Annual Survey of Periodical Literature

Nancy Ver Steegh
Mitchell Hamline School of Law, nancy.versteegh@mitchellhamline.edu

Publication Information
44 Family Law Quarterly 623 (2011) This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Repository Citation
http://open.mitchellhamline.edu/facsch/212

This Article is brought to you for free and open access by Mitchell Hamline Open Access. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.
Annual Survey of Periodical Literature

Abstract
The Annual Review of Periodical Literature provides a sampling of law review articles published between November 1, 2009, and October 31, 2010. The survey highlights the variety and depth of family law scholarship produced during the year and calls attention to currently debated "hot topics." Readers are encouraged to read articles of interest in their entirety because the summaries included in the survey are necessarily abbreviated.

Keywords
family law

Disciplines
Family Law

This article is available at Mitchell Hamline Open Access: http://open.mitchellhamline.edu/facsch/212
The Annual Survey of Periodical Literature provides a sampling of law review articles published between November 1, 2009, and October 31, 2010. The survey highlights the variety and depth of family law scholarship produced during the year and calls attention to currently debated "hot topics." Readers are encouraged to read articles of interest in their entirety because the summaries included in the survey are necessarily abbreviated.

Adoption

Annette Ruth Appell, *Controlling for Kin: Ghosts in the Postmodern Family*, 25 Wis. J.L. GENDER & SOC'Y 73 (2010). This article examines the complex biological and social connections that characterize the American family and uses adoption as the guide for accommodating constellations of biological and social constructions of family.

--- *Reflections on the Movement Toward a More Child-Centered Adoption*, 32 W. NEW ENG. L. REV. 1 (2010). After examining the increase in open adoptions in the United States and England, the author argues that open adoption, whether mandated by the court or through voluntary agreement, results in positive outcomes for children and families.


Mary Beck, *A National Putative Father Registry*, 36 CAP. U. L. REV. 295 (2007). The author urges creation of a national putative father registry to reduce the number of disputed adoptions around the country. The registry would protect parental

* Nancy Ver Steegh is a professor and Vice Dean for Academic Programs at William Mitchell College of Law, St. Paul, Minnesota. She thanks Rachael Hirshenhorn, Jennifer Miller, Jenny Nystrom, Erin Soldner Rohne, and Danielle Sollars for their assistance.
rights, while removing procedural barriers to adoption when a child's father has not registered.

Irene D. Johnson, *A Suggested Solution to the Problem of Intestate Succession in Nontraditional Family Arrangements: Taking the "Adoption" (and the Inequity) Out of the Doctrine of "Equitable Adoption,"* 54 St. Louis U. L.J. 271 (2009). Analyzing intestacy issues arising in nontraditional families, the author recommends statutorily defining "child" to include children raised in nonbirth families and use of a "family member test" for inheritance purposes. The author argues that these changes will protect the inheritance rights of people raised outside their birth families while maintaining the objectives of the current intestacy statutory scheme.

Cynthia R. Mabry, *Joint and Shared Parenting: Valuing All Families and All Children in the Adoption Process with an Extended Notion of Family,* 17 Am. U. J. Gender Soc. Pol'y & L. 659 (2009). This article examines who may adopt under current adoption statutes and advocates expansion of adoption laws to allow unmarried individuals to jointly adopt children. Allowing unmarried individuals to adopt would enable more children to be adopted and would be more reflective of families in modern society. The author proposes standards for evaluating joint petitions for adoption in order to protect the best interests of the child.

— A MEPA-IEP Review from Adoption Attorneys' Perspectives: Continuing to Make Permissible Assessments Based on Race for the Best Interests of Children of Color, 38 Cap. U. L. Rev. 319 (2009). Arguing that MEPA-IEP should not be amended to allow race, ethnicity, or cultural background to again be a factor in adoptive placements, the article examines the effects of transracial adoption. Improved education of case workers and prospective parents, lowering the cost of adoption, and expanding the pool of prospective parents would promote finding permanent homes for children in the foster care system.

— Looking Beyond the United States: How Other Countries Handle Issues Related to Unwed Fathers in the Adoption Process, 36 Cap. U. L. Rev. 363 (2007). Comparing the laws in several countries related to the rights of unwed fathers in adoption proceedings, the author asserts that in order to protect the best interests of children, all countries need to amend or adopt laws aimed at protecting the rights of unwed fathers.

Margaret M. Mahoney, *Permanence and Parenthood: The Case for Abolishing the Adoption Annulment Doctrine,* 42 Ind. L. Rev. 639 (2009). This article compares termination-of-parental-rights statutes to the abrogation-of-adoption doctrine and suggests that the abrogation of adoption doctrine should be eliminated. Termination of parental rights through state statutes should be the exclusive means for terminating the child-parent relationship.

Laura Oren, *Unmarried Fathers and Adoption: "Perfecting" or "Abandoning" an Opportunity Interest,* 36 Cap. U. L. Rev. 253 (2007). This article analyzes the "biology plus" standard for protection of an unmarried father's rights in an adop-
tion setting. Discussing the differences between the constitutionally protected rights of parents and the unprotected rights of a putative father, the author proposes several standards to better protect the rights of putative fathers.

Jeffrey A. Parness & Therese A. Clark Arado, Safe Haven, Adoption and Birth Record Laws: Where Are the Daddies?, 36 CAP. U. L. REV. 207 (2007). This article examines how the rights of putative fathers are inadequately protected under laws regulating child abandonment, adoption, and birth records for children born outside of marriage. The authors propose legal reforms to ensure that privacy rights of an unwed mother do not unconditionally supersede the rights of a putative father.

Peter T. Wendel, The Succession Rights of Adopted Adults: Trying to Fit a Square Peg Into a Round Hole, 43 CREIGHTON L. REV. 815 (2010). This article examines status-based and intent-based approaches to inheritance rights of adopted adults and recommends a statutory framework taking the nature of the adoptive relationship into account.

International Adoption Issues

David M. Smolin, Intercountry Adoption and Poverty: A Human Rights Analysis, 36 CAP. U. L. REV. 413 (2007). This article analyzes intercountry adoption as a response to poverty in developing countries and focuses on safeguarding basic human rights. The author proposes adoption of a policy that would provide family preservation assistance to families living below the international poverty standard prior to relinquishment of a child.

Rachel J. Wechsler, Giving Every Child a Chance: The Need for Reform and Infrastructure in Intercountry Adoption Policy, 22 PACE INT'L L. REV. 1 (2010). The article examines the conventions and treaties governing intercountry adoption, explores recent declines in intercountry adoption, and suggests that an international agency on intercountry adoption could address problems of discrimination, corruption, and lack of legal uniformity among nations.

Same-Sex Adoption


Catherine L. Hartz, Arkansas’s Unmarried Couple Adoption Ban: Depriving Children of Families, 63 ARK. L. REV. 113 (2010). This article examines the Arkansas ban on adoption by unmarried couples in light of the policies of other states, concluding that the law does not serve the best interests of children in the foster care system, violates the rights of unmarried couples, and is detrimental to parental autonomy.
Mark Strasser, *Adoption, Best Interests, and the Arkansas Constitution*, 63 ARK. L. Rev. 3 (2010). The author urges overturn of Arkansas’ Initiated Act 1, which prohibits cohabitating unmarried partners from adopting or fostering children because the Arkansas Constitution does not allow the State to create and impose arbitrary limitations on its citizens.

