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Same-Sex Unions and Marriage—Is There Any Difference?

Baroness Ruth Deech (House of Lords, UK)

Discusses British Law regarding Marriage and Civil Partnerships. This discussion laws relating to marriage and civil partnership, the UK Human Rights Act of 1998 (including various cases decided under the Act), and the 2004 Gender Recognition Act. She also highlights 2010 attempts to change civil partnership law. More general issues discussed include the role of human rights in the case law on the issue, transsexuals in British case law and international jurisprudence. In particular, the article concludes that the rights of children are called into question by the expansion of the rights of same-sex couples.

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Evaluating Legal Regulation of Family Behaviour

John Eekelaar (Oxford University)

This paper centers on the distinction between behavior and the norms related to family behavior, as expressed through state law and practice. Such expressions must be justified because they prescribe rather than describe social behavior. The article maintains that, in order to be justified, family-related normative expressions should enhance the well-being of individuals in the family. This requirement mandates careful evaluation of empirical evidence—in particular, an appreciation of the relative effects of legal events in relation to social behavior.

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Children's Human Rights to Natural Biological Origins and Family Structure

Margaret Somerville (McGill University, Canada)

Over the millennia of human history, the idea that children—at least those born into a marriage—had rights with respect to their biological parents was taken for granted and reflected in law and public policy. But with same-sex marriage, which gives same-sex spouses the right to found a family, that is no longer the case.

Likewise, children's rights with respect to their biological origins were not an issue when there was no technoscience that could be used to manipulate or change those origins: a baby could only be conceived in vivo through sexual reproduction. But with assisted human reproductive technologies (ARTs) and genetic technologies, that, too, is no longer the case.

So, in light of these new realities, what are our obligations, as societies, to children with respect to their biological origins and biological families? What protections do children need and deserve? This article argues that so-called “designer” children should be discouraged, as it heightens the relationship between children and their biological parents.

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Family Autonomy and Children's Best Interests:
Ireland, Bentham, and the Natural Law
Oran Doyle (Trinity College Dublin, Ireland)

Provides an overview of Irish Constitutional law with regard to the family. The Constitution is designed to protect the family unit and balance family autonomy with state sovereignty. These issues emerge in three types of cases: custody decisions, health decisions, and education decisions. These decisions have been linked by some justices to the writings of Jeremy Bentham and other catholic teachings. In particular, one Member of the Irish Supreme Court has suggested that there is little difference between a natural law approach and Bentham's approach. This paper uses a number of fact situations raised by Irish case law to explore in a more general way the theoretical differences between a natural law approach and a liberal, laissez-faire approach. The tentative argument of the paper is that, while the two approaches are superficially similar, A recognition that the Constitution is more consistent with natural law theory than with Bentham may be helpful in providing a more fully worked out conception of how to fashion a State that can support families and children. It would also help to avoid the false analogy between individual autonomy and family autonomy.

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The Definition of Family in Modern Law and Its Legal Protection
Olga Cvejić Jančić (University of Novi Sad, Serbia)

If one juxtaposes current conceptions of the family with those generally accepted before the end of the Second World War –and for some time after the war–it becomes obvious that the concept of family significantly changed during the second half of the twentieth century. Before the war, it was not questionable what family meant and what the bases of family were. It was understood that family comprised a married couple and their children (the narrower notion of family, "*nuclear family*"); or, in instances in which after marriage the couple continued to live with their parents, the family comprised the couple with their children and their parents, so that at least three generations lived, worked, and spent time together as an extended family (also called a "family collectivity"). The universal basis of family was marriage, while cohabitation, i.e., non-marital partnership, was unacceptable and for a long time was even stigmatized. Even worse was the situation with homosexual relations, because such relations were considered criminal acts in most states. This traditional meaning of family was adopted in a vast majority of European and Western states.

