

INTRODUCTION TO THE IASJF NEWSLETTER

This is the inaugural issue of the Newsletter of the International Academy for the Study of the Jurisprudence of the Family. The Secretary-Treasurer of the Academy, Professor Carmen Garcimartin, will prepare and send the newsletter every three months to all members of the Academy. This is an important step in the development of the IASJF. We encourage all members to send information to Carmen for her consideration for inclusion in the newsletter (cgarcimartin@udc.es).

NEWS FROM THE IASJF

⇒ The Academy has incorporated new members to the Executive Board of Directors and to the Advisory Board. As of January 1st 2012, academics from fourteen countries had kindly accepted positions of collaboration with the Academy. We are convinced that they will make valuable contributions and will greatly further the aims of the Academy.

⇒ On April 30th and May 1st will take place the “Symposium on the Jurisprudence of Extended Families, Extending Families and Intergenerational Solidarity”, will take place in Doha, hosted by the Doha International Institute for Family Studies and Development and co-sponsored by the Academy. The abstracts of papers and other information regarding the Symposium are posted in the Academy website: http://www.iasjf.org/conference_symposia.php. Papers from this symposium will be published in the International Journal of the Jurisprudence of the Family (IJF).

PUBLICATIONS

⇒ The first volume of the International Journal of the Jurisprudence of the Family has been published in 2010. It contains articles by distinguished authors in eight countries (titles and authors set forth below). It is now available both in hardcopy and through HeinOnline. A brochure with the Table of Contents for volume 1 and information on how to order the IJF is available at <https://www.wshein.com/media/brochures/131770.pdf>.

⇒ The second volume will be completed in 2012. Several of the articles have been published on line, and may be viewed at published and can be viewed on line at <http://heinonline.org>. Set forth at the end of this newsletter are the abstracts of some of the articles in this issue (abstracts may be viewed on the SSRN "Works in Progress" site).

FORTHCOMING

⇒ One of the aims of the Academy for the next months is the improvement of the webpage. We want it to be our regular way to convey the information about the activities of the Academy, and also a place for spreading news about scholarly research, as well as news on the Family Law. Send suggestions for improvement to Lynn Wardle at wardlel@law.byu.edu .

ABSTRACTS

Her Choice, Her Problem: How Having a Choice Diminishes Family Solidarity

Richard Stith

<http://ssrn.com/abstract=1911917>

This Article explores a little-noticed dimension of abortion and assisted suicide (or voluntary euthanasia): how choosing to reject those options can have a negative impact on the legally authorized choosers. Women who refuse abortion may be blamed for their choice by boyfriends, neighbors, employers, and others. Similarly, infirm or dying persons may find family and other caregivers upset by their refusal to agree to assisted suicide when voluntary death seems the sensible option. Finally, the author questions whether a life chosen as an option can ever have the dignity of a life simply accepted, i.e., whether the child a mother once chose not to abort suffers from her having been able to choose otherwise, and whether the severely disabled but suicide-rejecting person suffers from having to justify her continued existence.

Why French Law Rejects a Right to Gay Marriage: An Analysis of Authorities

William Duncan

<http://ssrn.com/abstract=1989009>

The debate over the definition of marriage has proceeded in strikingly different ways in the United States and Europe. While the debate in the U.S. has largely taken place in the judicial realm, the debate in Europe has largely been confined to legislative bodies. This procedural difference, however, is much less important than the differences in the substance of the discussion. This article examines French legislative and judicial authorities to highlight these differences. Thus, while the debate in the United States has generally focused on claims of equality and rights with an emphasis on treatment of adults seeking to marry. In France, by contrast, though equality claims are addressed, they have typically been analyzed with attention to the interests of children in marriage as a social institution rather than an association of adults. The article examines key cases from the Court of Cassation and Constitutional Court as well as a detailed report of a Parliamentary committee in France to flesh out the reasons these authorities for their decision to retain the legal definition of marriage as the union of a husband and wife.

