

10-1-2010

*A Tale of Two Families -- Red Families v. Blue Families: Legal Polarization and the Creation of Culture*  
by Naomi Cahn & June Carbone

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### Recommended Citation

Rachel Rebouché, *A Tale of Two Families -- Red Families v. Blue Families: Legal Polarization and the Creation of Culture*, by Naomi Cahn & June Carbone, 44 Fam. L.Q. 375 (2011), available at <http://scholarship.law.ufl.edu/facultypub/34>

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# A Tale of Two Families—*Red Families v. Blue Families: Legal Polarization and the Creation of Culture* by Naomi Cahn & June Carbone

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Review by RACHEL REBOUCHÉ\*

## I. Introduction

In their thought-provoking book, *Red Families v. Blue Families: Legal Polarization and the Creation of Culture*, Naomi Cahn and June Carbone examine conflicting views on family formation in the “culture war.”<sup>1</sup> Mirroring the electoral maps of 2004 and 2008, the authors contend that regional differences between Republican and Democrat voters correspond to deeply held beliefs about family values.<sup>2</sup> The “blue” family paradigm is essentially liberal: It stresses individual equality, tolerance of diverse lifestyles, and a role for government in helping people achieve educational and economic success. “Red” families are conservative. They value tradition, as expressed in religious beliefs or longstanding cultural mores, and they expect the state to respect these values.

But, as Cahn and Carbone show, differences of ideology do not account for the divergent choices that red and blue families make. Neither red nor blue families practice what they preach. Blue families may “bristle at restrictions on sexuality, insistence on marriage, or the stigmatization of single parents,” but they raise children in committed, long-term relationships after delaying marriage.<sup>3</sup> Red families disavow premarital sex and

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1. NAOMI CAHN & JUNE CARBONE, *RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE* (2010).

2. *Id.* at 5. See also Interview with Professor June Carbone, National Public Radio, May 9, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=126653602> (last visited Oct. 21, 2010).

3. CAHN & CARBONE, *supra* note 1, at 3–4.

proclaim the merits of marriage, but have higher rates of teenage pregnancy and divorce, as well as lower marriage rates.<sup>4</sup>

In three parts, Cahn and Carbone capture the entrenched divisions between red and blue families and explain how opposing opinions and practices around family formation inform debates over abortion, same-sex marriage, and abstinence-only education. Supported by rich historical, sociological, and cognitive research, they analyze how the views of communities where many marry young, have children as teenagers or young adults, and divorce early, differ from those in which people postpone childbirth and marriage.<sup>5</sup> Cahn and Carbone propose changing the subjects of policy from sex to commitment, from abortion to contraception, and from family to work can help forge common ground between red and blue families.<sup>6</sup>

The book's task is a difficult one. By virtue of their subject, Cahn and Carbone rely on generalizations about how large groups of people vote, think, and act to describe why the national conversation about family values is so polarized. Even though Cahn and Carbone acknowledge the influence of race and class, the importance of these characteristics may be still too understated. Moreover, changing the subject of the nation's family values conversation may not address the causes of division identified by the authors.

Part I of this review describes the evidence that Cahn and Carbone offer in explaining differences in blue and red ideologies and choices. Part II considers their treatment of the contentious issues at the core of red/blue disagreement and suggests a contrasting view of laws mandating parental involvement in minors' abortion decisions. Part III analyzes the book's solutions for redirecting current debate and contemplates limitations to Cahn and Carbone's approach.

## II. The Scope and Cause of the Cultural Divide

In the first part of *Red Families v. Blue Families*, Cahn and Carbone cite statistics and studies that reveal how birth and marriage patterns align with voting preferences. Northeast and mid-Atlantic states, which vote Democratic, have lower rates of teen, nonmarital births, whereas states voting Republican (concentrated in the South) have the opposite.<sup>7</sup> The authors make clear that their purpose is not to prove causal relationships or to discount the influence of "other cultural constructs."<sup>8</sup> For example,

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4. *Id.* at 4.

5. *Id.* at 31.

6. *Id.* at 7-9.

7. *Id.* at 24.

8. *Id.* at 30 (giving the example of middle class or wealthy red families).

nonmarital birthrates may “reflect race more than geography:”<sup>9</sup> Latinas and African Americans have higher rates of teenage pregnancy, childbirth, and abortion than whites.<sup>10</sup> When controlling for race, the highest and lowest rates of nonmarital births for whites are in both red and blue states.<sup>11</sup> Voting preferences are thus an interesting, but not always accurate, indicator of family formation.

