

Rights and Obligations in the Contemporary Family: Rethorizing Individualism, Families and the State

Organizers: Daphna Hacker & Cynthia Grant Bowman

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Conference's Rationale

Family law suffers from underdeveloped theoretical foundations. Though this area of law touches on the lives of us all, most academic and political discussions on current family law and possible family law reforms are conducted with no clear and coherent theoretical framework. Judges base their decisions on unarticulated and often conflicting theoretical assumptions. Differing and inchoate theories are emerging in the discussion of new family forms, such as same-sex marriage, cohabitation, and Assisted Reproductive Technology, but participants in these debates often develop their theoretical assumptions without considering their impact on the field of family law as a whole.

The need to develop theoretical frameworks to help us shape family law has become urgent in recent years. Current changes in family practices and values are so profound and rapid that law is lagging behind, with no answers to the needs and demands of new families, such as post-divorce family members, same-sex couples, partnerships, and children who were conceived by anonymous genetic material donations. Even members of traditional families lack agreed-upon social and legal scripts, hence facing uncertainty and insecurity in their familial expectations and experiences. Legislatures are slow to react; and judges, left with no coherent and consistent guidelines, produce a patchwork of ad hoc solutions that leave the area of family law unstable and full of tensions and contradictions.

A major reason for the current confusion and the failure of current legal arrangements to coherently address the interests of different family members is the growing tension between secular, individualistic and liberal concepts of the family, and religious, communitarian and relational concepts of the family. The aim of the conference is to address this tension and thus to contribute to the construction of a body of theory about family law that will assist scholars and policy makers to address current challenges created in the many occasions in which families meet the law.

The theme of the conference - *Rights and Obligations in the Contemporary Family: Rethorizing Individualism, Families and the State* - is relevant to many areas of family law. We hope the conference will address the theme both abstractly and in relation to specific legal questions. On the abstract level, we wish to ask:

- Should we think about the family as a conglomerate of individuals with independent and separate rights or as an association that creates special duties among its members? What are the theoretical justifications for burdening family members with obligations towards each other that are different than obligations among strangers? Should we think differently about these questions when dealing with relations between spouses and between parents and their children? Should genetics, actual relationships, or formal legal recognition be the test for familial obligations?

Among the specific legal questions we wish the conference to address are:

- Property division upon separation – What should be the mutual property obligations among spouses? Among separated parents and their children? Between cohabitants? What are the theoretical justifications for limiting individual property rights within the family and the post-separation family?
- Property division upon death – How should we balance freedom of testation and familial obligations?
- Technology and reproduction – Should a sperm or an ovum donor have parental obligations and under what circumstances? Should the law allow sperm harvesting in the name of the deceased's familial obligation?
- Children's rights and obligations – How should our understanding of children's rights affect our understating of their obligation to obey their parents? How should we treat parental obligation to educate and care for their children in cases in which such education and care conflict with the larger society's understating of children's rights and a democratic polity?
- Fault, no-fault and delayed divorce – Should the law intervene in the right to exit of one spouse, and if so in what ways and on what grounds of obligation? Should the answers to these questions affect our understanding of marriage and cohabitation and, if so, in what ways?

By bringing together scholars from different parts of the world and from different disciplines, and by encouraging them to engage in theoretical discussions about rights and obligations in the contemporary family, we hope to produce a collection of cutting edge articles that will be published in *Theoretical Inquiries in Law* and will be a significant contribution to narrowing the theoretical lacunae on family law.

List of Presenters:

Elizabeth Beck-Gernsheim, University of Erlangen (Germany)

Ayelet Blecher-Prigat, Sharie Mishpat College (Israel)

Cynthia Grant Bowman, Cornell University (USA)

Margaret Brinig, University of Notre Dame (USA)

John Eekelaar, Oxford University (UK)

Maxine Eichner, University of NC (USA)

Ira Ellman, ASU (USA)

Marsha Freeman, University of Minnesota (USA)

Michael Freeman, Univ. College London (UK)

Shelley Gavigan, York University (Canada)

Reg Graycar, University of Sydney (Australia)

Ruth Halperin-Kaddari, Bar Ilan University (Israel)

Shachar Lifshitz, Bar Ilan University (Israel)

Mulela Margaret Munalula, University of Zambia (Zambia)