the basis of economic sustenance, gender, or sexual orientation (pp. 5-6).

In her insistence about the importance of sex equality, McClain asserts that, while political theory accepts equality as a core value, social acceptance of sex equality has been more ambivalent. In addition, liberal theory boundaries the home against government intervention, and sex equality is sometimes believed to be hostile to the idea of family. As a result, the issue of government's role in promoting equality within the family, while not simultaneously denying the importance of family, has not been the topic of adequate critical reflection. The better approach, according to McClain, "would be to state explicitly that a commitment to antisubordination and to women's equal citizenship is a core public value and civic virtue, as reflected in federal constitutional and statutory norms, transformations *336 in family law, and state antidiscrimination laws" (pp. 61-62). The commitment does not require government to dictate who does the dishes, but it does require government to foster the capacity of individuals to act responsibly and with empathy toward one another, to enable parents to both care for children and hold down a job, to attack domestic violence, and so forth (p. 76).

When applying her theory to the area of welfare reform, Professor McClain argues that identifying the proper roles of government and family turns on valuing the "fundamental role of care in fostering individuals' capacities for self-government and healthy development" (p. 88). Seeing care as a public value comes from both liberal and feminist sources, according to McClain.

In the absence of valuing care, responsible citizenship is defined solely through market effort, to the detriment of women, who bear the larger share of care-taking responsibilities, and to the children they nurture. Without care, social reproduction cannot occur, either at the physical or the political level.

Government could just allow caretaking to happen, based on the incentives of individuals to nurture offspring. Or government could intervene to assist in the provision of care. McClain argues for the latter. "[M]y approach to government's formative project also posits an affirmative governmental responsibility to support care as a component of social reproduction" (p. 90). Ideas of independence and citizenship must be reconsidered, she argues, in light of feminist critics who exposed a historical lack of regard for care work usually performed by women.

McClain uses welfare reform as the lens through which to examine the need to see care as a public value. In her analysis, welfare reform is exposed as a program that values as proof of social citizenship solely what a person does as paid work and ignores what a person does in terms of caretaking. Further, under welfare reform, all the responsibility for change was placed on the individual adult in the impoverished family; government was given no responsibility for creating conditions of work that are meaningful for women with children and caretaking responsibilities. The independence achieved by these women under welfare reform, as a result, is only an illusion, and an illusion supported by a gendered ideology concerning care and work. What government can and must do, according to McClain, is to value care by intervening in the market to address the care crisis, including the employment issues faced by people whose families include children and the employment issues faced by people who care for the children of others.

One difficulty with valuing care, however, is that, because women have so often been caregivers, they can be stereotyped and treated solely as caregivers, with nobody else taking on any part of the role. Just as ignoring caretaking as a public value is wrong, according to McClain, so is viewing caretaking solely as a woman's responsibility. She argues, instead, that "[p]ublic policy should recognize and promote care as a public value, but should do so in ways that do not replicate the inequality and injustice of the gendered care economy that has characterized much of this nation's history" (p. 99).

While McClain's analysis is tough and thorough, her proposed solutions to the problems of economic support for families in poverty are a bit more timid. Asserting the need to postpone formulating solutions until after there has been a public conversation and deliberative process involving people from throughout society, she offers instead a set of principles. Care must be valued without reinforcing a gendered conception of women being the only caregivers within families. Opportunities for both men and women to participate in caregiving and in paid work must be created, and both workplaces and families should follow an ungendered path. Part of the government's role must be to provide children with equivalent opportunities, regardless of the economic standing of their families, including access to *337 high-quality child care. Another role of government is requiring and supporting employment practices that give children and their parents more time together (pp. 111-13).

As McClain asserts, most of the solutions she points to have wide support among people who study successful children and families. Her analysis and her solutions stress the shared interests of all families, regardless of their current economic standing. Her emphasis on the importance of equality within families as well as between families is key to the argument.