State statistics on marriage and childbirth, however, only explain part of the culture divide that Cahn and Carbone map. The modern information-technology economy, which depends on an educated workforce, helped create a “new middle class morality” that made the blue family possible.<sup>12</sup> With the Industrial Revolution, American agrarian society, which relied on large families, gave way to employment in industry.<sup>13</sup> Factory work centered in urban areas enabled a new class of men to make living wages for smaller families. At the same time, divorce was stigmatized and hard to obtain, and unwanted pregnancy resulted in marriage.<sup>14</sup> The authors explain that as industrial jobs went overseas and disappeared at home, so too did the prospect of blue-collar work that would support an entire family. Instead, a new information economy, reliant on technological innovation, demanded an educated workforce that included women.<sup>15</sup> As both women and men reaped the financial rewards of higher education,<sup>16</sup> marriage became less central to the production of wealth.<sup>17</sup>

Resulting changes in sexual behavior and gender roles met resistance, manifested in calls for sexual restraint before marriage and a “return” to traditional family structures.<sup>18</sup> Cahn and Carbone argue that feeding the backlash was resentment of the ways that the new economy rewarded the “new middle class morality.”<sup>19</sup> An individual benefited from ending a teen relationship for the promises of college; delaying marriage to a college girl/boyfriend to start a career; and waiting to have children until settling

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9. *Id.* at 29. *See also id.* at 11 (noting that family formation in minority communities does not necessarily follow a red or blue pattern).

10. *Id.* at 23, 29.

11. *Id.* at 29.

12. *Id.* at 36–37.

13. *Id.* at 34.

14. *Id.* at 119.

15. *Id.* at 35–36.

16. *Id.* at 37–41.

17. *Id.* at 58.

18. One of the more well-known accounts of the resistance to changing gender norms is SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST WOMEN* 241 (1991); *see also* Robert Post & Reva Siegel, *Roe Rage: Democratic Constitutionalism and Backlash*, 42 HARV. C.R.-C.L. L. REV. 373, 377 (2007) (characterizing opposition to legalized abortion as a “vision that is intensely concerned. . . about the role of women, sex, family, and religion in American life”).

19. CAHN & CARBONE, *supra* note 1, at 207.

in a stable job and place. Unlike previous generations, those who wait to have children until their late twenties or thirties are unlikely to remain abstinent until marriage and will probably avail themselves of legal contraceptives and abortion.

Drawing on adolescent brain development research, Cahn and Carbone describe the benefits of choosing to have children later in adulthood.<sup>20</sup> Older parents are more mature, stable, and risk-averse.<sup>21</sup> The blue parents who embody the middle class morality “embrace the transformation [from adolescence], teach young people to wait, and consider age appropriate interventions to reconcile exploration with responsibility.”<sup>22</sup> Behavior inconsistent with the norms of the new morality is not similarly rewarded: early marriage or childbirth is harder to support financially, can deter education, and limit mobility.<sup>23</sup> Cahn and Carbone argue that the blue lifestyle provides practical reasons for birth control and abortion,<sup>24</sup> while the red approach views women’s control of their reproductive capacity as a threat to traditional values.<sup>25</sup>

Cahn and Carbone rely on cognitive science to explain why people in red states would retain values unrewarded by financial gain.<sup>26</sup> They argue that blue families and red families fall into dichotomous personality categories—modernists or “nurturant mothers” and traditionalists or “strict fathers,” respectively.<sup>27</sup> Modernists express “flexible thinking, tolerance of diversity, openness to change, and greater emphasis on equality.”<sup>28</sup> Traditionalists, on the other hand, desire order, respect authority, and adhere to tradition.<sup>29</sup> Increasing homogenization of neighborhoods and community gathering places, like churches, exacerbate these “genetic dispositions.”<sup>30</sup> In addition, Cahn and Carbone quote from studies highlighting that, based on personality traits, people are unlikely to change opinions even when confronted with evidence contradicting their beliefs.<sup>31</sup>

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20. *Id.* at 53 (citing studies that show adolescents lack the cognitive ability to make contextual judgments about the risks and benefits of their conduct).

21. *Id.* at 48, 55.

22. *Id.* at 49.

23. *Id.* at 194.

24. *Id.* at 41, 44.

25. *Id.* at 73.

26. *Id.* at 61.

27. *Id.* at 61 (citing GEORGE LAKOFF, *MORAL POLITICS: HOW LIBERALS AND CONSERVATIVES THINK* (2d ed. 2002)).

28. *Id.* at 62. Cahn and Carbone explain the blue paradigm’s “greater emphasis on equality” by citing the research of the Yale Cultural Cognition Project, which found that traditionalists are likely to value solidarity and hierarchy, whereas modernists prefer egalitarian individualism. *Id.* at 63.

29. *Id.* at 61.

30. *Id.* at 66–69.

31. *Id.* at 65.

