

## **NOT TO BE CITED WITHOUT AUTHORS PERMISSION**

### **Meanings and understandings of family solidarity and family regulation**

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The ideas of subsidiarity and solidarity, the topics for the third workshop, are particularly European continental ones, flourishing as well in the international law context. In the autonomy-independence-happy United States, we tend to shy from such communitarian ideals, and tend to group family situations in terms of freedom from state influence or control, or rights as played out by one family member against another.

To the extent that we in the U.S. think about the terms, we think in terms of dimension, with subsidiarity being vertical and associated with power, solidarity being horizontal and grouped with responsibility or obligation. This isn't necessarily the best way of thinking about these things (hence the last ISFL Congress was entitled "Solidarity Across the Generations," combining both horizontal and vertical ideas in one phrase), but perhaps will be a helpful mechanism for reflecting on the Leverhulme third workshop. We also might think in terms of norms—social norms, that is—within families and as the role government plays in strengthening, channeling or hindering these.

Taken as a whole, the talks about which I'll report indicate that in some ways family solidarity has not changed a great deal. That is because demographics tell us the group of people who are dependent—who rely on others' care—has shifted only in quantity, not so much in kind. Parents remain primarily responsible for young children, and for the most part, this responsibility—legally anyway—tracks biological parenthood. However, the group of people who now can be called parents no longer neatly fits the biological paradigm as more and more children are born to assisted reproductive technologies (ART) or live with stepparents, or occasionally with other relatives. The number of children who depend upon adults for care has been shrinking, while the number of elderly who may at some point become dependent grows. While government has assumed secondary responsibility for supporting children's wellbeing, they have perhaps taken a more standardized approach for those of advanced age, who are expected to have saved personally throughout their working lives and who may have social security benefits. Nonetheless, adult children may be caring for these people as well as for their minor children.

Perhaps the biggest, qualitative, change over the last several centuries, but especially since 1960, has been a rejection of the idea that women are also dependent, needing care from their fathers or husbands. In all the countries represented in the Leverhulme network, most married women, even those with small children, work outside the household at least part time. While some countries (but only to a limited extent the United States) provide economic

support for maternity, such time-honored institutions as dower and alimony are now rarely used and may even have been eliminated. And more and more mothers are not married when they have their children. The expectations for fathers have changed as well, though in some countries not as dramatically as for mothers. Today's fathers are expected not only to share in providing for the family's wellbeing and guarding against outside dangers, but also to actively participate in childrearing. Some, but not all, of our countries promote fatherhood from the birth of the child through paid parental leave policies, though, as we've seen, not as many fathers as mothers take advantage of these. A change, at least for married fathers, is that this dual role of fatherhood in the workplace and domestic spheres (held also and increasingly by mothers) is expected to continue even when the adult romantic relationship ends in separation. Our countries struggle with the terms and duties of shared parenting, both in the financial and the childrearing sense. Now for the session-by-session exploration.

In Session 1, exploring care obligations and entitlements, we began with Elizabeth Scott's paper, demonstrating a particular American approach to child custody at parental separation. This looks in terms of future parenting plans as something parents ought to resolve themselves, with their own experience-driven parental norms at the forefront, so that in those instances when they could not agree, whatever they had actually done before separation in terms of parenting would carry the day. Janet Reibstein and Liz Trinder then discussed how a theoretical model of child caretaking post-separation could be made better, with the "Rolls Royce" of training programs to show them how their own ongoing conflicts could be handled in a way that would help their children rather than mirror the anger felt by the adult breakup. This program, then, was about transforming norms rather than extending them across particular phases of a relationship, and its implementation met with mixed success because of resistance on the part of both the divorcing parents and those training them. Marie Connolly's paper focused on both a slightly different group of children—those threatened with state care—and a slightly different group of caretakers—extended family. She spoke about the rising role of informal kinship care programs in Australia—a phenomenon mirrored in the United States and Canada in urban settings, and the ways caregiving could be strengthened before government intervention in these families. In continental terms, both Connolly's and Swennen's paper, that followed, involved subsidiarity as well as solidarity. Frederick Swennen compared various European laws dealing with obligations to care for elderly family members. In some countries in Europe, such as Holland, families have been removed from many of these obligations, which now fall primarily on the elderly themselves or, more often, on the state. As with the first papers in the session, Swennen's paper dealt with changing social norms and the balance between ideas of shared communal responsibility versus individual autonomy.