Krista Stone-Manista, *Parents in Illinois Are Parents in Oklahoma Too: An Argument for Mandatory Interstate Recognition of Same-Sex Adoptions*, 19 LAW & SEX 137 (2010). The author argues that states that do not grant same-sex adoptions should give full effect to such adoption decrees from other states based on recognition of a constitutional right to parenthood, the mandate of the Full Faith and Credit Clause, and the rights and interests of children.

Lynn D. Wardle, *Comparative Perspectives on Adoption of Children by Cohabiting Nonmarital Couples and Partners*, 63 ARK. L. REV. 31 (2010). Exploring Arkansas Initiated Act 1, which prohibits adoption by nonmarital, cohabitating couples, regardless of sexual orientation, the author compares current U.S. adoption policy and international adoption law and concludes that the law is consistent with the majority of states and nations. After critically examining the legal arguments, public policy arguments, and social science in support of and against nonmarital cohabitating couple adoption, the author concludes that limiting adoption to married couples is sound policy from legal, social, and scientific perspectives.

**Alimony/Maintenance**

William J. Camp, *Health Care Options for Former Military Spouses: Tricare and the Continued Health Care Benefit Program (CHCBP)*, 43 FAM. L.Q. 227 (2009). This article surveys ways that former military spouses can receive health care benefits including Tricare health coverage and the Continued Health Care Benefit Program (CHCBP).

Karen Syma Czapanskiy, *Chalimony: Seeking Equity Between Parents of Children with Disabilities and Chronic Illnesses*, 34 N.Y.U. REV. L. & SOC. CHANGE 253 (2010). The author advocates for “chalimony” (financial support in addition to child support and alimony) for caregiver parents of children with disabilities or chronic illnesses. Chalimony would stem from economic loss suffered by the caregiver parent’s underemployment or unemployment and would promote child welfare, gender equality, and economic fairness.

**Alternative Dispute Resolution**

Marsha B. Freeman, *Comparing Philosophies and Practices of Family Law Between the United States and Other Nations: The Flintstones vs. The Jetsons*, 13 CHAP. L. REV. 249 (2010). This article compares collaborative law and therapeutic justice encouraged by American legal professionals with the implementation of these systems in other nations, including Canada and Australia.
Florida Collaborative Family Law: The Good, the Bad, and the (Hopefully) Getting Better, 11 FLA. COASTAL L. REV. 237 (2010). The author describes traditional approaches to divorce and other family disputes, analyzes the current state of the family law system, and argues for use of collaborative law in the family law context.

Forrest S. Mosten, Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court, 43 FAM. L.Q. 489 (2009). This article explores the role of family lawyers as peacemakers within the context of litigation, client advice, unbundled coaching of pro se parties, mediation, collaborative law and preventative legal and conflict wellness advice. The author recommends making peacemaking education mandatory, seeking subsidies for pro bono peacemaking services, and transforming court facilities, procedures and staff appointments to promote peacemaking.

Assisted Conception

Alexia M. Baiman, Cryopreserved Embryos as America’s Prospective Adoptees: Are Couples Truly “Adopting” or Merely Transferring Property Rights?, 16 WM. & MARY J. WOMEN & L. 133 (2009). This article navigates the quagmire caused by lack of legislation governing embryo donations and adoptions. The author recommends that legislation require donations of embryos for non-research purposes be controlled by adoption law and that donations to research facilities be governed by contract law.

Mary Patricia Byrn & Jenni Vainik Ives, Which Came First, the Parent or the Child?, 62 RUTGERS L. REV. 305 (2010). This article examines the constitutional right of children to have legal parents, the fundamental right to raise one’s child, and the parens patriae power of the state to determine parentage. The authors suggest statutory reform to clearly and definitively determine legal parents at birth, recognize genetic parents of children conceived by sexual intercourse, and recognize the intended parents of children conceived through assisted reproductive technology.

Melissa B. Jacoby, The Debt Financing of Parenthood, 72 LAW & CONTEMP. PROBS. 147 (2009). This article explores access to assisted reproductive technology and adoption with respect to the role and availability of commercial lenders and evaluates the need for regulation of lenders and the parenthood market.

Courtney G. Joslin, Travel Insurance: Protecting Lesbian and Gay Parent Families Across State Lines, 4 HARV. L. & POL’Y REV. 31 (2010). Describing how parentage recognized in one state may not be recognized in another, this article advocates for legislation requiring states to adopt a registration system to establish parentage of children born via assisted reproduction.

Charles P. Kindregan, Jr., Considering Mom: Maternity and the Model Act Governing Assisted Reproductive Technology, 17 AM. U. J. GENDER SOC. POL’Y & L. 601 (2009). This article examines confusion regarding definitions of mater-
nity arising from advancements in assisted reproductive technology and analyzes how such scenarios would be resolved under the American Bar Association Model Act Governing Assisted Reproductive Technology.

Browne Lewis, *Two Fathers, One Dad: Allocating the Paternal Obligations Between the Men Involved in the Artificial Insemination Process*, 13 Lewis & Clark L. Rev. 949 (2009). This article explores the legal consequences of artificial insemination on donors, parents, and artificially conceived children. The author focuses on the legal obligations of the father, describing the unique circumstances of husbands, known donors, and unknown donors and argues that the legal meaning of fatherhood should be determined on a case-by-case basis in light of the best interests of the child.

Christine Metteer Lorillard, *Informed Choices and Uniform Decisions: Adopting the ABA's Self-Enforcing Administrative Model to Ensure Successful Surrogacy Arrangements*, 16 Cardozo J.L. & Gender 237 (2010). The article examines the history of surrogacy in the U.S. and describes legal, ethical/moral, and economic arguments regarding surrogacy. The author compares the ABA's Self-Enforcing Administrative Model with the Judicial Pre-approval Model and concludes that the Administrative Model protects the interests and intent of the parties by imposing eligibility and procedural requirements.


J. Brad Reich & Dawn Swink, *You Can't Put the Genie Back in the Bottle: Potential Rights and Obligations of Egg Donors in the Cyberprocreation Era*, 20 Alb. L.J. Sci. & Tech. 1 (2010). The article surveys existing regulation of egg donor-donnee transactions and explores tort claims, including negligence and products liability, that may arise as a result of the increasing market for donor eggs. The authors recommend use of interstate commerce authority to regulate transactions noting that bans on donation for compensation would reduce the number of competent medical providers and generate political resistance.

Elizabeth S. Scott, *Surrogacy and the Politics of Commodification*, 72 Law & Contemp. Probs. 109 (2009). This article traces the history of surrogacy from the 1988 *Baby M.* litigation to the present day and discusses surrogacy from legal and societal perspectives, as well as the evolving debates over commodification, coercion, and contracts.

Mark P. Strasser, *You Take the Embryos, But I Get the House (and the Business): Recent Trends in Awards Involving Embryos Upon Divorce*, 57 Buff. L. Rev. 1159 (2009). The article reviews approaches for resolving disputes sur-
rounding the disposition of frozen embryos and the legal and emotional difficulties that arise. The author asserts that the cases of Davis v. Davis and Kass v. Kass, which established that initial agreements regarding the embryos should be enforced, provide the best approach to resolving these disagreements.

Richard F. Storrow, *Medical Conscience and the Policing of Parenthood*, 16 WM. & MARY J. WOMEN & L. 369 (2010). The author argues against allowing physicians to refuse fertility treatment to single or lesbian women based on religious beliefs or conscience. The author concludes that medical professional guidelines must be harmonized with current norms of nondiscrimination and must clearly delineate the ethical responsibilities of physicians.