Personality types may help explain why disagreements about the function and composition of families appear so intractable. Yet the focus on personality or cognitive predilections can obscure the importance of institutional arrangements that shape people's choices. Cahn and Carbone acknowledge the political function that the partisan debate about family values plays.<sup>32</sup> Nevertheless, they de-emphasize the role of alliances between conservative groups and religious organizations in cultivating shared values in red states. Many have analyzed the modern decay of municipal and state infrastructures in red states, and the ways that religious groups promoting traditional values have filled the gap.<sup>33</sup> Indeed, other popular work describes how the Republican Party tapped into feelings of displacement of those outside large urban centers, in poorly managed or suffering state economies, through coalitions with community and religious organizations.<sup>34</sup>

The danger of framing red/blue politics in terms of personality is not only that it suggests beliefs are impermeable, rather than shaped by changing socioeconomic forces, but also that it influences how to close the gap between opposing positions. Instead of discussing systemic reform of local economies, the conversation revolves around messaging that can reach differing personality types—a point addressed in more detail in Part III of this review. The next part first describes the issues that Cahn and Carbone believe are emblematic of the current tension between family paradigms.

### III. The Dividing Lines of the Family Values Debate

The second part of *Red Families v. Blue Families* undertakes the complicated task of mapping demographic patterns against a backdrop of state and federal laws. Cahn and Carbone persuasively argue that issues like abortion, sex education, and same-sex marriage are contentious because they evoke fundamental disagreements about “how to build family support.”<sup>35</sup>

Their objective, however, is not to rehash familiar debates. Rather, by highlighting that blue states “as a whole” differ from red states “as a

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32. See *id.* at 92–93 (describing “the identification of Republican Party with traditionalist values” as well as the coalition that the Reagan administration built with religious groups opposing abortion).

33. See, e.g., ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

34. For example, Cahn and Carbone cite Thomas Frank's best-seller, *What's the Matter with Kansas?*, which details Republican alliances with evangelical religious groups. CAHN & CARBONE, *supra* note 1, at 105, n.82; see also THOMAS FRANK, *WHAT'S THE MATTER WITH KANSAS? HOW CONSERVATIVES WON THE HEART OF AMERICA* 94 (2004).

35. CAHN & CARBONE, *supra* note 1, at 74.

whole” on controversial subjects, Cahn and Carbone illustrate “how the acceptance of a new family regime translates into types of legal decision making.”<sup>36</sup> Different goals, such as the desire to curb premarital sexuality or the promotion of equality, underpin this legal decision-making in ways that, as Cahn and Carbone emphasize, do not always match the realities and needs of either red or blue family life.<sup>37</sup>

Cahn and Carbone begin by noting the dramatic changes to the interpersonal and legal regulation of sex during the 1960s and 1970s. They chart three pivotal influences—the substantial increase of women enrolling in college; the introduction and popularity of the birth control pill;<sup>38</sup> and decisions of the United States Supreme Court striking down laws prohibiting couples, married and unmarried, from using contraceptives.<sup>39</sup> Cahn and Carbone describe a synergy between blue family ideas and birth control as women newly graduated from college had better job prospects and access to legal family planning services. Birth control permitted women to engage in sexual activity before marriage (which they postponed to pursue careers) with less risk of unwanted pregnancy.<sup>40</sup>

Over the course of two decades, the national conversation about birth control changed from criminalization to government subsidization. Congress enacted family planning programs through Medicaid and Title X of the Public Health Service Act to reduce the number of children born to low-income women and to decrease welfare expenditures.<sup>41</sup> The bipartisan support that characterized the initial programs for confidential and free family planning services soon dwindled. The Reagan administration cut funding for family planning, which subsequent administrations have never restored completely.<sup>42</sup>

Decreases in government funding, however, did not impede access to birth control for those who could afford it. Indeed, objections to the broad availability of birth control pale in comparison to the furor over abortion—“the rallying cry for the return to traditional values.”<sup>43</sup> Relying

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36. *Id.* at 12.

37. *Id.*

38. *Id.* at 82 (noting that by 1963 1.75 million women were using oral contraceptives—two years before the Supreme Court held that laws barring contraceptives for married people unconstitutional).

39. See *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

40. CAHN & CARBONE, *supra* note 1, at 84.

41. Cahn and Carbone, as many others, note the racist undertones of public family programs. *Id.* at 86–87. See, e.g., Rebekah Smith, *Family Caps in Welfare Reform: Their Coercive Effects and Damaging Consequences*, 29 HARV. J.L. & GENDER 151, 179–80 (2006) (noting racism in contemporary limits on family size for welfare recipients).