Session 2 developed concepts of the family's financial security, whether coming from other family members or from society as a whole. In particular, several papers addressed families in poverty, and assuring that financial obligations were fully met. The session began with Kristi Slack's coauthored piece discussing the impact of financial security on child maltreatment. While earlier work suggested the correlation between financial insecurity and interventions of the child welfare system, a randomized study taking place in Milwaukee, Wisconsin, suggests that the link is a causal one: that income insecurity produces the variety of ills constituting maltreatment. Tess Ridge, who could not be at the workshop *in vivo*, nonetheless presented a very lively podcast continuing the theme. She addressed the problems children with separated parents and low-income working mothers have with dealing with poverty based on a longitudinal study from the UK. The children moderated their own needs rather than put pressure on their mothers, or even their fathers, if they too were indigent. Anne Barlow discussed the dilemmas of trying to provide economic solidarity, especially for children, at a time when gender equality and autonomy are expected as norms, but childcare and workplace realities still result in a gendered and uneven playing field. The session concluded with Tone Sverdrup's discussion of the remaining property-related differences between cohabitation and marriage in Nordic couples, where a about a quarter choose cohabitation and about half of all births are outside marriage. While social norms and the actual practice do not disfavor cohabitation, the legal regimes in all but Sweden do, to the disadvantage of lower earning partners, causing a need for legal academics to suggest wise policies that capture the economic realities of various family forms.

The last session of the workshop explored how the themes of solidarity are developed and passed from outside the family to within it and from individual families to society at large. Marsha Garrison took on this theme explicitly as she discussed various U.S. programs designed to strengthen marriage and promote responsible fatherhood, some of which have been more successful than others. She concluded that the successful programs had been more carefully calibrated to their audiences, and that future work would need to develop ways of attracting and retaining low income unmarried participants. Rachael Field discussed an Australian empirical project, currently in its pilot phase, designed to explore how legal information is used as part of the mediation process. Leanne Smith spoke about the wide and growing use of legal information available on the internet to people in the midst of separation. One striking feature of the information is that it is concentrated in silos of strictly legal rules and strategies and more psychologically-oriented processes. As is evident in many family-related contexts (though not in the Leverhulme project), the fields do not interact very well, and research between the fields remains cumbersome. Two less, but increasingly common, family forms were described by Masha Antokolskia and Charlotte Patterson: the multiparent family (with more than two legal parents) and those headed same sex-couples. While most states hesitate to recognize more than two parents for children, Professor Antokolskia reported occasions

when the child's future will clearly be enhanced by allowing another adult to share some, but not all, of the bundle of rights and obligations associated with parenting. States are increasingly recognizing that keeping same-sex couples from enjoying full parental rights hurts not only them but also the children in their care. Professor Patterson reported evidence that despite the many disadvantages brought about by legal inequality and the subtexts presented by governments in jurisdictions not fully recognizing same-sex marriages, the children involved seem to turn out well.

One final thought about solidarity brought to mind by my own recent work. Policymakers are apt to try to treat all families alike—in fact, that's what the multiparent or same-sex parent-headed families seek. Sometimes families do not fit the group aimed for by legislation, however well-meaning. While it may make complete sense to prevent tangible harm from being done to children or the helpless elderly, we may lose the values of pluralism and experimentation if we force all families into the same mold. For example, my current empirical work shows the danger of assuming that equal parenting following separation should be expected of all parents, particularly in cases of families troubled by violence and conflict (in which a parent or the children may be harmed physically or psychologically) or families of all income groups (since wealthier, but not poorer or unmarried, families take advantage of strong equal parenting presumptions) or even families with cultural backgrounds that do not support active father involvement following separation. In conclusion, while we need to at least continue to support the dependent among us (and, derivatively, their caregivers), and working through families seems by far the best way to do this, we need to recognize the challenges of doing so through law. The discussions we have begun through the Leverhulme network show how integration of many disciplines and many countries will be necessary in our complex and increasingly smaller world.