Nowadays, the traditional concept of family is not the only one. There are now many different family forms that enjoy a degree of protection in different fields of law, such as family law, social law, inheritance law, criminal law, and tax law. These new family forms include the incomplete family (which exists where only one parent lives with the children owing to divorce, separation, termination of cohabitation, or single parenthood from the outset), the restored family, the homosexual family, and the adoptive family.

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From Enrico to Charlie: The Parent-Child Relationship in Children's Literature

Maria Donata Panforti (University of Modena-Reggio Emilia, Italy)

Considering that the parent-child relation is at the core of family life, this paper intends to explore how and to what extent this relation is mirrored in children's literature of the 19th-20th centuries. As it is well known, the relationship between parents and children, with its psychological, social and of course legal implications, underwent a continuous change in the 1900s. In short, the content of that change goes back to overcoming the traditional idea that the parent's main task is to safeguard, educate, and direct the offspring, and also to its substitution with the belief that the mother and father have above all to love, comprehend and support the children. The function of parental support has replaced the role of parent-teacher of the past.

The paper will show that the above development has in fact been faithfully – although often unconsciously - described in children's literature, that is to say either texts to be read by children either ones to be read by adults and later on categorized as coming-of-age texts. To this purpose, several novels and tales written in the last two centuries will be analyzed and compared. The research's method is the one that belongs to the Law and Literature's approach. I will therefore take into consideration several works by Roald Dahl (especially *The Witches*, U.K., 1964, and *Charlie and the Chocolate Factory*, U.K., 1964), and books by other authors.

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Family Values in the Jewish Tradition

J. David Bleich (Yeshiva University, USA)

This paper presents Judaism as a religion of law. In Judaism, the family unit, "both as a social unit and as a legal institution," it helps to provide comfort, companionship, and stability. The paper discusses the role of reproduction within the family unit, artificial insemination, and the homosexual act (not the homosexual as a person). It concludes with a discussion of the phrase, "be fruitful and multiply." He notes that this phrase is understood as both a commandment and a blessing. While there is some doubt among scholars, the article contends the law is generally applicable. Emphasizes that the command to multiply and replenish the earth (Gen 2:24) is meant to occur in the context of the family

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Emotional Violence Caused to Children by their Parents' Divorce

Suzana Kraljić (University of Maribor, Slovenia)

The author, with special attention to Slovenian law, proposes the thesis that 'word wars' and other hostile or neglectful conduct between spouses who are divorcing or separating may constitute emotional violence against children. Such practices may cause long-term emotional and also physical harm to the child.

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Family Autonomy in Contemporary Parent-Child Relations
Gordana Kovaček Stanić (University of Novi Sad, Serbia)

This paper focuses on family autonomy as a principle of law. In this paper, family autonomy as a principle refers to the possibility for family members to make decisions on family matters by mutual agreement and without the interference of the state. It differs from a principle supporting autonomous decisions by each family member, as it presupposes the actions of at least two parties. The principle of family autonomy thus is important and valuable, as it supports the family's regulating relationships between its members.

Family autonomy as one of the principles of family law could be analyzed in different areas of parent-child relations. In some areas, parties can exercise their wills in establishing mutual rights and duties; in other areas free will is limited, such as maternity and paternity. The aim of this paper is to ascertain whether family autonomy is broadened in contemporary family law, and in what manner it may be broadened.

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Family Solidarity Versus Social Solidarity in the United States
Sanford N. Katz (Boston College, USA)

This paper centers on the question of who should take charge of the family unit as a whole—individual family members or the government. This paper contrasts social safety nets in the United States, such as Social Security, with obligations based on individuals, such as child support. United States law places more emphasis on individual support of families through methods such as alimony and marital property division. Especially when contrasted with the law on issues such as cohabitation, it is clear that American marriage law is based on belief that marriage is the centerpiece of society and, in the words of a United States Supreme Court decision, “the most important relation in life.”