42. CAHN & CARBONE, *supra* note 1, at 90.

43. *Id.* at 91.

again on the personality types described in the first part, Cahn and Carbone contend that Republican alignment with antichoice groups, which framed abortion as a stark moral choice, corresponds to absolutist/“strict father” personality preferences.<sup>44</sup> The authors, of course, recognize that other events influenced abortion politics. The point they emphasize, however, is that the abortion debate, as currently framed, strikes a chord with traditionalists and alienates modernists.

Cahn and Carbone explain red and blue reactions to abortion through the example of laws that require parental consent or notice before a minor has an abortion.<sup>45</sup> In 1979, the Supreme Court held in *Bellotti v. Baird* that parents cannot exercise a veto over a minor’s decision to have an abortion and that state laws must provide an alternative to parental involvement.<sup>46</sup> In most states, this alternative is a court hearing in which a judge determines whether a minor acting without a parent is sufficiently mature to decide to have an abortion or an abortion is in the minor’s best interests.

Since *Bellotti*, however, the Court has upheld parental notice or consent laws that do not work in practice. In *Hodgson v. Minnesota*, a divided Supreme Court upheld a law that required notice to both parents even though the lower court found, based on expert witness testimony, that the law was too burdensome on minors, that judges were unequipped to gauge maturity or best interests for abortion purposes, and that the two-parent notice requirement exacerbated family strife (when, for example, parents were separated or abusive).<sup>47</sup> *Hodgson* signaled that the “Supreme Court could no longer reach agreement either on the substance of parental involvement laws or on the judicial role of managing the litigation it produced.”<sup>48</sup>

Mandated parental involvement, Cahn and Carbone argue, “goes to the heart of the symbolic divisions between family paradigms and . . . marital and motherhood expectations [that young women’s] communities expect [of] them.”<sup>49</sup> They make the case that parental consent or notice fails on their own terms: the laws endanger, rather than protect, the health and

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44. *Id.* at 93.

45. *Id.* at 95–96. Cahn and Carbone note that abortion has not always been the subject of political disagreement. For an account of the public debate before *Roe v. Wade*, see LINDA GREENHOUSE & REVA B. SIEGEL, *BEFORE ROE V. WADE: VOICES THAT SHAPED THE ABORTION DEBATE BEFORE THE SUPREME COURT’S RULING* (2010).

46. *Bellotti v. Baird*, 443 U.S. 622, 643–44 (1979) (holding that minors need an alternative to parental involvement that is “completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained”).

47. *Hodgson v. Minnesota*, 497 U.S. 417 (1990). See *Hodgson v. Minnesota*, 648 F. Supp. 756, 774–75 (D. Minn. 1986), *reversed by* 853 F.2d 1452, 1455 (8th Cir. 1988).

48. CAHN & CARBONE, *supra* note 1, at 99.

49. *Id.* at 95.

well-being of minors, and do not encourage parent-child dialogue about pregnancy options.<sup>50</sup> Despite the laws' inefficacy, parental notice and consent statutes enjoy wide bipartisan popularity. State legislatures have passed parental involvement laws in forty-four states,<sup>51</sup> and thirty-seven statutes are in force today.<sup>52</sup> Perhaps this appeal is not surprising, given that the legal system has traditionally granted parents the right to monitor and to make decisions about their daughters' health care. As Cahn and Carbone note, it was not until the 1970s that teens could make independent decisions about birth control, much less abortion, without parental approval.<sup>53</sup> Moreover, consent or notice laws are arguably the less punitive version of laws that penalized extramarital teen sexuality. In the not too distant past, laws punished teenage pregnancy through school expulsions, placement in maternity homes, and criminal penalties.<sup>54</sup>

Cahn and Carbone are clearly concerned about the treatment of marginalized minors at the hands of the law. Although Cahn and Carbone argue that consent or notice laws hurt already vulnerable minors (such as those with strained parental relationships), they contend that statutes in blue states ease these burdens.<sup>55</sup> They point to statutes that allow a non-parent adult to consent or receive notice; change the age of majority for abortion; or allow a physician to consent. Wisconsin, for example, permits an adult family member, such as a grandparent, aunt, uncle, or sibling,

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50. *Id.* at 102–03. Decades of studies urge that parental involvement laws do not fulfill their own purposes. *See, e.g.,* Rachel Pine, *Speculation and Reality: The Role of Facts in Judicial Protection of Fundamental Rights*, 136 U. PA. L. REV. 655, 687–93 (1988) (summarizing studies showing that parental involvement laws fail to meet their stated aims, namely, to improve child-parent communication); AMANDA DENNIS ET AL., GUTTMACHER INSTITUTE, THE IMPACT OF LAWS REQUIRING PARENTAL INVOLVEMENT FOR ABORTION: A LITERATURE REVIEW 27–28 (2009) (summarizing studies that show abortion rates do not decrease with consent or notice laws and that the level of parental consultation remains static).

