FAMILY HISTORY: INSIDE AND OUT

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INSIDE THE CASTLE: LAW AND THE FAMILY IN 20TH CENTURY AMERICA. By *Joanna L. Grossman* and *Lawrence M. Friedman*. Princeton and Oxford: Princeton University Press. 2011. Pp. 331. $35.

INTRODUCTION

The twenty-first century has seen the dawn of a new era of the family, an era that has its roots in the twentieth. Many of the social and scientific phenomena of our time—same-sex couples, in vitro fertilization, single-parent families, international adoption—have inspired changes in the law. Legal change has encompassed both constitutional doctrine and statutory innovations, from landmark Supreme Court decisions articulating a right to procreate (or not), a liberty interest in the care, custody, and control of one's children, and even a right to marry, to state no-fault divorce statutes that have fundamentally changed the way married couples dissolve their legal relationships. But thus far, no legal scholar has attempted to write a comprehensive history of twentieth-century family law. To be sure, many excellent books have been written on particular aspects of the twentieth-century story.[1] *Inside the Castle: Law and the Family in 20th Century America*, by Joanna Grossman[2] and Lawrence Friedman,[3] however, is the first book to my knowledge that attempts to provide a comprehensive social history of twentieth-century family law in the United States.

The goal that *Inside the Castle* articulates is "to look inside the home, inside the castle; to map a century's worth of dynamic change" (p. 22). The central claim of the book is that the rapid social change that occurred during the twentieth century forced the law to adapt in correspondingly sweeping ways. Readers who are familiar with Professor Friedman's voluminous other books and articles on legal history will recognize his "law as mirror of society" thesis here, and readers of Professor Grossman's numerous law review articles and *Justia* commentaries will recognize her careful attention

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1. *See, e.g.*, NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000); MARY ANN GLENDON, THE TRANSFORMATION OF FAMILY LAW (1989); HENDRIK HARTOG, MAN AND WIFE IN AMERICA (2000); HENDRIK HARTOG, SOMEDAY ALL THIS WILL BE YOURS: A HISTORY OF INHERITANCE AND OLD AGE (2012); ALICE KESSLER-HARRIS, IN PURSUIT OF EQUITY: WOMEN, MEN, AND THE QUEST FOR ECONOMIC CITIZENSHIP IN 20TH-CENTURY AMERICA (2001).

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3. Marion Rice Kirkwood Professor of Law, Stanford Law School.

to the effects of contemporary social phenomena on the law.[4] "Family law follows family life," Professors Grossman and Friedman state (p. 2).

> That is, what happens to families, in this society, determines what happens to the law of the family. Law is not autonomous; it does not evolve according to some mysterious inner program; it grows and decays and shifts and fidgets in line with what is happening in the larger society. (p. 2)

Professors Grossman and Friedman identify a plethora of social changes that transformed American family law. These include technological changes, such as contraception, fast and efficient transportation, and medical advances leading to longer life spans; social changes, such as "dramatic changes in relations between men and women" and "the particular mass culture of the late twentieth century"; and economic changes, including a booming industrial and postindustrial economy and vastly increased individual wealth (pp. 7–8). Together, these new changes helped to produce a new kind of person—the autonomous individual. Where the nineteenth-century married couple stayed together "until death do us part," the twentieth-century couple—at least by century's end—stayed together until the marriage "no longer contributed to personal growth and fulfillment, for either partner" (p. 12). Whereas nineteenth-century men and women were expected to marry to have "legitimate, approved-of sex," twentieth-century unmarried couples began cohabiting in such great numbers that by the late twentieth century, "it had pretty much become normal" (p. 10). And it was not only married couples who became more autonomous; extended families broke apart, the birth rate receded, and adult children were placed in the difficult position of being financially responsible for aging parents living longer postretirement lives.[5]

Inside the Castle ties the major legal changes in family regulation to these changed social conditions. According to its story, the desire for companionate marriage led to no-fault divorce (pp. 13–16); the weakening of sexual mores led to the abolition of laws criminalizing nonmarital sexual activity (pp. 9–13); the aging of the population led to social programs such as Medicare and Social Security, which serve as "a lifeline for seniors" but are also highly beneficial to their adult children, relieving them of much of the "financial burden of parent-care" (pp. 16–17). Even changes in adoption law can be traced to these fundamental social changes. When "bastards" became the more benignly termed "nonmarital children," adoption no longer carried a stigma requiring secrecy, and when family formation became a matter of self-fulfillment rather than a duty, choosing to become a parent through adoption or alternative reproductive technologies became a laudable goal worthy of facilitation through law (pp. 20–21).