**Attorneys and Professional Responsibility**


Katherine Hunt Federle, *Lawyering in Juvenile Court: Lessons from a Civil Gideon Experiment*, 37 FORDHAM URB. L.J. 93 (2010). The author advocates for a client-empowering approach to lawyering in the juvenile court system and in representation of poor clients. The article addresses representation issues, such as a lack of resources and training and potentially conflicting goals of the lawyer and client.

Judith G. McMullen & Debra Oswald, *Why Do We Need a Lawyer?: An Empirical Study of Divorce Cases*, 12 J.L. & FAM. STUD. 57 (2010). This article presents empirical data concerning pro se divorce outcomes. The authors found that length of marriage, income of the husband, age of the parties, and presence of minor children affected the decision to proceed with self-representation. Representation by lawyers resulted in longer divorce processes and a higher likelihood of maintenance awards. The authors provide possible explanations for the findings and urge self-represented litigants to seek counsel in complex cases.

**Child Abuse and Termination of Parental Rights**

Elizabeth Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 ARIZ. L. REV. 871 (2009). This article criticizes the “Racial Disproportionality Movement,” arguing that statistical assertions are not supported by empirical evidence and that decreased reporting and removal would not be in the best interests of maltreated children. Socioeconomic reform with attention to risk factors is the best method to combat child maltreatment.

Deborah A. Connolly, Heather L. Price, & Heidi M. Gordon, *Judicial Decision Making in Timely and Delayed Prosecutions of Child Sexual Abuse in*

Laureen A. D’Ambra, The Vital Role of the Rhode Island Family Court and Its Unique Jurisdiction in Immigration Cases Involving Abused and Neglected Children, 15 Roger Williams U. L. Rev. 24 (2010). This article explores the impact on children of the interplay between the Rhode Island family court system and federal immigration law, recommending education and training for judges, social workers, attorneys, and parents.


Martin Guggenheim, Texas Polygamy and Child Welfare, 46 Hous. L. Rev. 759 (2009). The article explores the importance of protecting civil rights and child welfare in cases involving polygamist communities. The author advocates for use of the criminal justice system because it protects civil liberties and warns of the repercussions of misuse of the child welfare system.

Amos N. Guiora, Protecting the Unprotected: Religious Extremism and Child Endangerment, 12 J.L. & Fam. Stud. 391 (2010). This article examines lack of law enforcement response on behalf of child brides and “lost boys” of the Fundamentalist Church of Jesus Christ of Latter-Day Saints. Using Rousseau’s social contract theory, the author concludes that law enforcement should aggressively protect the children of extremist religious groups.

Daniel L. Hatcher, Collateral Children: Consequences and Illegality at the Intersection of Foster Care and Child Support, 74 Brook. L. Rev. 1333 (2009). The author examines the dilemma of poor parents with children in foster care who fall behind on payments to child welfare and child support agencies. The author asserts that such payments do not benefit children, but reimburse the government for the costs of providing foster care services.

David J. Herring, Jeffrey J. Shook, Sara Goodkind, & Kevin H. Kim, Evolutionary Theory and Kinship Foster Care: An Initial Test of Two Hypotheses, 38 Cap. U. L. Rev. 291 (2009). This article examines whether children in kin foster placements experience better outcomes and whether outcomes vary by the type of kin with whom children are placed. Because the results of the data set analysis fail to support either hypothesis, the authors recommend additional research.

Eric S. Janus & Emily A. Polacheck, A Crooked Picture: Re-framing the Problem of Child Sexual Abuse, 36 WM. Mitchell L. Rev. 142 (2009). The article traces the history of sexual predator laws and the view that such predators are
"others" who should be segregated from society. The authors recommend reframing the issue of child sexual abuse to address the causes of abuse, focus more on the victims and their needs, and effectively use empirical evidence to create a comprehensive policy to prevent child sexual abuse.

David R. Leggans & J. Danielle McAfee, Protecting the Interests of Abused and Neglected Children: Is Court-Ordered Family Reunification Always the Best Policy?, 9 WHITTIER J. CHILD & FAM. ADVOC. 3 (2009). The authors analyze In re Derrick S., in which reunification efforts with a noncooperative mother were ultimately unsuccessful, to assert that reunification services for noncooperative parents may not serve the best interests of children.

Susan Vivian Mangold & Catherine Cerulli, Follow the Money: Federal, State, and Local Funding Strategies for Child Welfare Services and the Impact of Local Levies on Adoptions in Ohio, 38 CAP. U. L. REV. 349 (2009). The authors examine child-welfare funding mechanisms and cost apportionment, including an analysis of Ohio’s local, dedicated tax-levy strategy, which was positively correlated with child-welfare outcomes.

John E.B. Myers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. DAVIS J. JUV. L. & POL’Y 1 (2010). This article examines the use of psychological and medical expert testimony in child sexual abuse cases with little or no physical evidence of abuse. The author describes how expert testimony may be used to bolster, impeach, or rehabilitate a child’s testimony, and he urges judicial scrutiny of expert witnesses to prevent juries from being exposed to unreliable testimony.

Kathleen G. Noonan, Charles F. Sabel, & William H. Simon, Legal Accountability in the Service-Based Welfare State: Lessons from Child Welfare Reform, 34 LAW & SOC. INQUIRY 523 (2009). The authors explore the Alabama-Utah child-welfare model emphasizing system self-assessment. Describing how the model encourages collaboration and customization of services, they argue that it should be adopted in a variety of service-based welfare programs.


Julie Poehlmann, Children of Incarcerated Mothers and Fathers, 24 Wis. J.L. GENDER & SOC’Y 331 (2009). After outlining current behavioral science research regarding children of incarcerated parents, the author concludes that though there is a correlation between incarcerated parents and negative outcomes for children, the research does not establish causation.

Orly Rachmilovitz, Achieving Due Process Through Comprehensive Care for
Mentally Disabled Parents: A Less Restrictive Alternative to Family Separation, 12 U. PA. J. CONST. L. 785 (2010). This article explores the legal challenges faced by mentally-ill parents, specifically those suffering from schizophrenia and supports Programs of Assertive Community Treatment (PACTs) as a less restrictive means of achieving the state interest of child protection, while maintaining the substantive due-process rights of mentally-ill parents.


Jennifer E. Spreng, The Private World of Juvenile Court: Mothers, Mental Illness and the Relentless Machinery of the State, 17 DUKE J. GENDER L. & POL’Y 189 (2010). The author concludes that education of attorneys, judges, social workers, and mental health professionals is essential to overcoming bias and better understanding the needs and capabilities of mentally-ill mothers in the child-welfare system.

Lashanda Taylor, Resurrecting Parents of Legal Orphans: Un-Terminating Parental Rights, 17 VA. J. SOC. POL’Y & L. 318 (2010). This article examines creation of legal orphans as a result of the Adoption and Safe Families Act. The author proposes temporary termination of parental rights orders that allow for reinstatement of parental rights if a six-factor analysis demonstrates reunification is in the best interests of the child.

Victor I. Vieth, The Forensic Interviewer at Trial: Guidelines for the Admission and Scope of Expert Witness Testimony Concerning an Investigative Interview in a Case of Child Abuse, 36 WM. MITCHELL L. REV. 186 (2009). As to the scope and admissibility of forensic expert testimony, the author urges expert witnesses to use widely accepted guidelines and practices established by organizations, such as the American Professional Society on the Abuse of Children and the National Children’s Alliance.

