

The Grant: A Brief History

This grant was awarded to the University of Exeter to set up an interdisciplinary International Network on New Families; New Governance: the Family, Regulation and the State. The broad aim was to forge international and interdisciplinary connections to examine the role of the state in family regulation, in the context of significant change in both family structures and processes and in the nature of regulation and governance of families.

The total award was for **£123,141.00** over three years, commencing on the **1st March 2012** to fund a part-time Network Administrator, participant travel and catering for three 2-day workshops and a final conference. A no-cost extension was granted to facilitate an additional workshop, giving a new formal end date of **31st August 2015**.

The International Network comprised 7 partners: -

Cardiff University (UK)
University of Bath (UK)
University of Bristol (UK)
University of Exeter (UK)
Notre Dame University, USA
University of Melbourne, Australia
VU (Free) University of Amsterdam, The Netherlands;

Three very successful 2-day international and interdisciplinary themed workshops were hosted in turn, by the University of Exeter in September 2012; The University of Melbourne in April 2013 and the University of Notre Dame in March 2014 to which a range of local family academics, doctoral students and stakeholders were invited in addition to the core Network members. A final 2-day London conference was hosted at the London premises of the University of Notre Dame in September 2014, as was the additional workshop in May 2015.

Objectives

By bringing together both interdisciplinary and international perspectives on new-style families and new approaches to family governance in a rapidly changing world, the objectives of the International Network were to use a wide range of international academic expertise and some stakeholder experience across three continents to provide a theoretically informed, comparative and interdisciplinary lens to -

1. Explore how the nature and experience of formal, judicial and executive regulation of families are changing;
2. Consider what is driving and shaping such changes;
3. Explore the nature and consequences of new forms of family regulation and governance for different styles of families and family members;
4. Consider what lessons can be drawn for family law and policy in the UK and globally.

Research Activity and Methods

Initially, **three workshops** were held to pursue these objectives. They each took the form of a 2-day themed workshop in which specific issues identified as important and subject to varying approaches internationally were explored. The style of each these workshops involved up to 4 papers being given in each of three sessions over two days by selected academics drawing on their own (often empirical) research and legal and policy context to an audience of 50 participants. This aimed to provide a balance of perspectives and approaches from each of our partner countries. Each session was followed first by table discussion of identified questions, with a mix of Network members, wider academic colleagues, selected stakeholders from practice and doctoral students at each table. The issues were then further debated in plenary. After each workshop, the partners met to consider the key findings, plan publications and the follow-up activity for the next workshop or final conference. Full details of each workshop and the final conference including the abstracts of the 36 papers and slides presented can be found on the International Network's website at <http://socialsciences.exeter.ac.uk/law/research/frs/researchprojects/nfng/>.

Voices heard and unheard was the theme of the **first workshop**, led by Professor Barlow and hosted at the University of Exeter (UK) on 6-7 September 2012,. The main focus was on the voice of the child in a range of situations including family court proceedings, mediation, intact families, public care system and in artificial reproduction regulation. The voice of ethnic minority women under Sharia law as operating in the UK context, the voice of the poorest with no or limited access to justice and situations where social welfare law mechanisms operate to affect behaviours of families were also debated. A key issue identified is the tendency for rhetoric to hear but not listen to such voices in policy making.

Delegalisation and new forms of governing the family was the focus of the **second themed workshop** held at the University of Melbourne (Australia) on 15-16 April 2013, led by Professor Humphreys. The trends in different jurisdictions towards Alternative Dispute Resolution in private and increasingly public family Law and the unique approaches and challenges within the Aboriginal and other minority cultures which work alongside the traditional justice system built on some aspects of the first workshop and revealed diverse approaches to a common theme. In addition, juxtaposition of this move towards the 'smaller state' alongside greater state intervention in 'troubled families' was a UK development where resonance with aspects of US policy could be seen.