The Principle of Verisimilitude and Artificial Filiation Links: Biology as a Model for the Law of Parent and Child

Carlos Martínez De Aguirre

<http://ssrn.com/abstract=1978897>

Recent developments in law concerning the basic relationship between parents and children put at stake the very legal concept of filiation. This is the case in Spanish Law, which allows both same-sex adoption and same-sex parenting in cases of medically assisted procreation. In order to face properly those new legal provisions, revisiting the concept of filiation is needed. This paper suggest that filiation is neither a legal nor a social construction, but a biological fact. Biology provides the basic structure for a relationship to be considered as one of filiation. The principle of verisimilitude, this paper proposes, requires that the law regarding the main structure of filiation be guided by the biological model.

Pairing, Parenting and Promising Through Tortuous Paths: Cohabitation, Single-Parenting, Extended-Family Parenting, and the Role of Kinship and Religion

Paul Galea

<http://ssrn.com/abstract=1973675>

As couples in Western Europe generally follow the traditional path leading to marriage through a series of familiar stages, guided by recognized signposts, for a sizable number the course of action is more complicated. When many of the pair-bonding ingredients traditionally associated with marriage, such as emotional and sexual intimacy, are inserted into the early stages of the relationship, unplanned pregnancy is very likely to occur at a time when the relationship lacks clear contours and direction. The new family finds itself in a juridical and psychological limbo. While customs and values may change over time, other factors, such as kinship, extended family ties and the religious culture seem to be more resilient than previously thought. In the wake of an increase in births out of wedlock, extended families seem to be responding sufficiently well by absorbing these newcomers into their fold. In this process, grandparents are seen to be playing a determining role. These evolving family patterns are analyzed from an empirical perspective and illustrated by a study of a particular socio-cultural scenario taken from the island state of Malta. Though the conclusions cannot be generalized, there are sufficient indications that some of these patterns are replicated elsewhere.

Human Dignity and the Pregnant Woman's Right to Support

Debora Gozzo

<http://ssrn.com/abstract=1973640>

This article describes aspects of Brazilian law relating to alimony, with special attention to a recently adopted statute which allows for a pregnant woman, in certain cases, to compel alimony payments from someone she demonstrates to be the biological father of the child, even though fatherhood cannot be decisively proven until after the child is born. It identifies the roots of this right to alimony in the principle of human dignity, noting the development of this principle in the writings of Immanuel Kant and the endorsement of this principle in the Brazilian Constitution.

The Children of No-Fault Divorce: Family Structure and Success

Baroness Ruth Deech

<http://ssrn.com/abstract=1950299>

This paper examines poverty and family structure as the two major components affecting the development of the children of broken unions, and concludes that on balance, it is family care that is more significant than poverty. Nevertheless, governmental solutions have focused on providing more resources to the affected children; this strategy does not seem to have had much success.

Education in the Secular State: Whose Right is it?

Carmen Garcimartin

<http://ssrn.com/abstract=1954843>

State Constitutions and international treaties usually recognize the parents' right to choose the kind of religious or moral education they want for their children. Public authorities have the power to establish the education system and the compulsory subjects of the school curriculum. Conflicts between parental rights and State powers in this area must be resolved by applying the constitutional principles of religious freedom and separation of Church and State. The secularism that pervades Europe has led in some countries to a misconception of the consequences of these principles, and, as a result, to some political decisions regarding the education system that have triggered intense controversies, mainly related to subjects that may include an ideological or moral content. The paper analyzes this matter, with special attention to the decisions of the European Court of Human Rights.

Artificial Reproductive Techniques and Parenting: Trends and Paradoxes

Jorge Nicolás Lafferriere

The increasing use of artificial reproductive techniques generates very complex problems concerning parent-child juridical relations. Posthumous insemination, heterologous fertilization procedures, and surrogate motherhood raise questions as to the traditional ways in which we establish parenthood. This paper analyzes trends in comparative family law and proposes responses to the challenges presented by artificial reproductive techniques. First, it considers the juridical issues that arise from the use of donor gametes, with special attention to the question of donor anonymity. Then the paper considers basic principles that should guide law and policy in this area, and proposes conclusions as to the right to identity, the commodification of the human body, the traceability of gametes, the exploitation of women, and other matters. The paper considers same-sex marriage (with special attention to a recent Argentinian law recognizing them); and it considers the possibility of “two-mother” or “two-father” families. The complexities of the different combinations of biological parents, donors, and surrogate mothers are considered. The paper concludes by identifying the problems intrinsic to these reproductive techniques and by emphasizing the need for strong legal measures to assure the human dignity of the unborn child and the transmission of life, with special consideration to family law.