Jessica Dixon Weaver, The Texas Mis-Step: Why the Largest Child Removal in Modern U.S. History Failed, 16 WM. & MARY J. WOMEN & L. 449 (2010). This article examines the Texas Department of Family and Protective Services (DFPS) removal of children from the Yearning for Zion Ranch and describes why and how the state failed to meet its burden of proof. The author discusses legislative and judicial reforms that may be adopted to avoid similar problems in the future.

Child Custody and Parenting Time

General Child Custody Issues

describes a study of reported Canadian cases involving allegations of parental alienation. The authors found a range of judicial responses often linked to the resources of the parents as well as judicial perceptions.

Lauren S. Douglass, *Avoiding Conflict at Home When There Is Conflict Abroad: Military Child Custody and Visitation*, 43 Fam. L.Q. 349 (2009). The author examines attempts to modify custody when the custodial parent is deployed, analyzing problems that the statute was intended to correct and proposing amendments to protect the custody rights of military parents and their children.

Barbara Jo Fidler & Nicholas Bala, *Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums*, 48 Fam. Ct. Rev. 10 (2010). This article surveys the causes and types of parent-child contact problems and summarizes the literature with respect to the effect of alienation on children. The authors make eleven recommendations to improve policy and practice.


Tali Schaefer, *Saving Children or Blaming Parents? Lessons from Mandated Parenting Classes*, 19 Colum. J. Gender & L. 491 (2010). This article discusses legally mandated parenting classes and argues that these programs result from inflated perceptions of harm caused to children of divorce and the societal desire to blame the parents. The author advocates restructuring economic and legal conditions that accompany divorce to reduce interparental conflict and consequently reduce negative outcomes for children.

**International Child Custody Issues**


or relativist approaches. The author recommends separate representation for children in Hague Convention cases when their interests conflict with those of their parents, use of “liaison judges,” and attachment of enforcement contingencies to return orders.


Relocation

David V. Chipman & Mindy M. Rush, *The Necessity of “Right to Travel” Analysis in Custodial Parent Relocation Cases*, 10 *Wyo. L. Rev.* 267 (2010). The authors argue that “legitimate reason” tests are an unconstitutional infringement on the right to travel and that the best interests of the child approach should not be the sole compelling interest in deciding relocation cases because courts are unable to make best-interest determinations with any degree of certainty.


Supervised Parenting Time

Nat Stern & Karen Oehme, *A Comprehensive Blueprint for a Crucial Service: Florida’s New Supervised Visitation Strategy*, 12 *J.L. & Fam. Stud.* 199 (2010). This article explores Florida’s supervised visitation program, which emphasizes “safety, training, dignity and diversity, and community” as its founding principles. The article addresses certification for supervised visitation programs, immunity of program staff and volunteers, and funding issues.

“Third Party” Custody and Visitation

Illinois grandparent visitation beginning with common law principles and progressing to the current statute and including analysis of Illinois judicial decisions to illustrate current application of the statute and demonstrate consequences of unconstitutionality.

Julia Halloran McLaughlin, *The Fundamental Truth About Best Interests*, 54 St. Louis U. L.J. 113 (2009). This article explores application of the best interests standard in custody cases involving third parties who have formed parent-like relationships with a child. The author favors use of a weighted balancing test to advance the fundamental right of a child to be reared in a “loving and nurturing parent-like relationship.”

**Children’s Rights**

Annette Ruth Appell, *The Pre-political Child of Child-Centered Jurisprudence*, 46 Hous. L. Rev. 703 (2009). This article examines the concept of childhood and ways that categorizing children as dependents undermines their rights in society. The author compares child jurisprudence with feminist jurisprudence to argue that the special circumstances surrounding childhood should be used to empower children within our legal system.

Ireh Iyioha & Yusuff A.O. Akorede, *You Give Me Welfare But Take My Freedom: Understanding the Mature Minor’s Autonomy in the Face of the Court’s Parens Patriae Jurisdiction*, 13 Quinnipiac Health L.J. 279 (2010). This article seeks to reconcile conflicting goals of the welfare principle and the mature minor rule. The authors argue that judicial determinations upholding autonomy over welfare, where a minor lacks the capacity to rationally consent, deny the minor the right to informed consent and undermine self-determination.

**Child Support**

Joseph W. Booth, *A Guide for Assisting Military Families with the Uniform Interstate Family Support Act (UIFSA)*, 43 Fam. L.Q. 203 (2009). This article summarizes the Uniform Interstate Family Support Act (UIFSA), which regulates child support and parentage for military personnel and their families. The author provides a four-part analysis for practitioners and considers how UIFSA is applied in different parts of the country.


Monica Hof Wallace, *A Federal Referendum: Extending Child Support for Higher Education*, 58 U. Kan. L. Rev. 665 (2010). This article examines ways that children of divorce may be emotionally and financially handicapped with respect to post-secondary education. The author asserts that child support obligations should include post-secondary education costs if the obligor parent has the
means to contribute and the child expresses interest in continuing education. The author recommends federal legislation providing flexibility to states to determine terms and structure.

**Cohabitation**


**Court System**

Sandra Leigh King, *Abandonment: How the Texas Legislature and Family Court System Fail to Meet the Needs of Texas Children*, 51 S. TEX. L. REV. 75 (2009). This article critiques the Texas family court system and describes the emotional toll that identified shortcomings take on families. The author suggests a six-part solution for resolving the issues that pervade the Texas family court system.

Jane M. Spinak, *Reforming Family Court: Getting It Right Between Rhetoric and Reality*, 31 WASH. U. J.L. & POL’Y 11 (2009). The author argues that the outcomes of family court reform have not been adequately studied and that additional reflection and accountability are needed.

**Divorce**

Kristen M.H. Coyne, Darren Myers, & Susan H. Witting, *The SCRA and Family Law: More Than Just Stays and Delays*, 43 FAM. L.Q. 315 (2009). The authors survey the Servicemembers Civil Relief Act and explore its application in family law cases involving issues such as support and custody.

Adelaide Madera, *Civil and Religious Law Concerning Divorce: The Condition of Women and Their Empowerment*, 12 J.L. & FAM. STUD. 365 (2010). The author describes marriage dissolution in the Catholic, Jewish, and Islamic faiths, highlighting the disparity between the genders and financial consequences of dissolution. The author explores the intersection of secular civil law and religious law and makes policy recommendations.

**Domestic Violence**

Laurie L. Baughman, *Friend Request or Foe? Confirming the Misuse of Internet and Social Networking Sites by Domestic Violence Perpetrators*, 19 WIDENER L.J. 933 (2010). The author advocates for the education of victims of domestic violence and attorneys in regard to the benefits and dangers of social networking. The article discusses evidentiary obstacles that may be faced, including authentication, hearsay and best evidence, and also surveys recent case law, specifically addressing misuse of the internet.
Sara R. Benson, *Failure to Arrest: A Pilot Study of Police Response to Domestic Violence in Rural Illinois*, 17 AM. U. J. GENDER SOC. POL’Y & L. 685 (2009). This article examines the gap between the current status of Illinois law on domestic violence, and the implementation of those laws in rural Illinois. The author presents survivor narratives to illustrate enforcement issues and makes proposals to enhance police response and enforcement in domestic violence cases.

Marisa Silenzi Cianciarulo & Claudia David, *Pulling the Trigger: Separation Violence as a Basis for Refugee Protection for Battered Women*, 59 AM. U. L. REV. 337 (2009). This article examines international refugee law and United States asylum law in the context of domestic violence, asserting that victims are eligible for asylum in the U.S. as a result of their membership “in a particular social group.”