Meanings and understandings of family solidarity in the contemporary world was the **third workshop** theme, led by Professor Brinig, hosted by the University of Notre Dame (USA) on 27-28 March 2014. Here we considered the differential approach to legal recognition of same-sex families across jurisdictions and the implications for family solidarity within such groups and for expectations around post-separation families, where continued co-operation of parents is considered crucial. In addition, the reduction in the protective role for family law was debated alongside the benefits and dangers of a move to autonomy and equality discourses as the dominant feature guiding family law and policy, where research shows autonomy is at best relational and equality is merely formal.

At the **Final London Conference** attended by some judges, policy makers, practitioners as well as a range of academics, the international Network presented and debated its findings, following the keynote opening presentation by Supreme Court Justice, Lady Hale on *Family Law and Policy: the*

Shifting Contemporary Landscape. The aim was to draw out commonalities and differences in causes and responses, as well as identifying any lessons for family law and policy locally and globally. This was discussed under the following three headings -

Governance and regulation: making good families or families good?

This session led by Ian Butler (Bath) confirmed the finding of a shift away from an easily understood era of legal regulation led by government to a broader yet more nuanced form of governing, conceptualised as ‘governance’ which can include hard regulation (particularly in relation to poor families and welfare), but increasingly encourages soft law, ‘nudging’, messaging and private agreement as the traditional functions of the state are rolled back. We reached the conclusion that there is a notable trend across jurisdictions towards new ways of governing the family and a reimagining of concepts of justice.

Voices heard and unheard: can we adjust the volume?

Cathy Humphreys (Melbourne) followed up this theme from our first workshop. She concluded that two elements appear to be of overriding importance in hearing the voices of children and young people in the micro-practices of courts or in the macro public policy arenas. First, we cannot know, without asking, whether women, children, unrepresented litigants or members of the wider family, are adequately and fairly listened to by judges, policy-makers or decision-makers. However, secondly, resourcing, too, appears to be critical. Listening to as opposed to just hearing voices is a key way forward but some voices can become harder to hear in a deregulated world.

Renegotiating relationships: what is the future for family solidarity?

Peg Brinig (Notre Dame) summarised the findings on this third, which had been more fully explored at the Notre Dame workshop. The ideas of subsidiarity and solidarity are particularly European continental ones, flourishing as well in the international law context. This is not how Americans tend to theorise the world. However, she suggested we think in terms of dimension, ‘with subsidiarity being vertical and associated with power, solidarity being horizontal and grouped with responsibility or obligation.’

It concluded with the thoughts of Professor Smart, University of Manchester, the conference discussant. She identified the interplay between poverty, social security and family law as significant. The loss of the protective role of the courts in private family life and the rise of genetic (rather than social) connectedness as a driver of policy were also future research challenges. She thought many of the gains made through family law were now ebbing away and saw the need for ‘a different theoretical understanding of power with new kinds of language and a narrative which people will actually listen to.’

At the **additional 2-day workshop** attended by the partners at the end of May 2015, these identified challenges were discussed in the context of future research projects.

Conclusions and achievements

By bringing together interdisciplinary experts researching on family from Europe, Australia, USA and the UK, the Network has met its four main objectives. Through its workshops and publications, it has explored how the nature and experience of formal, judicial and executive regulation of families are changing, steering towards greater private ordering with the championing of autonomy in the

private sphere , alongside greater intervention in the public sphere, aiming at behaviour change through welfare control in many states. Both austerity and political ideology are driving and shaping some of the change, such as delegalisation, but not in a linear way, with cultural and social norms triggering differentiated, regulatory responses to e.g. legal recognition of same-sex families, conditions for access to artificial reproduction and the move towards and strategies for enhancing post-separation co-parenting and even child protection through steered private ordering. We concluded that the voices unheard in many legal and policy practices in the systems we studied need to be better facilitated so that they are both heard and listened to, particularly where children in public or private family law disputes are concerned, within or out of court.