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4. For examples of the authors' previous work, see LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY (1993); LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (3d ed. 2005); Joanna L. Grossman, *Pregnancy, Work, and the Promise of Equal Citizenship*, 98 GEO. L.J. 567 (2010); and Joanna L. Grossman, *Resurrecting Comity: Revisiting the Problem of Non-Uniform Marriage Laws*, 84 OR. L. REV. 433 (2005).

5. *See* pp. 16–17.

If all of this sounds as if it applies primarily to the middle class—or perhaps even the upper middle class—that's because it does. Professors Grossman and Friedman are refreshingly up-front about the limitations of their project. They admit, near the very beginning of the book, that "it would be more accurate to say that this is a book about middle-class family law" (p. 2). They expressly distinguish "another, vast field, which deals with poor families" (p. 2), the law commonly referred to as "welfare law." This alternate story, one that they describe as

> the tortured and depressing story of the way in which the state, in exchange for welfare payments, has claimed and exercised rights to meddle with the family lives—even the sex lives—of poor mothers and other women, in ways that would be legally and social intolerable with regard to middle-class families (p. 2),

is clearly not the subject of their book.

In this Review, I aim to highlight the strengths of Professors Grossman and Friedman's rich and insightful approach to the study of family law while also calling attention to the ways in which their focus on the middle-class family may distort our understanding of the relationship between the family, law, and society. I begin in Part I by discussing the aspects of the book that track what legal casebooks and treatises traditionally classify as "family law"—the law of marriage, divorce, child custody, and adoption. I discuss the book's expansive treatment of the law of public assistance—including Social Security and Medicare—and argue that by focusing on the impact that broad social developments can have on the law, the authors are able to make observations about the development of law in areas that have been defined by legal academics as doctrinally distinct, yet share a common genesis in social change. In Part II, I identify the area where the authors could have further expanded this approach: the treatment of families that do not fit the book's marital, middle-class lens. Part III argues that the exclusion of poor families from the book's scope calls into question some of its causal historical claims.

I. The Law "Inside" the Castle

To begin, what is the law of the family? And what is "family law"? These two questions, I would argue, have very different answers. The first invites us to consider the many ways in which families are created, shaped, and constrained by law. The "law" at issue may be law that we think of as tax law (marriage benefits and penalties, child care credits), property law (the ownership of property acquired during a marriage, including land, income, and pensions), public assistance law (including the law of public entitlements based on family relationships, such as Social Security, Aid to Families with Dependent Children, and its successor, Temporary Assistance for Needy Families), zoning law (including restrictions on individuals living together who do not qualify as a "family"), trusts and estates law (including intestate succession and the effect of family status on inheritance taxes), tort

law (including interspousal tort immunities), contract law (including what spouses may or may not promise one another), insurance law (including the provision of health insurance through employer and family relationships rather than through government subsidy), and criminal law (including the rapidly developing law of domestic violence).

Family law, in contrast, is indisputably the law of marriage and divorce and the law of parent–child relations. Open almost any casebook with the title "Family Law" or "Domestic Relations" and you'll see it—cases covering topics such as entry into marriage, the intact marriage (maybe including some of what we might otherwise call "property law"), and the law of divorce, including child custody, child support, spousal maintenance, and property distribution. Many casebooks also give attention to parent–child relations, including adoption law and the law of relatively new alternative reproductive techniques, such as in vitro fertilization and surrogacy. Different casebooks, of course, emphasize different issues. At least one casebook has made an effort to destabilize the importance of marriage, beginning instead with adoption.[6] Others include more extensive treatment of the property interests of spouses in ongoing marriages and the public assistance aspects of family relationships.[7] But the ghost that haunts all of these casebooks is the content of the domestic relations portion of the bar exam—the nuts and bolts of marriage and divorce. Casebook authors who deviate from the standard format do so consciously, with the knowledge that what they are doing is unexpected and divergent.

The distinction I am drawing here is not new. The last few years have produced a flowering of scholarship challenging the traditional constraints of the doctrinal field of family law. Janet Halley has written several articles tracing the genealogy of "family law" and critiquing what she calls "family law exceptionalism"—the treatment of the family and the market as separate spheres, and the consequences that follow in the law school curriculum.[8] Jill Hasday has critiqued scholars' unthinking fidelity to what she calls the "canon of family law"—a canon that excludes welfare law and federal regulation of the family from its ambit, even as these areas of family regulation grow at an astounding pace.[9] Indeed, the thrust of much of family law scholarship today is the intersection of what has traditionally been considered "family law" and the fields excluded from Hasday's canon—including criminal, tax, immigration, Social Security, and pension law—demonstrating that

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6. *See* JAMES DWYER, FAMILY LAW (2012).