51. Six states—Connecticut, Hawaii, New York, Oregon, Vermont, and Washington—and the District of Columbia are the only jurisdictions that have not enacted laws mandating parental involvement for all minors. A Connecticut statute permits counseling about the value of parental notification for minors, but does not mandate it. CONN. GEN. STAT. ANN. §§ 19a–601 (2010).

52. Guttmacher Institute, *State Policies in Brief, Parental Involvement in Minors' Abortions*, at [http://www.guttmacher.org/statecenter/spibs/spib\\_PIMA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf) (last visited Sept. 28, 2010) (describing the parental involvement laws of thirty-four states, but omitting the laws of Maryland and Maine (which have physician waivers) and Alaska). Unless enjoined by a court, a new Alaskan notice law took effect in December 2010. *See* Medical News Today, *Alaskan Voters Approve Parental Notification Ballot Initiative*, Aug. 26, 2010, at <http://www.medicalnewstoday.com/articles/199006.php>.

53. CAHN & CARBONE, *supra* note 1, at 83, 97 (noting that until 1977 all states required parental consent for contraceptive use and that parental control over minors' medical decisions enjoys a long history).

54. Carol Sanger, *Decisional Dignity: Teenage Abortion, Bypass Hearings, and the Misuse of Law*, 18 COLUM. J. GENDER & L. 409, 476 (2009).

55. CAHN & CARBONE, *supra* note 1, at 101.

who is at least twenty-five years old, to give consent.<sup>56</sup> In Delaware, the age of majority for abortion decisions is sixteen years old.<sup>57</sup> Maine and Maryland allow a physician to waive parental involvement if the minor is mature or an abortion is in her best interests (the standards that judges apply in judicial bypass hearings).<sup>58</sup> Blue states are more likely to pass notice, rather than consent, statutes, and only red states require two-parent consent (North Dakota and Mississippi) or both notice and consent (Oklahoma, Texas, Utah, and Wyoming).<sup>59</sup>

A recent study by the nonprofit organization, the National Partnership for Women & Families, shows that a state's statute may have little to do with minors' abortion access.<sup>60</sup> The study compared the law on the books to the law in practice through 155 interviews with judges, lawyers, advocates, court clerks, state agency employees, and clinic staff members.<sup>61</sup> The final report demonstrates that a significant population of minors cannot consult their parents for logistical or personal reasons, and, for that cohort, the judicial bypass is not a meaningful alternative to parental consent or notice.<sup>62</sup> In only a few places, the alternative to parental involvement is a process in which most minors, from any part of a state, have the information and means necessary to seek a bypass without significant delay, cost, or embarrassment.

One might suspect that notice laws are less restrictive because parents or guardians need not agree to the abortion. The National Partnership's study, however, found that notice laws and consent laws often operate the same. For example, many abortion providers require parents to sign notice

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56. WIS. STAT. § 48.375 (2010).

57. DEL. CODE ANN. tit. 24, §§ 1782-83 (2010).

58. MD. CODE ANN. HEALTH-GEN. § 20-103 (2009); ME. REV. STAT. tit. 22 § 1597-A (2010). Maine's statute gives the minor the option of a bypass hearing or state-mandated counseling, which the abortion provider delivers. The provider must describe, among other things, the alternatives to and risks of abortion; encourage minors to consult with parents; and record the minors' reasons for not seeking parental consent.

59. CAHN & CARBONE, *supra* note 1, at 101.

60. See Rachel Rebouché, *Parental Involvement and New Governance*, 34 HARV. J.L. & GENDER (forthcoming 2011) (describing the National Partnership study and the gap between law and practice in parental involvement laws).

61. NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, *BYPASSING JUSTICE: PREGNANT MINORS AND PARENTAL INVOLVEMENT LAWS 10* (2010) (on file with the author). The author was an associate director of adolescent health programs at the National Partnership and co-wrote, with Anne Dellinger, *BYPASSING JUSTICE*. For additional information about the report and judicial bypass project, see [www.nationalpartnership.org](http://www.nationalpartnership.org).

62. See, e.g., Ted Joyce, *Parental Consent for Abortion and the Judicial Bypass Option in Arkansas: Effects and Correlates*, 42 PERS. SEXUAL & REPRO. HEALTH 168, 173 (2010) (noting that ten percent of pregnant minors petition for a bypass in one state and comparing the estimate that forty percent of minors indicate they would not consult a parent in electing abortion).

attestation forms in person.<sup>63</sup> The study also found that a physician waiver does not necessarily result in a more consistent, or less restrictive, application of the maturity and best interests standards. Although the politics of a state can foster a more or less hospitable atmosphere for abortion, the best indication of what makes a consent or notice law “workable” is not whether the state votes “blue” or “red.” Rather, a fair process frequently depends on the relationship among providers, judges, reproductive rights advocates, and other professionals facilitating minors’ access to courts and clinics.<sup>64</sup>