Joshua Friedman & Gary C. Norman, *Protecting the Family Pet: The New Face of Maryland Domestic Violence Protective Orders*, 40 U. BALTIMORE L.F. 81 (2009). This article explores the connection between domestic violence and abuse of pets and service animals, arguing that Maryland’s domestic violence law should be expanded to include these animals.


Elayne E. Greenberg, *Beyond the Polemics: Realistic Options to Help Divorcing Families Manage Domestic Violence*, 24 ST. JOHN’S J. LEGAL COMMENT. 603 (2010). The author seeks to enhance a domestic abuse survivor’s sense of agency by offering a range of alternative dispute resolution options and parallel parenting, in addition to traditional court proceedings.

Amanda Hitt & Lynn McLain, *Stop the Killing: Potential Courtroom Use of a Questionnaire That Predicts the Likelihood That a Victim of Intimate Partner Violence Will Be Murdered by Her Partner*, 24 WIS. J.L. GENDER & SOC’Y 277 (2009). This article describes the Danger Assessment (DA) questionnaire and its application in civil and criminal proceedings and recommends judicial training for the DA, state legislation addressing the admissibility of the DA, and changes to the DA to meet hearsay exceptions.


Regarding domestic violence that generate resistance: (1) battered women syndrome expert testimony in cases where the abused has killed or harmed the abuser; (2) prosecution of marital rape; and (3) Supreme Court opinions regarding domestic violence policy. The article provides insight into why resistance may persist by tracing the history of domestic violence law in the United States and suggesting that enduring ideas of coverture and perceptions of women may be to blame for the lack of a comprehensive policy to fight domestic violence.

Kathlene J. Somerville, The Military Report Card Concerning Domestic Violence and Sexual Assault, Including Compliance with the Lautenberg Amendment, 43 Fam. L.Q. 301 (2009). The author evaluates the status of domestic abuse and sexual assault within the military through consideration of prosecution and other consequences for perpetrators, and the resources available to victims.


Nancy Ver Steegh, The Uniform Collaborative Law Act and Intimate Partner Violence: A Roadmap for Collaborative (and Non-Collaborative) Lawyers, 38 Hofstra L. Rev. 699 (2009). The article explains and critiques the domestic violence provisions of the proposed Uniform Collaborative Law Act, which place explicit obligations on collaborative lawyers. The author reviews relevant social science literature on intimate partner violence and empirical studies regarding the practice of collaborative law. She suggests eleven factors for consideration in deciding if collaborative law is safe and appropriate.

International Domestic Violence Issues

Misty Wilson Borkowski, Battered, Broken, Bruised, or Abandoned: Domestic Strife Presents Foreign Nationals Access to Immigration Relief, 31 U. Ark. Little Rock L. Rev. 567 (2009). The author discusses immigration relief available to foreign nationals who suffer domestic violence at the hands of their U.S. citizen spouses, specifically examining the victim’s four available options for pursuing immigration status following instances of abuse. The article also examines available immigration relief for abused, abandoned, or neglected children.

Daniel Epstein, *Romance Is Dead: Mail-Order Brides as Surrogate Corpses*, 17 Buff. J. Gender L. & Soc. Pol'y 61 (2009). The author examines the mail-order bride industry with focus on perpetuation of physical and sexual abuse of women. The author contends that men who purchase mail-order brides have distorted views about sexuality and he compares their propensity to degrade women to the practice of necrophilia.

Jodie G. Roure, *Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform*, 41 Colum. Hum. Rts. L. Rev. 67 (2009). This article examines the influence of international human rights law, the feminist movement, and efforts of grassroots organizations in effectuating change in Brazil’s domestic violence law. The author discusses the shortcomings of Brazil’s judicial system, but concludes that Brazil has made significant reforms regarding domestic violence and the status of women and recommends additional legislative initiatives, more funding, and education.

Robin Fretwell Wilson, *Privatizing Family Law in the Name of Religion*, 18 Wm. & Mary Bill Rts. J. 925 (2010). The author examines the repercussions for women and children of religious deference in the realm of family law. The author focuses on Muslim groups living in Great Britain and Greece, and explores the extent to which women are more likely to be thrust into poverty and have difficulty escaping domestic violence. The author cautions against state adoption of religious deference without extensive and detailed safeguards in place.

### Evidence


### Families and Society

Anne L. Alstott, *Private Tragedies? Family Law as Social Insurance*, 4 Harv. L. & Pol’y Rev. 3 (2010). The article examines a case of spousal support and disability and a multifamily child support case to illustrate how family disruptions implicate both family law and public insurance. The author challenges traditional notions of public insurance as solely applicable to work interruptions and demonstrates that affective life disruptions can be equally detrimental to individual development and economic stability.

Naomi Cahn & June Carbone, *Family Classes: Rethinking Contraceptive Choice*, 20 U. Fla. J.L. & Pub. Pol’y 361 (2009). The authors argue that the discourse surrounding contraception has become dominated by the conservative and progressive elites without consideration of the effects on, or the needs of, the poor and racial minorities. The article suggests three issues for reflection when con-
considering reform: (1) comprehensive sex education; (2) comprehensive access to contraception for adults; and (3) access to contraception for adolescents.

Sandie McCarthy-Brown & Susan L. Waysdorf, *Katrina Disaster Family Law: The Impact of Hurricane Katrina on Families and Family Law*, 42 Ind. L. Rev. 721 (2009). The authors examine divorce, domestic violence and child custody in the aftermath of Hurricane Katrina. The article recounts the impact of Hurricane Katrina on women, children, and families and the authors propose reform of family law procedures and practices in order to better meet the needs of families in crisis after a natural disaster.


Elizabeth G. Patterson, *Unintended Consequences: Why Congress Should Tread Lightly When Entering the Field of Family Law*, 25 Ga. St. U. L. Rev. 397 (2008). This article examines the history and current status of the federal government’s power to legislate in the family law arena. The author asserts that Congress should use caution when proposing and enacting national family law legislation.

Alice Ristoph & Melissa Murray, *Disestablishing the Family*, 119 Yale L.J. 1236 (2010). This article examines the possibility of disestablishing the family in American law, much in the same way religion has been disestablished by the Free Exercise and Establishment Clauses of the First Amendment. The authors focus on state efforts to discourage or encourage particular models of family, sometimes through criminal sanctions.

Barbara Bennett Woodhouse, *A World Fit for Children Is a World Fit for Everyone: Ecogenerism, Feminism, and Vulnerability*, 46 Hous. L. Rev. 817 (2009). The author asserts the importance of aligning the interests of women and children in order to strengthen and protect the rights of both.

**Immigration**


Claire A. Smearman, *Second Wives’ Club: Mapping the Impact of Polygamy in U.S. Immigration Law*, 27 Berkeley J. Int’l L. 382 (2009). This article examines the effects of polygamy on immigration and explores the polygamy provi-
sions of the Immigration and Nationality Act. The author notes the impact on those seeking to enter the country in addition to those seeking to stay, as well as the disparate impact on women and children of polygamous marriages.

Marcia Zug, *Deporting Grandma: Why Grandparent Deportation May Be the Next Big Immigration Crisis and How to Solve It*, 43 U.C. DAVIS L. REV. 193 (2009). The author asserts that grandchildren should fall under the Immigration and Nationality Act hardship exception when the grandparents being deported are their primary caregivers.