7. *See, e.g.*, LESLIE JOAN HARRIS ET AL., FAMILY LAW (4th ed. 2010).

8. Janet Halley, *What Is Family Law?: A Genealogy Part I*, 23 YALE J.L. & HUMAN. 1 (2011); Janet Halley, *What Is Family Law?: A Genealogy Part II*, 23 YALE J.L. & HUMAN. 189 (2011); Janet Halley & Kerry Rittich, *Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism*, 58 AM J. COMP. L. 753 (2010).

9. Jill Elaine Hasday, *The Canon of Family Law*, 57 STAN. L. REV. 825 (2004); *see also* Jill Elaine Hasday, *Parenthood Divided: A Legal History of the Bifurcated Law of Parental Relations*, 90 GEO. L.J. 299 (2002) (exploring the history of the divide between one set of legal norms for dealing with poor families and another for wealthier families).

these other areas shape, benefit, and constrain families just as much as the law of marriage and divorce.[10]

Inside the Castle's strengths and weaknesses become visible when viewed through this lens. We can begin with its title, which suggests through the "castle" metaphor a kind of "family law exceptionalism." When someone says "a man's home is his castle," the phrase invokes notions of privacy, autonomy, and perhaps wealth. The castle metaphor suggests that this book is fundamentally a history of the private family, not the publicly regulated one.

To a great extent, the book tracks the story told in traditional family law casebooks. The subjects that Grossman and Friedman cover in detail do little to destabilize the notion that the traditional married couple is at the center of family law and other "nontraditional" families are at the periphery. Thus, we have chapters on the role of marriage in society (Chapter Two), common-law marriage (Chapter Three), and the demise of heart-balm statutes (breach of promise to marry, seduction, alienation of affections, and criminal conversation) (Chapter Four). Nonmarital relationships and same-sex relationships are presented as exceptional, as consequences of changes in sexual mores (Chapters Five, Six, and Seven). Divorce gets its own chapter (Chapter Eight), as do the economic consequences of divorce (Chapter Nine) and the children of divorce (Chapter Ten). Parentage comes next (Chapters Twelve and Thirteen), and adoption is the caboose (Chapter Fourteen)—just as it is in most family law casebooks.[11]

It's not just the structure of the book that is traditional but the choice of materials as well. Most of the famous cases taught in family law classes are here—*Griswold v. Connecticut*[12] and *Eisenstadt v. Baird*,[13] *Loving v. Virginia*[14] and *Goodridge v. Department of Public Health*,[15] *McGuire v. McGuire*[16]

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10. *See, e.g.*, Sarah Abramowicz, *The Legal Regulation of Gay and Lesbian Families as Interstate Immigration Law*, 65 VAND. L. REV. EN BANC 11 (2012), *available at* http://www.vanderbiltlawreview.org/content/articles/2012/04/Abramowicz_65_Vand_L_Rev_En_Banc_11.pdf (immigration); Kristin A. Collins, *Administering Marriage: Marriage-Based Entitlements, Bureaucracy, and the Legal Construction of the Family*, 62 VAND. L. REV. 1085 (2009) (pensions); Goodwin Liu, *Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and the Challenge of Reform*, 1999 WIS. L. REV. 1 (social security); Shari Motro, *Preglimony*, 63 STAN. L. REV. 647 (2011) (tax); Melissa Murray, *Marriage as Punishment*, 112 COLUM. L. REV. 1 (2012) (criminal law).

11. *See, e.g.*, DOUGLAS E. ABRAMS ET AL., CONTEMPORARY FAMILY LAW (3d ed. 2012); HARRIS ET AL., *supra* note 7; CARL E. SCHNEIDER & MARGARET F. BRINIG, AN INVITATION TO FAMILY LAW (3d ed. 2006).

12. 381 U.S. 479 (1965) (recognizing a constitutionally protected interest in privacy that covers the use of contraceptive devices by married couples).

13. 405 U.S. 438 (1972) (establishing the right of unmarried couples to possess contraception).

14. 388 U.S. 1 (1967) (establishing the right to marry a person of a different race).

15. 798 N.E.2d 941 (Mass. 2003) (establishing the right of same-sex couples to marry).