Parental involvement evokes commonly held beliefs that bridge, potentially in ways Cahn and Carbone dislike, the family values divide. Blue families that are “pro-choice” nonetheless embrace rights to parental autonomy when the decisions of their own children are at stake. Resonating with the book’s premise that practices do not necessarily follow values, what blue parents believe for other people’s children may not be how they view their own children’s reproductive or relationship decisions. Recognition of this particular commonality could also help illuminate the diversity within and the overlap between red and blue families. The barriers to clinical and legal services in almost all parental involvement states suggest that adolescents from both red and blue homes can face similar problems—parents that are unavailable, unsympathetic, or unable to assist them, for example.

Perhaps Cahn and Carbone’s mapping of blue and red differences better captures the debate about sex education, where similar issues about parental control over teen sexuality are at stake. As with consent and notice laws, Cahn and Carbone express frustration that states and the federal government (though to a lesser extent now) continue to fund abstinence-only programs, despite evidence that they are ineffectual. As with minors who cannot access abortion because of legal and practical impediments, the authors worry about the well-being of adolescents carrying unwanted pregnancies because they lacked information about or access to contraceptives. Again, in Cahn and Carbone’s view, personality differences are partly to blame. Traditionalists believe, based largely on religious views, that sex is sacred, and modernists believe in sexual autonomy and fulfillment. These beliefs translate into state policies governing sex education in public schools. Blue states reject abstinence-only funding, and red states do not.<sup>65</sup>

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63. BYPASSING JUSTICE, *supra* note 61, at 35, 37.

64. Rebouché, *supra* note 60, at 31. Cf. CAHN & CARBONE, *supra* note 1, at 191 (arguing that physician waivers and nonparent adult consent makes parental involvement laws “more workable”).

65. CAHN & CARBONE, *supra* note 1, at 112–15.

Likewise, the same-sex marriage debate reveals stark divisions between red and blue families. All of the states (and the District of Columbia) that recognize same-sex marriage vote Democratic.<sup>66</sup> Cahn and Carbone argue that opposition to same-sex marriage is fiercest in solidly red regions. They link the decline of marriage in the poorer parts of the country, where the ability to marry has become a “marker of class,”<sup>67</sup> and the failure of marriage promotion programs<sup>68</sup> to the rejection of same-sex marriage. Indeed, popular “red” arguments against same-sex marriage mirror the interests that states assert in defending “traditional” marriage: stability of heterosexual unions; the goals of procreation and child rearing; and the preservation of traditional relationships between men and women through marriage.<sup>69</sup>

Cahn and Carbone note two areas where changing sexual mores and family structure have not attracted the same level of debate or resulted in various laws of questionable effectiveness—custody for a parent cohabitating with a same (or opposite) sex partner and marriage promotion efforts that respond to high divorce rates. Taking the custody example first, Cahn and Carbone note a quiet revolution in the tone and outcomes of custody and visitation hearings. Courts across the country, with notable exceptions,<sup>70</sup> no longer treat a parent’s nonmarital cohabitation as per se evidence that a parent is “unfit” or as presumptively harmful to children. Although courts in red states were slower to adopt this approach, almost all courts now treat a parent’s relationship or sexual orientation like any other factor in a best interests determination.<sup>71</sup>

The decline of marriage and introduction of widespread no-fault divorce has not sparked the same political polarization as same-sex marriage, abortion, or sex education.<sup>72</sup> Many states, red and blue, have enacted marriage promotion policies, funded in part by the federal government during both Republican and Democrat administrations.<sup>73</sup> For the most

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66. The exception may be Iowa, which voted Democratic in the 2008 presidential election but voted Republican in the 2004 presidential election.

67. CAHN & CARBONE, *supra* note 1, at 118.

68. *Id.* at 120 (“researchers have found that there is no magic prescription to promote marriage, and there is thus no one way for the law to respond”).

69. *Id.* at 128–31. See *Goodridge v. Dep’t of Pub. Health*, 440 Mass. 309, 343 (Mass. 2003); *In re Marriage Cases*, 43 Cal. 4th 757, 781–85 (Cal. 2008); *Varnum v. Brien*, 763 N.W.2d 862, 898–904 (Iowa 2009), *Kerrigan v. Comm’r of Pub. Health*, 289 Conn. 135, 251–60 (Conn. 2008).

70. Cahn and Carbone describe custody cases decided in Arkansas, in which the court held that a parent’s involvement in a same-sex relationship creates a presumption of unfitness. CAHN & CARBONE, *supra* note 1, at 149–50.

71. *Id.* at 148.

72. *Id.* at 121–22.

