Abstracts for
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ABSTRACTS

The Children of No-Fault Divorce
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Some 40 years ago no-fault divorce (in theory or in practice) became the regime of choice in many Western European and North American states. After four decades it is now realised that this change to readily available divorce does not solve problems, but may create more than it has solved. When it was proposed, for example by the UK Law Commission Reform of the Grounds of Divorce: The Field of Choice (Cmd 3123, 1966), the welfare of children was not properly examined. In the UK, their presence in a breaking down marriage was regarded as a factor in whether the divorce should be granted or not, not as an issue in its own right. It was thought that to refuse a divorce because of the welfare of children would not improve matters for them, for the adults involved would no doubt go on to form new unions in any case. It was also surmised that no-fault divorce would mean fewer children born out of wedlock because the parents would be able to free themselves from dead marriages and regularise their new unions. These predictions have been proved quite false. The number of children born out of wedlock has risen from some 4% 50 years ago to nearly 50%. Moreover, once the relative poverty of divorced women became an issue (Weitzman, The Divorce Revolution, 1985) governments tended to believe that the problem could be solved by extracting more money from ex-husbands, a tactic that has largely failed except in the case of the very wealthy. Then international studies revealed the deprivation and harm caused to the children of divorce and those raised in single or cohabiting parent families. The reaction of governments, again, has been to throw money at the problem and to fund projects for children designed to alleviate their poverty by a child focused strategy. Thus men could argue that no damage was caused: they could have their cake and eat it by paying off the ex-wife and, by claiming contact with their children, with increased success, they could see their children when they wanted to.

Now Patrick Parkinson has revealed in his recent study Family Law and the Indissolubility of Parenthood that while marriage is freely dissoluble, parenthood is not, and that national legislation has to take a new turn and deal with this. It is also clear from
UN and OECD studies of child development that the UK and the USA rank very low amongst developed countries in child well being, despite large amounts of expenditure of taxpayers’ money on the problems. This paper will argue that it is, on the whole, not material poverty that damages children in unmarried families but their situation and the capacity of their parents to nurture them in their earliest years. Stability and marriage are shown to result in far better child outcomes than any other family form, even though governments are unwilling to acknowledge this.

The Authority of Law and the Authority of Families

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States allow parents to make decisions for their children. In a sense, parents are treated as authoritative decision-makers in respect of their children. However, states tend not to allow parents absolute authority over their children. There is therefore an unavoidable question of how to draw the line between the sorts of decisions that the state will allow parents to make and the sorts of decisions that the state will not allow parents to make. This is a moral question that must be answered by reference to moral criteria, albeit with a keen sense of how any stated legal position will play out in reality. Although there is much debate on this moral issue, there has been little consideration – in this context – of the concept of authority itself. However, within the context of general jurisprudence, there is a flourishing debate on the concept of authority. This paper draws on the jurisprudential debate over authority and seeks to relate it to the issues that arise in respect of the authority of parents over their children. The hope of the paper is that a clearer conceptual understanding of authority will help to clarify the moral arguments in favour of the adoption of particular legal positions. The central argument of the paper is that the key relationship is a tripartite relationship between parents, their children and the state. It is therefore necessary to justify not merely parents’ authority vis-à-vis their children but also the state’s acceptance of this authority. This understanding of authority in the context of the family will then be applied back to the general jurisprudential debate over the authority of law where it will again be argued that law’s authority must also be understood in the context of a tripartite relationship between law maker, law subject and law applier.

Fatherhood under Russian Law as an Example of Gender Inequality

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The paper deals with developments in Soviet/Russian law that at some point minimized the role of a father to simple sperm donor and/or source of maintenance.
The reform in family law after the Revolution of 1917 intended to bring equality to women – in the society in general and in the family in particular. The results were quite surprising: gender inequality did not disappear but shifted (or its focuses switched) – a man became a discriminated against figure.

Men at some point lost in full the right to acknowledge their offspring born out of wedlock. If a man legally fathered a child he was not entitled to any social benefits (such as monthly payments, vacations from a work corresponding with child’s vacations at school, right to choose not to work night shifts, etc) even if he was single parent, while mother had these benefits whether she was married or single.