**Indian Child Welfare Act**

Dan Lewerenz & Padraic McCoy, *The End of “Existing Indian Family” Jurisprudence: Holyfield at 20, In the Matter of A.J.S., and the Last Gasps of a Dying Doctrine*, 36 WM. MITCHELL L. REV. 684 (2010). This article traces the roots of the “existing Indian family” doctrine that first arose in Kansas and became an integral piece of Indian Child Welfare Act (ICWA) jurisprudence. The authors explore adoption and rejection of the doctrine in light of the 2009 decision of the Kansas Supreme Court rejecting it.

Suzianne D. Painter-Thorne, *One Step Forward, Two Giant Steps Back: How the “Existing Indian Family” Exception (Re)imposes Anglo American Legal Values on American Indian Tribes to the Detriment of Cultural Autonomy*, 33 AM. INDIAN L. REV. 329 (2009). This article examines the historical relationship of U.S. laws to American Indian tribes, asserting that the Indian Child Welfare Act was a commendable government effort toward the inclusion of American Indian perspectives in lawmaking, but that state governments and the judicially created “existing Indian family exception” have hindered the objectives of the Act.

Dennis Puzz, Jr., *Untangling the Jurisdictional Web: Determining Indian Child Welfare Jurisdiction in the State of Wisconsin*, 36 WM. MITCHELL L. REV. 724 (2010). The author explores the interplay between exclusive tribal jurisdiction to adjudicate child welfare matters and the responsibility of the State of Wisconsin to fund social services provided to Indian families.

Marcia A. Zug, *Dangerous Gamble: Child Support, Casino Dividends, and the Fate of the Indian Family*, 36 WM. MITCHELL L. REV. 738 (2010). The author examines court sanctioned elimination of an Indian father’s support obligation within the context of the *Cyprus v. Jumper* decision and argues that the decision was in direct conflict with common law principles and based on a misguided perception that the Indian families are different.

**Marriage**

Michael Boulette, *That Kind of Sexe Which Doth Prevaile: Shifting Legal Paradigms on the Ontology and Mutability of Sex*, 50 JURIMETRICS J. 329 (2010). This article explores the legal landscape of sex and sexual mutability within the context of marriage cases in England, the United States, and Australia. The
author presents four analytic structures (spectrum, hodgepodge, essentialist, and factor-based) for considering cases involving transsexual and intersex persons, concluding that the factor-based analysis is most likely to provide satisfactory conclusions.

**Martha M. Ertman**, *Race Treason: The Untold Story of America’s Ban on Polygamy*, 19 COLUM. J. GENDER & L. 287 (2010). This article examines the political, legal, and social frameworks used to justify the government’s attempt to deal with the problem of polygamy in the nineteenth century. The article concludes by posing three questions to guide the contemporary debate regarding polygamy within the context of race, foreignness, and DOMA.

**Kaaryn Gustafson**, *Breaking Vows: Marriage Promotion, the New Patriarchy, and the Retreat from Egalitarianism*, 5 STAN. J. C.R. & C.L. 269 (2009). This article examines three marriage promotion movements and explores the political, social, and religious landscapes giving rise to them: the Christianity-centered “New Patriarchy;” “Government Sponsored Marriage Promotion and the Fatherhood Initiative;” and lastly, the “Same-Sex Marriage Movement.” The author argues these three movements are anti-egalitarian and she offers suggestions for a new policy discourse regarding marriage.


**Sahar Lifshitz**, *Married Against Their Will? Toward a Pluralist Regulation of Spousal Relationships*, 66 WASH. & LEE L. REV. 1565 (2009). This article examines economic relationships between unmarried cohabitants, arguing for the development of two distinct legal models for cohabitation and marriage, and giving couples the freedom to choose between them. The article discusses traditional views of cohabitation and marriage and explains liberal-pluralist rationales for distinguishing between the two.

**Robert E. Rains**, *Marriage in the Time of Internet Ministers: I Now Pronounce You Married, But Who Am I to Do So?,* 64 U. MIAMI L. REV. 809 (2010). This article explores state marriage solemnization with respect to the ability of Universal Life Church ministers to officiate marriages. The author explains the public policy implications of state laws regarding Internet ministers as officiants and the potential adverse effects on couples. The author concludes that the state should take a “hands off approach” to provide couples with legal certainty and relieve the state of the difficult task of determining who is a proper officiant.

**Brett G. Scharffs & Suzanne Disparte**, *Comparative Models for Transitioning from Religious to Civil Marriage Systems*, 12 J.L. & FAM. STUD. 409 (2010). The author suggests that Israel’s system of religious marriage should include both civil and religious marriages, similar to transitions made by England and Turkey, and explains that “special roles” remain for their established religions.

Karin Carmit Yefet, *What’s the Constitution Got to Do with It? Regulating Marriage in Pakistan*, 16 DUKE J. GENDER L. & POL’Y 347 (2009). This article examines marital regulation under the Pakistani Constitution and Islamic law. The author explains that these authorities provide a surprising amount of protection for women’s rights, despite the often negative perception of Islamic women’s marital rights internationally.

Same-Sex Marriage


Ralph Richard Banks, *Why Do So Many People Oppose Same-Sex Marriage?*, 5 STAN. J. C.R. & C.L. 409 (2009). The author argues that animus towards gays and lesbians does not provide a complete picture of why some people oppose same-sex marriage. The article suggests that opponents of same-sex marriage are concerned with how allowing same-sex couples to marry could change the institution of marriage and negatively effect traditional gender roles and procreative sex within marriage.

Courtney Megan Cahill, *Celebrating the Differences That Could Make a Difference: United States v. Virginia and a New Vision of Sexual Equality*, 70 OHIO ST. L.J. 943 (2009). The author embraces the “inherent differences” model as promulgated by Justice Ginsburg in her majority in United States v. Virginia. The author argues that the sexual/marriage equality movement would be well served to adopt a position that celebrates difference, rather than attempting to assimilate to heteronormative ideals of marriage under the no-difference model.


John G. Culhane, *The Short, Puzzling(?) Life of the Civil Union*, 19 B.U. PUB.
The author examines court decisions, applying heightened scrutiny to claims of discrimination based on sexual orientation, and argues that civil-union legislation is a stepping stone for marriage equality.

Ian Curry-Sumner, *Interstate Recognition of Same-Sex Relationships in Europe*, 13 J. GENDER RACE & JUST. 59 (2009). This article compares ways that European countries have implemented regulatory registration schemes for same-sex relationships and explores paths to harmonization.

M.K.B. Darmer & Tiffany Chang, *Moving Beyond the “Immutability Debate” in the Fight for Equality After Proposition 8*, 12 SCHOLAR 1 (2009). This article suggests that California’s *In re Marriage Cases* will have more influence on similar cases nationally than the later decision upholding Proposition 8, which was based largely on California’s constitutional amendment framework.


Aderson Bellegarde Francois, *To Go into Battle with Space and Time: Emancipated Slave Marriage, Interracial Marriage, and Same-Sex Marriage*, 13 J. GENDER RACE & JUST. 105 (2009). This article explores similarities and differences between the historical opponents of miscegenation and present-day opponents of same-sex marriage.

Jackie Gardina, *The Tipping Point: Legal Epidemics, Constitutional Doctrine, and the Defense of Marriage Act*, 34 VT. L. REV. 291 (2009). This article explores the link between changing societal norms and political change with respect to sexuality, gender, race, and marriage. The author argues that a “tipping point” must be reached for a radical change in policy, but it may be too early to succeed in invalidating DOMA.