Largely absent from the principles that animate McClain's solutions, however, are intermediate institutions of civil society, such as extended families, religious organizations, and unions. All of these groups have much to contribute to a recognition of care as a public value and to the institutionalization of care in public and private practices. Unionization of care workers, for example, is likely to be one of the best ways to force government to improve their pay and working conditions, because so many care workers are involved in and with the public sector. Religious organizations and extended families often provide support for struggling young families, but they rarely get credit for the care work they do. With more public support for the value of care coupled with an ethic of equality, the many grandmothers who take in their grandchildren might be given more credit for their contributions to the public good. For example, extended families who take in children when their parents are unable to care for them need

financial support without, as seems likely under recent reforms of welfare law, also facing a requirement that they engage in work activities. Many of these grandparents have already spent a lifetime working in low-wage jobs. Their caretaking work should be recognized as the demanding task that it is, and they should be allowed to do it with society's support and thanks.

An important aspect of McClain's argument is that government has a role in fostering families as organizations that can then in turn foster their members, particularly the children (p. 126). When McClain turns to the question of marriage, she argues that government's involvement with families extends to government facilitating marriage as a family organization, particularly because married families are an important resource, though not an exclusive one, for the raising of children. She rejects the argument that government should be neutral on the subject of marriage. Instead, she argues in favor of "facilitative governmental measures to help people form and sustain committed, intimate relationships through education of both children and adults" (p. 118). In her view, these measures are justifiable only if they promote equality within marriage as well as among families.

McClain uses, as one of the examples of government intervention into marriage, the marriage promotion activities undertaken in recent years by the federal and state governments. In her view, these programs are flawed because they advance a form of marriage that is both unequal within families and unequal among families. That is, many of the marriage promotion programs advance returning to gendered roles for husbands and wives, and all of them agree that same-sex couples must be excluded from marriage.

McClain dissects the arguments advanced by advocates of governmental marriage promotion programs with a fine-toothed comb. She identifies two principal prongs of the advocates' arguments: marriage is a healthy way for adults to live and marriage is the best family form for raising children. Her critique is devastating on every level, from the philosophical to the empirical. She demonstrates with particular care why fostering marriage is not, absent effective economic empowerment for young men and women now in poverty, an effective antipoverty strategy, as its advocates claim.

When it comes to appropriate governmental support for marriage, however, McClain's argument falters. She advances the claim that government has a legitimate role in educating people about marriage, so long as the type of marriage advanced by that education is one *338 of equals and so long as all forms of committed adult relationships in which children are nurtured are treated as equal to married relationships (p. 149). If government is neutral on equality within marriage, she asserts, it permits the advancement of patriarchal and anti-equality agendas that contradict legal and constitutional norms advancing equality on the basis of sex (p. 150).

In my view, although equality norms in family and constitutional law have advanced in the last half century, McClain overstates the case as to how far the law has come. She asserts, for example, that "family law holds parents equally responsible for the material support and nurture of their children" (p. 150). While she is right about material support, it is still entirely legal for one parent to nearly ignore a child and leave nearly all of the child's nurture to the other parent. Even in states with a presumption of joint custody, there is little to no penalty when a parent fails to perform his or her custodial duties. At the constitutional level, while gender stereotyping is ordinarily prohibited, it is still the case that gender discrimination is, on rare occasions, not found unconstitutional.

McClain's argument does not stop with legal claims. She also advances the argument that gender equality within marriage is a "practical and effective way to foster strong families" (p. 151). As a feminist, I cannot but applaud the claim. As a member of civil society and observer of many young people in my family and my law school classes, however, I cannot but be skeptical about how far the norm has advanced into broad acceptance, as even McClain agrees (p. 153). Given that gender equality within family relationships is still a contested matter in civil society, for government to advance it as the only acceptable norm concerning marriage seems, at best, premature.