Neglect of fathers by the law bred a new generation of totally irresponsible men who did not consider themselves to have family duties and responsibilities. It is not easy to change this attitude of men even now though the discriminatory laws have been mostly abandoned.

Culture, Family, and Parental Promotion of Virtue
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There are three types of culture: one type aims principally at virtue, one at pleasure and other feelings, and one at wealth, prestige and other instrumental goods. These three categories correspond fairly closely to the three categories of affiliation recognized by Aristotle in Book Eight of the *Nicomachean Ethics* (where he identifies “full” or “complete” friendships, affiliations of pleasure, and affiliations of utility).

A society’s character, as belonging principally to one or another of these three categories, can be ascertained by ascertaining what traits, characteristics, and courses of conduct will conduce to social success, prestige, recognition, and emulation. In some social orders prominence is secured principally through the accumulation and exhibition of wealth, for example, and through generating and running associations for the production of goods and services. In other social orders prominence is secured and maintained through buzz, glitz, and the generation of a whirl of pleasurable excitement (sometimes referred to as “charisma”). In the third sort of society – one based upon virtue—excellence of character is continuously assessed and, when it is achieved, is steadily commended and rewarded with recognition and emulation.

The Roman Republic stands as the historic paradigm of the virtue-based, virtue-commending, and virtue-celebratory social order. The Roman virtues of character, preeminently those of fidelity, self-sacrifice, and patriotism, have been proposed as exemplary in many of the cultures which directly or indirectly descend from the Roman Empire, including those of Argentina and its South American neighbors. The cultures of Northwestern Europe and its descendant countries are also heirs of Rome, but have displayed tendencies in recent generations to emphasize emotion, pleasure, and the
instrumental goods as guides to conduct and grounds for recognition.

Family structure tends to reflect the social order. This is especially the case as regards parenting practices, since parents often encourage and transmit the beliefs and practices of their society as they prepare their offspring to join it. Here again, the Roman social order may be taken as exemplary, since the transmission of the classic Roman virtues was regarded as a central mission of parenting in classical Rome. Some tendencies in thought and practice about parenting in the media and in social-science writings during the present age tend to move that relationship towards a basis in feeling and emotion and to de-emphasize the promotion of character.

Child’s Origin And Parenting
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Although the largest number of people today considers parenting as the most beautiful, important and noblest calling, it has never been a rule that applies to everyone. In addition, we can say that the previously mentioned is true only if a parent wants to accept the child and their parenting, otherwise other rules are valid. At the same time the biological (genetic) ties between parents and a child are the most common basis of parenting, but at the same time it is not a crucial factor that has legal consequences in the field of parenting. The crucial one is the willingness of the parents, particularly fathers, to accept their child and the role in parenting.

There are many legal examples of that. For example, until recently, through the history of social development, the legal position of an illegitimate child was very unfavorable and had depended on the will of a father (sometimes also of a mother) to recognize his illegitimate child. Biological (genetic) ties were of no importance if father did not want to accept his child. The proceedings for establishing child’s paternity by a court’s decision lasted very long and in many countries it was forbidden to initiate them.

The similar situation holds for adoption, when biological (genetic) ties lose its importance, and legal connections get prevalence.

Thereto should be added the cases of biomedical assisted reproduction with sperm or egg donations.

For the reasons of the legal security of a child born in wedlock and the status of a mother’s husband, it is sometimes very difficult to rebut a paternity of a mother’s husband (it was particularly the case in the past), and therefore it happens that it can never be revealed the real paternity of a child’s biological (genetic) father.

In my paper I am going to deal with this issue, considering historical and comparative aspects of the matter, as well as the reflection about the topic regarding the best interest of the child.
Filiation and Parenting under the Law: a little (Universal) Biology, a little (Spanish) Law, and some (Personal) reflections.

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Is filiation (and parenting) a biological concept? Is it a legal concept? Is it both a biological and a legal concept? Are the biological structures of filiation a limit for legislators and for the Law itself? On the contrary, may the legislators and the Law go beyond these limits (maybe, “to infinity... and beyond”) and (legally) rebuild those (biological) concepts? This paper offers some reflections and tries to shed some light on those questions, which are universal (because of the Biology), but also locally determined (because of the distinctive features of each national culture and Law.) The current features of the Spanish Family Law (same-sex marriage, same-sex adoption, reproductive technologies) set out all of these fundamental problems, and allow reflecting about them.