73. *Id.* at 123–25.

part, these policies advertise marriage's benefits, offer couples communication and problem-solving tips, and have attracted little public debate.<sup>74</sup> Where blue and red states differ are covenant marriage laws, which, in addition to affirming the value of marriage, erect procedural barriers to divorce. The three states enacting laws that essentially make divorce more difficult vote Republican. However, as Cahn and Carbone illustrate, only very low percentages of marrying couples choose covenant marriages.

Interestingly, Cahn and Carbone pit two categories of laws against each other. The first set dealing with abortion, same-sex marriage, and sex education have become emblematic of the culture war. Although custody and marriage promotion are at the heart of family structure, the second set of laws have not been lightning rods of controversy. Cahn and Carbone attribute the diffusion of tension in the latter category to the triumph of lived experience over ideology. In custody determinations, opposition to parental relationship choices does not trump the best interests of children. In marriage promotion, distaste for divorce does not trump the needs of people seeking exit from bad relationships. What both examples purport to show is a gradual recognition, across most states, that political allegiances should give way to the everyday needs of family members. The real danger of abortion laws, same-sex-marriage bans, and abstinence-only programs, then, is that they have not kept pace with people's day-to-day lives and disadvantage those who cannot navigate around the law. For example, Cahn and Carbone argue that parental consent and abstinence-only laws are dangerous because, in addition to being ineffective, they punish low-income women, who too early become mothers and incur the costs that come with childbearing.

Cahn and Carbone seek to help both red and blue families meet their needs and come to compromise on contentious subjects. They appear sympathetic to marriage promotion programs, reasoning that couples in long-term, stable relationships experience greater financial stability and create environments conducive to child rearing.<sup>75</sup> As such, they advocate marriage promotion policies that address what make marriages difficult (through premarital counseling programs, for instance) without penalizing couples when marriages fail (as covenant marriage laws do).<sup>76</sup>

The next part considers the book's proposals to "allow each part of the country to redefine family aspirations;" to reinvent regulation of the workplace and health care system in order to meet the needs of caretakers and potential parents; and to move away from divisive topics like abortion to

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74. *Id.* at 126.

75. *Id.* at 162–63.

76. *Id.* at 156–59.

those that “can succeed with diverse groups,” such as availability of birth control.<sup>77</sup> However, the prescription of “changing the subject” of the family values debate may not address the causes of division between red and blue families that Cahn and Carbone identify.

#### IV. Obstacles to Consensus

The final part of *Red Families v. Blue Families* does not argue for changed attitudes; instead, it in the main recommends changing the subject.<sup>78</sup> As noted, Cahn and Carbone propose that discussions about abortion should instead focus on the importance of contraceptive use in preventing unwanted pregnancies.<sup>79</sup> Instead of debating the emphasis on abstinence in sex education for teenagers, policy should concentrate on educating young adults about birth control methods.<sup>80</sup> Rather than policing which couples states should allow to marry, legislation should focus on supporting parents in the workplace.<sup>81</sup>

To this end, Cahn and Carbone seek to reconfigure debates about family values, currently discussed as national crises needing one-size-fits-all solutions, as regional discussions about the needs of diverse families. Policy in red states should provide assistance for caretakers returning to school or parenting education for young couples.<sup>82</sup> Conversely, policy in blue places should attend to the fertility needs of women who delayed childbirth and allow fathers to take paid paternity leave from their jobs.<sup>83</sup> There are exceptions, however, to localized control of family law matters. Cahn and Carbone argue, for example, that states should not circumscribe “intimate and personal private behavior” in laws that would ban abortion, contraceptives, or same-sex intimate conduct.<sup>84</sup>

Changing the subject, however, may not address how the two main catalysts of the culture war that Cahn and Carbone highlight—economic inequality and personality traits—will continue to create perpetual “losers and winners.” The authors explain that blue families’ modernist approach is an inevitable consequence of a changing economy. Cahn and Carbone highlight the complex role of class, but, for the most part, they rely on class to characterize blue families as wealthy or middle class and red fam-

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77. *Id.* at 208–09.

78. *Id.* at 7.

79. *Id.* at 184–86.

80. *Id.* at 174–79.

81. *Id.* at 190–92.

82. *Id.* at 151–58.

83. *Id.* at 186–87.

84. *Id.* at 163–64, 174. The authors argue, however, that states should have discretion to decide whether to permit same-sex marriage. *Id.*

ilies as working class or low-income earners.<sup>85</sup> An immediate objection to these generalizations is that the red and blue categories are underinclusive. In addition to discounting diversity within red and blue states, it ignores wealthy Republicans and working-class Democrats.<sup>86</sup> The income distinction also minimizes the disparities between voting patterns and family ideology. One could readily imagine a family that votes Democratic, but espouses traditional ideas about family structure because of religious or ethnic beliefs and commitments. More importantly, it might not be possible to talk about class politics without a robust conversation about race. If the image of the red family is implicitly white and rural and the blue family is white and urban, then red/blue family constructs exclude the experiences of all other racial groups and reflect an incomplete picture of modern American communities.