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The Right to Divorce in Jewish Law: Between Politics and Ideology
Avishalom Westreich (Academic Center of Law and Business, Ramat Gan, Israel)

The paper discusses the deep, even emotional, debate surrounding no-fault divorce in Jewish Law. As the paper argues, moderate conception of no-fault divorce has a basis in the classic Jewish Law sources. In current rabbinical court decisions, however, it has become the subject of a keen debate. A possible explanation of the debate is a political one, as part of the inter-authority conflict between rabbinical and civil courts which characterizes the Israeli legal system in matters of family law. According to this explanation, some rabbinical courts have sought to expand their authority by limiting, or controlling, divorce. The paper, however, argues that the political explanation is not sufficient, and suggests an alternative ideological reason.

Accordingly, a significant school of rabbinical judges rejects the right to no-fault divorce, and, using various legal and hermeneutic methods, claims that this right belongs to "the laws of the nations," that is, that it arises from non-Jewish sources and lacks roots in Jewish Law.

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Natural Law and the Rights of the Family

Robert John Araujo, S.J. (Loyola University Chicago School of Law, USA)

This paper reviews the nature and rights of the family in contemporary international law. Relying especially on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and other international charters, treaties, and texts, it emphasizes that the family is the basic unit of society, it is founded on the marriage of man and woman, and that parents have profound rights as the primary educators of their children and that natural law right reason underlies the self-evident truths about the critical

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Fundamentals of the Jurisprudence of the Family: Building on Rock or Sand?

Lynn D. Wardle (Brigham Young University Law School, USA)

This paper will establish and illustrate three points concerning the jurisprudence of the family. The first principle is that the study of the jurisprudence of the family is important and timely. The second is that the comparative study of constitutional law is one valuable source of insights into the principles that make up the jurisprudence of the family. The third is that comparative study of religions is another valuable source for understanding the jurisprudence of the family, especially in any particular faith community or legal system influenced by a faith community. This article begins with a review of the importance of foundations in building institutions that are stable, lasting, secure, and effective. It considers the relevance of jurisprudence of the family, and whether there are any real foundational principles for family law or for moral and virtuous family life apart from social preferences that happen to prevail in a culture or community at any particular time and place.

“That Man Is You!”: The Juristic Person and Faithful Love

Scott FitzGibbon (Boston College Law School, USA)

“The science of law,” it has been said, “must be drawn from man’s inmost nature.” The science of obligation – the dimension of jurisprudence that concerns duties – must be founded upon the experiences of humanity. It should draw upon insight into human flourishing, and it should base its conclusion upon the basic goods involved in human life. Similar recommendations might be suggested for the “science,” if it is one, of love. This paper aims to pursue those projects by focusing on the story of King David. The story of David, Bathsheba, and Nathan sheds much light on man’s inmost nature, and on obligation, love, and law. Nathan’s comments must have given David much food for thought. Nathan reminded David of his duty. Of course the Torah forbids adultery, and David had committed it. Nathan’s comments surely led David to reflect

about obligation and to ponder the Law.

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Book Review of “The Jurisprudence of Marriage and Other Intimate Relationships”

Margaret Somerville (McGill University, Canada)

This book summarizes a variety of articles discussing the legal state of marriage in the digital realm. The authors support one man-one woman marriage, and view marriage in terms of relationships—that of husband and wife and that of mother and child. This form of marriage has many benefits, deprived from natural law. The articles also argue that so-called homosexual marriage would not be successful, as they do not have the same roots in natural law.

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Symposium on the Jurisprudence of the Family: Summary of Presentations

Marya Reed (Doha Int’l Institute for Family Studies and Development, Qatar)

The articles in this volume of *International Journal of the Jurisprudence of the Family* were developed from papers presented at the Symposium on the Jurisprudence of the Family held May **29**, 2010, at the Bratislava School of Law, Bratislava, Slovakia. This article **by** Dr. Reed describes the context of that conference and summarizes the approach taken in many of the papers.