Tiffany C. Graham, *Exploring the Impact of the Marriage Amendments: Can Public Employers Offer Domestic Partner Benefits to Their Gay and Lesbian Employees?*, 17 VA. J. SOC. POL’Y & L. 83 (2009). This article examines state marriage amendments that affect a forced denial of domestic partner benefits to gay and lesbian employees. The author argues for narrow interpretation of ambiguous provisions of marriage amendments, with a focus on voter intent and political and historical context.


Greg Johnson, *We’ve Heard This Before: The Legacy of Interracial Marriage Bans and the Implications for Today’s Marriage Equality Debates*, 34 VT. L. REV. 277 (2009). This article describes the similarities between opposition to interracial marriage and opposition to same-sex marriage.
Arthur S. Leonard, *New York Recognition of a Legal Status for Same-Sex Couples: A Rapidly Developing Story*, 54 N.Y.L. SCH. L. REV. 479 (2009/10). This article chronicles recent New York court decisions and executive branch action in support of legal recognition of same-sex marriages that occur out-of-state between New York residents. The author concludes that in the absence of legislation or review by the court of appeals, the legal landscape for same-sex couples in New York will remain unsettled.

Rena M. Lindevaldsen, *Same-Sex Relationships and the Full Faith and Credit Clause: Reducing America to the Lowest Common Denominator*, 16 WM. & MARY J. WOMEN & L. 29 (2009). The author argues that full faith and credit afforded to child custody orders, as applied to same-sex couples under the Parental Kidnapping Prevention Act (PKPA), undermines the historical power of the individual states to make determinations regarding domestic relations. The article describes the history of PKPA and the Defense of Marriage Act (DOMA) and discusses three landmark cases that provide background with respect to redefining traditional parentage and child custody.

Paul Benjamin Linton, *Same-Sex Marriage and the New Mexico Equal Rights Amendment*, 20 GEO. MASON U. CIV. RTS. L.J. 209 (2010). This article dissects the New Mexico Equal Rights Amendment in the context of litigation strategies for same-sex marriage proponents.

Jean C. Love, *The Synergistic Evolution of Liberty and Equality in the Marriage Cases Brought by Same-Sex Couples in State Courts*, 13 J. GENDER, RACE & JUST. 275 (2010). This article asserts a “stereoscopic” approach to gay marriage litigation, recognizing that the synergy between liberty and equal protection has allowed state courts to rethink the traditional definition of marriage and state laws denying marriage to same-sex couples.

Mathias Moschel, *Germany’s Life Partnerships: Separate and Unequal?*, 16 COLUM. J. EUR. L. 37 (2009/10). The author asserts that European member states will reach different conclusions regarding marriage and same-sex partnerships and he uses Germany to illustrate separate and unequal treatment of same-sex couples in the wake of Maruko.

Melissa Murray, *Marriage Rights and Parental Rights: Parents, the State, and Proposition 8*, 5 STAN. J. C.R. & C.L. 357 (2009). The author examines shifting rhetoric motivated by the desire to frame the issue of same-sex marriage outside of homophobia and bigotry and instead appeal to people’s beliefs in traditional gender roles, the nuclear family, parental autonomy, and the role of the state in the family.

Dara E. Purvis, *Evaluating Legal Activism: A Response to Rosenberg*, 17 BUFF. J. GENDER L. SOC. POL’Y 1 (2009). The author responds to Rosenberg’s *The Hollow Hope*, by arguing that same-sex marriage advocates rightfully chose to pursue their goals in the judicial system rather than the political arena. The article concludes that the advocates successfully coordinated both judicial and political systems to further social change.
Jane S. Schacter, The Other Same-Sex Marriage Debate, 84 CHI.-KENT. L. REV. 379 (2009). The author explores the same-sex marriage debate in American discourse by describing the law and arguments supporting each side and examining the internal debate within the gay rights movement. The author examines alternate paths the movement may have taken had the internal resistance to marriage prevailed and suggests that critiques of the past be used to guide present and future empirical inquiry.

Edward Stein, The "Accidental Procreation" Argument for Withholding Legal Recognition for Same-Sex Relationships, 84 CHI.-KENT. L. REV. 403 (2009). The author compares the procreation argument against legal recognition of same-sex marriage with the "accidental procreation" argument, noting that the arguments suffer from many of the same pitfalls.

Mark P. Strasser, Tribal Marriages, Same-Sex Unions, and an Interstate Recognition Conundrum, 30 B.C. THIRD WORLD L.J. 207 (2010). This article examines the recognition of polygamous Native American marriages by federal and state governments. The author argues that this historical recognition lends support for legislation affording same-sex couples the same rights and protections as heterosexual couples when traveling across state borders.

——— Interstate Marriage Recognition and the Right to Travel, 25 Wis. J.L. GENDER & SOC’Y 1 (2010). The author asserts that same-sex marriages that are validly celebrated in the couple’s state of domicile cannot be invalidated if the couple chooses to exercise the constitutional right to travel to a new state, unless the state can demonstrate a close relationship between nonrecognition and sufficiently important state interests.

——— The Legal Landscape Post-DOMA, 13 J. GENDER RACE & JUST. 153 (2009). The author explores the implications of repeal of DOMA and argues that same-sex marriage should be protected under the Constitution in order to secure the rights of same-sex couples and their families.

Michael Tamir & Dalia Cahana-Amitay, "The Hebrew Language Has Not Created a Title for Me": A Legal and Sociolinguistic Analysis of New-Type Families, 17 AM. U. J. GENDER SOC. POL’Y & L. 545 (2009). The authors contend that because same-sex couples are left unidentified in Israeli society, cultural equality cannot be achieved. In order to promote equality, the authors propose providing legal recognition and authenticity to new types of alternative families.

Nelson Tebbe & Deborah A. Widiss, Equal Access and the Right to Marry, 158 U. PA. L. REV. 1375 (2010). This article proposes using an Equal Access litigation strategy for achieving same-sex marriage rights by analogizing them to voting and court access cases. The authors describe the Due Process and Equal Protection strategies most often employed as well as the grounds courts have used to reject these arguments.

Scott C. Titshaw, The Meaning of Marriage: Immigration Rules and Their
Implications for Same-Sex Spouses in a World Without DOMA, 16 WM. & MARY J. WOMEN & L. 537 (2010). This author argues for immigration policy that recognizes same-sex spouses for immigration purposes so long as the marriage is valid where celebrated and the state of domicile has no strong public policy objection. The author uses Adams v. Howerton to illustrate treatment of same-sex couples under pre-DOMA immigration policy and makes recommendations for the analysis that should be applied should DOMA be repealed or struck down.

Lynn D. Wardle, Marriage and Religious Liberty: Comparative Law Problems and Conflict of Laws Solutions, 12 J.L. & FAM. STUD. 315 (2010). The article describes how marriage, particularly same-sex marriage, can be a battleground between the state and religion and the author suggests applying traditional conflict-of-law principles. The author concludes by suggesting a “limited deference approach” which provides for broad accommodation of religious liberties while protecting legitimate state interests.

Parentage

Leslie Joan Harris, The Basis for Legal Parentage and the Clash Between Custody and Child Support, 42 IND. L. REV. 611 (2009). This article asserts that the historical rules governing child-parent relationships are undermined as parentage laws focus on biology-based tests for paternity, at the expense of recognizing functional parent-child relationships. The author argues that both biology and functioning child-parent relationships must be considered in parentage laws to protect children and families.