Cahn and Carbone acknowledge that their definitions of red and blue families have these shortcomings. Even setting these criticisms aside, accepting the economic imbalance between red and blue families necessitates living with economic inequality that pits families against each other. By the book's own terms, blue families will always come out on top financially (because the economy rewards blue lifestyle choices), and red families will always be on bottom. As Cahn and Carbone show, young people in nonurban, noncommercial centers choose early childbearing not out of personal preferences but because it poses no significant barriers to existing employment or education prospects. Conversely, Cahn and Carbone imply that it would make sense for a young person from a red community to develop a blue lifestyle after receiving a scholarship for college. Proposals for closing the culture gap that do not recognize the implicit preference for blue choices and the resource asymmetry that these preferences create may have little hope in scaling back debate. Indeed, the culture war may help sustain inequality by naturalizing the idea that not all places can accommodate a population of wealthy, well-educated people. Not all families can be blue families.<sup>87</sup>

The same impasse may result if, as Cahn and Carbone suggest, division between red and blue families is a product of personality differences. The cognitive science on which Cahn and Carbone rely indicates that some level of conflict will always exist between contextualists/modernists and

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85. Cahn and Carbone acknowledge that the relationship between voting patterns and income is not perfect. *Id.* at 10–11.

86. Cahn and Carbone acknowledge this point briefly, too, by noting the diversity of red families. *Id.* at 30. See, e.g., Clare Huntington, *Purple Haze*, 109 MICH. L. REV. (forthcoming 2011) (making this criticism in a review of *Red Families v. Blue Families*).

87. Cahn and Carbone's proposals advocate income and other assistance for young parents, especially young mothers. However, they stop short of casting most (if not all) of their solutions as either direct or indirect economic support for red families.

absolutists/traditionalists. As absolutists, red thinkers, by definition, are loathe to compromise.<sup>88</sup> The authors appear hopeful that if regional stakeholders can negotiate policies that mediate personality differences, the national culture war might subside. However, as Cahn and Carbone's proposals show, political compromise on family values may inherently favor red ideals over blue ones. Flipping the power dynamics that the new economy produces (which implicitly favor blue families), an acceptable agreement for absolutists likely requires policies that incorporate a significant amount of deference to traditional family structures and norms, which emphasize the centrality of marriage and childrearing. For example, Cahn and Carbone suggest that both camps might agree that everyone wants a "stable family." They also contend that the red vision of a stable family relies on spouses playing traditional gender roles, whereas the blue concept is one in which equality defines partners' roles. An effort to re-envision these roles, perhaps through education or workplace advancement, may incite the very debate that Cahn and Carbone hope to avoid.

Certainly, the authors are not blind to the power differentials between red and blue families. Cahn and Carbone are frank about the limitations of their approach: "We are pessimistic . . . that genuine family transformation can occur without addressing the growing inequality that has exacerbated the pressures on family life."<sup>89</sup> The purpose of this review is to highlight the tenacity of division as a means of supporting the book's larger objective—to facilitate a more transparent conversation about the personal, economic, and social interests that make the terms of the country's family values debate difficult to change.

## V. Conclusion

*Red Families v. Blue Families* is intensely concerned with the well-being of all families, which seems to be the best justification for finding common ground. Even if the reader disagrees with the authors' policy proposals, Cahn and Carbone have created an important and innovative new language for conversations about family values. Their intervention is timely in an era where accommodation seems unsatisfying and answers

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88. Democrats, in fact, have tried some of the "changes of subjects" that Cahn and Carbone advocate, especially in the context of abortion, with little apparent success. For example, in 2002, President Clinton supported abortion that was legal, safe, and rare, arguing that contraceptive use should help reduce abortion. Since then, Democrats have repeated the phrase to advance an agenda for broader contraception access. See Susan A. Cohen, *Toward Making Abortion 'Rare': The Shifting Battleground over the Means to an End*, 9 GUTTMACHER POL'Y REV. 2 (2006), at <http://www.guttmacher.org/pubs/gpr/09/1/gpr090102.pdf>.

89. CAHN & CARBONE, *supra* note 1, at 14.

are elusive in the culture war.<sup>90</sup> *Red Families v. Blue Families* asks us to imagine a broader and better agenda.

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90. See Sam Tanenhaus, *Sound of Silence: The Culture Wars Take a Break*, N.Y. TIMES, June 28, 2009, at WK1 (“Accommodations [between right and left politics], the hallmark of consensus, present their own risks.”).