"So Expensive a Charity"1. Adoption in the Law and in the Literature

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Adoption is an effective legal institution to ensure support and solidarity to children in need. As it is well known, however, adoption has changed its aims with the passing of time. In fact, it has long been functional to provide help in any possible sense to adoptive families. Only in modern times it has come to be considered the other way round, as a means to provide children with love and care. This contribution will try to investigate how far the above development has been described in literature.

But then, leaving aside these very general features of the history of adoption, if turn to its discipline in the different legal systems of the western world, we find that adoption as a legal institution is relatively recent in some countries (roughly speaking, in the common law countries) but very ancient in others (the civil law ones). This difference in timing will be investigated and explained.

Several novels and tales will be analysed and compared, such as Tom Jones (Henry Fielding, England, 1749), Les Misérables (Victor Hugo, France, 1862), Sans Famille (Hector Malot, France, 1878), Anne of Green Gables (Lucy Maud Montgomery, Canada, 1908), and other, less famous, contemporary works.

The research method will follow the Law and Literature approach.

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1 J. Austen, Mansfield Park, 1811-1814, cap. 1.
The Influence of Religion on Parenting: Jurisprudential Principles and Legal Problems
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This paper will review the importance of effective parenting for children, the importance of religion as a support system for much effective parenting, and growing problems with state intrusion upon parenting in ways that weaken religious influence and undermine the faith-family connection.

The importance of parenting for the healthy and complete development of children is a topic that many great thinkers about life, society and law have considered. This paper will focus on enlightenment philosophers, including Hobbes, Locke, Montesquieu and others. Several common principles about the importance and responsibilities of parenting that have been developed in that literature will be identified and explained.

The role of religion to support families, in particular to support effective parenting, will be examined both in jurisprudential theory and in sociological studies. The theory underscores the mutually reinforcing concerns of religions and parents. The data seems consistently to show that children raised in families that have significant religious support (religiosity and life experience) experience fuller, more successful, less troubled lives, and that parents who are involved in religion are more nurturing, effective, and successful as parents.

The “trilemma” of modern liberalism will be discussed. The trend toward greater state and social hostility against some religions (especially fundamentalist Muslim groups) will be examined. The impact upon parenting in families that belong to those faith communities will be considered. The “ripple effect” of hostility toward other “fundamentalist” religions, in particular, and all or most other religious communities in general will be evaluated.

Changing Images of Family and Parenting in American Art
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Artistic portrayals of images of the family and of parent-child relationships in the family tell us something about how those relations and those social institutions are perceived and understood, at least within one perceptive sub-group of society. They express the views and insights of the artist and/or the artist’s patron and/or audience. Art also reflects to some degree the norms and social practices of a particular community at a particular time and place, either popular or tolerated and marginal.
Images of the family and of parent-child relationships portrayed by American artists have dramatically changed, especially in the last fifty years. This presentation will present some of those artistic expressions to show the changing images of the family and of parent-child relations.

Some interpretation of the artistic images will be provided. Implications for what they tell us about the family and parenting in American society, and what they may reveal about the changing jurisprudence of parenting will also be discussed.

**Social Development and Social Change:**

Global Implications of Emerging Family Structures

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Studies conducted over the past two decades suggest that children raised in a stable, married, two-parent household have significant developmental advantages (including better educational, health and interpersonal outcomes) than children raised in other family structures. At the same time, however, it appears that the prevalence of the traditional, two-parent household is declining, with increasing numbers of children born outside wedlock, marriage rates declining and divorce rates either increasing or remaining at historically high levels.

This paper will survey studies from various regions of the world that analyze developmental outcomes for children in two-parent and other family structures. It will also survey data from numerous countries and regions demonstrating recent trends in family structure. Such data will include (where available) information regarding marriage rates, divorce rates and children born outside of wedlock. The paper will conclude by noting the regional and global implications arising from changing family structures.