Melanie B. Jacobs, More Parents, More Money: Reflections on the Financial Implications of Multiple Parentage, 16 CARDOZO J.L. & GENDER 217 (2010). This article explores the possible support structures and financial obligations that arise from recognizing multiple parents. The author describes the Louisiana Dual Paternity structure, the Pennsylvania Superior Court’s decision in Jacob v. Schultz-Jacob, and the American Law Institute’s reflections on support in cases of multiple parentage. The author concludes that as the two-parent paradigm changes to allow for recognition of multiple parents, support obligations should reflect the nature of the parent-child relationship.

Nancy D. Polikoff, A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-First Century, 5 STAN. J. C.R. & C.L. 201 (2009). This article explores statutes that may be enacted to allow lesbian couples to achieve legal parentage of their children, without an adoption decree, the first based on the relationship of the parents, and the second based on judicial application of general parentage statutes. The author describes systems in Canada, Australia, and Europe that address the issue of lesbian couple parentage. The author argues that the District of Columbia’s recent Domestic Partnership Judicial Determination Parentage Act provides a good model for other jurisdictions.
Premarital & Postnuptial Agreements

Margaret Ryznar & Anna Stepień-Sporek, *To Have and to Hold, for Richer or Richer: Premarital Agreements in the Comparative Context*, 13 *Chap. L. Rev.* 27 (2009). This article compares ways the formation, application, and consequences of premarital agreements are handled in the United States, France, Germany, Switzerland, and Poland. The authors conclude that the most striking difference between the American and European regimes is the American focus on freedom of contract and autonomy of the parties. The authors examine the reluctance of people in Europe and the United States to enter into such agreements.

Property Division


Jeffrey S. Kinsler, *The Unmerry Widow: Spousal Disinheritance and Life Insurance in North Carolina*, 87 *N.C. L. Rev.* 1869 (2009). This article analyzes North Carolina law with respect to the elective-share, which allows a living spouse to renounce the will of a decedent spouse in situations of spousal disinheritance. The author contends that despite the state legislature’s intent to remove life insurance proceeds from the state elective-share statute, most life insurance benefits payable to a nonspouse remain within the realm of the statute. The author proposes a legislative reform to remove life insurance proceeds from the elective-share statute.

John E. Kirchner, *Division of Military Retired Pay*, 43 *Fam. L.Q.* 367 (2009). This article describes issues related to military retired pay that are commonly misunderstood and/or misinterpreted by family law practitioners. The author argues that the lack of uniformity in application among the fifty states results in confusion and he offers guidance to practitioners attempting to divide military retired pay.

Stephanie Hunter McMahon, *California Women: Using Federal Taxes to Put the “Community” in Community Property*, 25 *Wis. J.L. Gender & Soc’y* 35 (2010). This article explores efforts by California women to increase their community property rights. The author examines common interests of women and the wealthy and concludes the wealthy commandeered the federal tax argument leaving women without expanded rights.

Raymond C. O’Brien, *Integrating Marital Property Into a Spouse’s Elective Share*, 59 *Cath. U. L. Rev.* 617 (2010). This article assesses the 2008 revisions to the Uniform Probate Code (UPC), including examination of the historical background of the elective-share provision. The article traces the history of marital-property distribution upon the death of a spouse and the various conflicting
regimes that led to the desire for uniformity under the UPC. The article concludes that the 2008 UPC revisions embody the most reasonable approach to marital-property law.

**John V. Orth**, *In re Tenancy by the Entirety—Married Couples, Common Law Marriages, and Same-Sex Partners: Orth v. Orth*, 85 N.D. L. Rev. 287 (2009). The author examines Professor Rosich-Schwartz's remarks regarding the preferred method of property ownership for married couples, common law marriages, and same-sex couples: the tenancy by the entirety. This article concludes that nonsexual relationships, although similarly permanent and stable, are viewed as "qualitatively different" and therefore afforded fewer rights regarding property ownership.

**James Ratner**, *But From Where Will the Money Come? Community Property Liability for Child Support and Other Premarital Obligations*, 9 WHITTIER J. CHILD & FAM. ADVOC. 17 (2009). This article examines community property approaches to debts incurred by one spouse, including the managerial regime, the partition regime, and the community property/separate property classification regime. The author argues that child support should be viewed as a community obligation, thus opening up all community property to pay child support. But, the author believes that spousal maintenance should be viewed as a premarital debt and only the debt-incurring spouse’s separate property should be used to pay it.

**Self-Represented Parties**

**Jim Hilbert**, *Educational Workshops on Settlement and Dispute Resolution: Another Tool for Self-Represented Litigants in Family Court*, 43 FAM. L.Q. 545 (2009). This article describes the increase in self-represented litigants in family court and the challenges faced by pro se clinics, self-help centers, and referral services in educating self-represented litigants regarding settlement. The author concludes that education about when and why settlement is appropriate would lead to faster and more beneficial resolutions for all parties in family court disputes.

**Richard Zorza**, *An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue*, 43 FAM. L.Q. 519 (2009). This article describes methods for accessing informational materials aimed at self-represented litigants. The author describes how self-help methods operate, explores the effect of technological innovation, and discusses a resulting shift toward judicial “engaged neutrality.” The author examines systemic problems, such as excessive costs, delays, and complex procedures, and offers six ways to rethink and reform the family court system.

**Tax Issues**

**Patricia A. Cain**, *DOMA and the Internal Revenue Code*, 84 CHI.-KENT. L. REV. 481 (2009). The author argues DOMA's application to the Internal Revenue Code lacks a rational basis and is unconstitutional. The article outlines tax
benefits that are conferred upon married couples as well as the unintentional benefits enjoyed by same-sex couples. The author suggests several litigation strategies for attacking DOMA’s application to the Internal Revenue Code before describing a “world without DOMA” and addressing concerns regarding marriage-specific provisions in the tax code.

Lily Kahng, *One Is the Loneliest Number: The Single Taxpayer in a Joint Return World*, 61 HASTINGS L.J. 651 (2010). The article explores the costs and benefits of abolishing the joint tax return, and after reviewing the tax burden placed on single persons, the author ultimately concludes the joint tax return should be abandoned.

**Torts**


Benjamin Shmueli, *Love and the Law, Children Against Mothers and Fathers: Or, What’s Love Got to Do with It?*, 17 DUKE J. GENDER L. & POL’Y 131 (2010). This article critiques four approaches to lawsuits initiated by children against their parents. The author favors a model that emphasizes: (1) a reasonable gap between the declaration of children’s rights and moderate enforcement; (2) criteria for recognizing the tort suit; (3) referrals to mandatory extra-judicial procedures; and (4) allowance of “emotional remedies.”

—-*Tort Litigation Between Spouses: Let’s Meet Somewhere in the Middle*, 15 HARV. NEGOT. L. REV. 195 (2010). The author critiques individualistic and family approaches to intrafamilial tort claim litigation and proposes an intermediate approach to accommodate the individual’s right to litigate tort claims, while remaining sensitive to familial relationships.

—-*What Have Calabresi & Melamed Got to Do with Family Affairs?: Women Using Tort Law in Order to Defeat Jewish and Shari’a Law*, 25 BERKELEY J. GENDER L. & JUST. 125 (2010). This article applies Calabresi and Melamed’s primary and secondary remedy framework to the interaction of religious law and family civil law in Israel. The author concludes that the liability rule in favor of plaintiffs fills the gap created by family law when the primary remedy cannot be provided.