McClain's argument is strengthened by her exploration earlier in the book of the differences between compulsion and persuasion. Government necessarily must be tolerant most of the time about the choices people make about how to live. When government undertakes to educate people about a civic virtue, however, she argues well that it must do so in a way that honors all

the basic civic virtues. Surely sex equality is among those virtues and cannot be denied regardless of whether it has gained broad acceptance. Instead, as McClain argues, what it means may change over time in practice and as addressed in critical public discourse.

A remaining but significant difficulty with McClain's argument is that government has a proper role in promoting capacity when it comes to adult intimate relationships, rather than simply accepting them as being important to the individuals involved. Unless government has an obligation, it seems to me, the entire argument in favor of marriage promotion fails. I have not been persuaded by McClain that government's interest in promoting the capacity of adults to engage in intimate relationships is so essential that it requires government to promote marriage, even on the gender-neutral terms that McClain advocates. This is not to say, however, that I object to McClain's advocacy of the extension of marriage to same-sex couples or to her advocacy for the recognition of kinship relationships or for the imposition of marriage-like obligations on certain cohabiting couples. It is only to say that I believe the better argument for these reforms lies in claims for equality among families, not in the claims for capacity building among the adult members of these families.

When it comes to sex education, McClain exposes the approach of abstinence-only sex education as a gendered program based on imposing different responsibilities on girls and boys. Girls are to be the gatekeepers when it comes to sexual activity; if they were to refuse sex outside of marriage, they would be fulfilling their natural role of being the sexual partner who has less interest in sex and more to lose if they engage in sex without marriage. Boys are encouraged to be less aggressive about sex, but their failure, if it occurs, would be more *339 understandable. As McClain explains, the reemergence of the double standard denies gender equality, denies young women the opportunity to see themselves as sexual beings, and denies both young men and young women the opportunity to develop their capacities for self-governance, a key civic virtue in a democracy.

Because of her belief in the interest of government in fostering capacity of adults for intimate relationships, McClain does not argue for the abolition of sex education. Instead, she argues that, when government intervenes in this area, it must do so while fostering the civic virtues of capacity, equality, and responsibility. Permitting public and private educators to advance a gender-stereotyped theory of sexuality fails on all fronts.

McClain's analysis of the content of sex education, like her analysis of the content of marriage promotion programs, is incisive and apt. What concerns me is the solution. Clearly, government should not be in the position of advocating the reawakening of gender stereotyping, much less its reimposition. Nor should government pay others in civil society to do the same thing. It is not clear to me, however, that government can be in the position of advocating the opposite goal through a comprehensive sex education curriculum which assumes the legitimacy of all forms of sexual expression. When many parents disagree with that approach to human behavior, and advocate for women and men to occupy different and stereotyped roles in their lives, how can we expect them to accept the notion that their children should not follow their instruction on such intimate concerns?

McClain argues that part of government's function is to open the minds of children to thinking beyond what their parents believe. Otherwise, children do not develop the critical facilities they need to behave in a democratic society. When it comes to something so fundamental as sexual behavior, however, many parents are willing to draw a line. If they just remove their children from the sex education classes, as many school systems allow, their decision does not isolate the child from the other messages government and society convey through education. If they put their children beyond the reach of government through home schooling, however, they can ghettoize the child. Home schooling has been a growing phenomenon in American society; if comprehensive sex education contributes to its growth, it is important to ask whether the gain is worth the cost. To answer that question in the affirmative, one must accept, it seems to me, McClain's argument that government has an obligation to foster adult intimate relationships. Because I find that part of her argument less persuasive than other parts, I for one would need to have other reasons to support comprehensive sex education in those school systems where home schooling has become a major issue.

In trying to locate families, government, and civil society at the intersection of liberalism and feminism, McClain has undertaken a heroic task. She succeeds in many ways, most notably by

exploring and claiming a central position for sex equality. Her critiques of the conservative promarriage agenda are models of clarity and insight. Whether each of her proposals persuade every one of her readers is less important than the fact that she will make each reader rethink some basic assumptions and, if democratic values prevail, open his or her mind to the possibility of alternatives.

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