We have been pleased to use the Network to identify relevant international research through our members to assist in policy debates in e.g. by the Government Task Force on Family Mediation in 2014. In terms of lessons learned, the USA illustrates to other jurisdictions the hard reality of access to justice for the most disadvantaged in the absence of a welfare state or indeed for the voice of a child in proceedings. Australian research has revealed issues with policy around equal time shared parenting which may affect child welfare. The different models of in court and out of court family mediation are numerous across the jurisdictions and some sharing of best practice is ongoing and to be welcomed.

The Network has facilitated an original collection of research ideas around two of the workshop themes of *Voices Unheard* and *Family Solidarity* which are published as two special issues of different refereed socio-legal journals. In terms of theoretical approaches, we have advanced a modernised concept of 'family solidarity' which recognises and values 'the family business of caring' in all styles of family as the cornerstone of private family law to counter inappropriate use of principles of individual autonomy and vulnerability in analysing family law disputes (Barlow, 2015). This has been adopted in a project RETHINKIN funded by the Flanders Research Council headed by Network members Frederik Swennen (Antwerp University) and Masha Antokolskaia (VU Amsterdam).

Overall, the work of the Network has made an important contribution to comparative traditional scholarship in this interdisciplinary field and has helped inform policy development in some areas.

Personal evaluation of principal award holder

Every one of the events of this International Network has been highly successful and I believe an enduring relationship has been established between a number of Network members. Publications were the most difficult element to keep on track.

Future plans

In addition to the RETHINKIN *Family Solidarity* project involving 4 Network members from Belgium, The Netherlands, Norway and the UK, two possible projects have been identified –

1. Data sharing for further comparative work around litigants in person and mediation use is ongoing between Exeter, Bristol, Cardiff and Notre Dame and a large grant proposal *Investigating the delegalized space* which includes looking at power and disempowerment within online space is in preparation.

2. Empowering unheard voices is another potential project, with a focus on children in care and domestic violence victims between Melbourne, Bristol and Exeter.

Publications

G. Douglas et al, 'New families, new governance: international perspectives on hearing and listening in family regulations' [2013] *Family Law* 559-563.

A. Barlow et al, 'New families, new governance: international reflections' [2015] *Family Law* 59-65.

Special Issue on 'New Families; New Governance: Voices heard and unheard, *Journal of Social Welfare and Family Law*, Volume 36, Issue 4, 2014: 355-437.

J. Masson & L. Smith, Editorial, 355-357.

B. Bennett-Woodhouse, 'Listening to children: Participation rights of minors in Italy and the United States', 358-369.

L. M. Coenraad, 'Voices of minor children heard and unheard in judicial divorce proceedings in the Netherlands', 370-380.

A. Singer, 'Voices heard and unheard – A Scandinavian perspective', 381-391.

R. M. Field and A. Lynch, 'Hearing parties' voices in Coordinated Family Dispute Resolution (CFDR): An Australian pilot of a family mediation model designed for matters involving a history of domestic violence', **392-402.**

M. Connolly and J. Masson, 'Private and public voices: Does family group conferencing privilege the voice of children and families in child welfare?', 403-414.

I. Butler, 'New families, new governance and old habits', 415-425.

D. E. Roberts, 'Child protection as surveillance of African American families', 426-437.

Special Issue on 'Family Solidarity, *Child and Family Law Quarterly*, Volume 27, Issue 3, 2015: 219-328.

G. Douglas et al (eds) 'Introduction – Special Issue on family solidarity', 221-222.

A. Barlow, 'Solidarity, autonomy and equality: mixed messages for the family?', 223-235.

T. Sverdrup, 'Family solidarity and the mind-set of private law', 237-247.

M. F. Brinig, 'Substantive parenting arrangements in the USA: unpacking the policy choices', 249-259.

M. Garrison, 'Fostering family law norms through educational initiatives', 261-270.

M. V. Antokolskaia, 'Parenting in step-parent families: legal status versus de facto roles', 271-284.

F. Swennen and L. Verhaert, 'Intergenerational solidarity and elder care in the Low Countries', 285-302.