16. 59 N.W.2d 336 (Neb. 1953) (holding that a wife cannot sue her husband for support without also leaving the marriage).

and *Williams v. North Carolina*,[17] and of course the famous "palimony" case *Marvin v. Marvin*.[18] The book tells a story that most family law instructors probably already know, but gives additional context, texture, and fascinating details about the cases that will be useful for teachers of family law who want to augment their students' (and their own) understanding of the cases they are exploring. Did you know, for example, that when the sheriff who arrested Richard and Mildred Loving for violating Virginia's antimiscegenation law was interviewed about his actions, he said, "The Lord made robins and sparrows, not to mix with one another"? (p. 35). Or that after Michelle Triola lost in the damages phase of her "palimony" case against actor Lee Marvin, she nevertheless entered into another nonmarital relationship, living with Dick Van Dyke for thirty years until her death? (p. 132). Or that one of the reasons for the expansion of California's domestic partnership law was the inability of the surviving same-sex partner of a flight attendant killed during the September 11, 2001 attacks to inherit his partner's estate? (p. 240). *Inside the Castle* is studded with such gems and will be of great use to teachers of traditional family law courses.

Inside the Castle is at its best, though, when it deviates from the family-law-casebook script. Both authors have published nuanced historical work on specific aspects of the law of the family, and the book is particularly rich when they draw on this prior work. Professor Grossman, for example, has coauthored a pair of excellent articles on the history, respectively, of adoption and annulment at the turn of the twentieth century.[19] The adoption article shows, by examining a set of cases from one county, that the passage of adoption statutes facilitated new legal family forms that tracked the social realities of many families; grandmothers, for example, became able to formally adopt their grandchildren.[20] The annulment article asks why, given the increasing availability of divorce, people still sought annulments and finds that the main reason was that divorce was simply not available to those who sought annulments—they were either bigamists seeking to officially terminate their second, void marriage or the "parents of impetuous teenagers seeking to erase" their children's "marital mistakes."[21] And Professor Friedman has written paradigm-shifting articles on the history of no-fault divorce, in which he demonstrates that no-fault divorce did not fall from the

17. 317 U.S. 287 (1942) (holding that every state has a rightful and legitimate concern in the marital status of persons domiciled in the state sufficient to grant a divorce, even when the other spouse is not present).

18. 557 P.2d 106 (Cal. 1976) (holding that contracts between unmarried cohabitants for domestic services are enforceable).

19. Joanna Grossman & Chris Guthrie, *The Road Less Taken: Annulment at the Turn of the Century*, 40 AM. J. LEGAL HIST. 307 (1996); Chris Guthrie & Joanna L. Grossman, *Adoption in the Progressive Era: Preserving, Creating, and Re-Creating Families*, 43 AM. J. LEGAL HIST. 235 (1999).

20. Guthrie & Grossman, *supra* note 19, at 253.

21. Grossman & Guthrie, *supra* note 19, at 330.

sky, but instead followed a long, unofficial move toward no-fault through collusive divorce, a process he termed "creeping no-fault."[22]

These insights turn up again in *Inside the Castle*, and in some ways turn on its head the conventional wisdom regarding how law and society interact. Instead of blindly accepting that new laws gave people a roadmap for how to behave, Professors Grossman and Friedman show that law exists, at least in part, because people want it to. If people want adoption, annulments, or no-fault divorce, eventually they'll get them. This is what the authors seem to mean by "law of the family." They look beyond the law on the books to law in action and carefully show how the changing desires of people in the aggregate—what we might call "social change"—slowly move the law and force it to change to suit society's needs.

Perhaps the freshest and most significant contribution of *Inside the Castle* is its explication of the changing dynamics between generations in middle-class families. Professors Grossman and Friedman devote a chapter to discussing the ways in which social changes in family structure have affected the law relating to the intergenerational family (Chapter Eleven). Here, they are unfettered by doctrinal distinctions, deftly blending what legal scholars would label "trusts and estates," "Social Security," and "health law" into a compelling story of the adult child's liberation from the duty to care for aging parents.[23] Indeed, they expressly acknowledge that they are straddling a doctrinal divide, explaining that separating "family law" from the law of succession "ignores one of the important social roles of the family" (p. 236).

Consistent with their "law as mirror of society" thesis, Professors Grossman and Friedman tie changes in the law of old age to the social changes preceding them. Significant changes occurred in the twentieth century that affected the way families operated intergenerationally. First, America became a firmly industrial society, rather than an agricultural one, making the extended family a less reliable economic resource than it previously had been (pp. 253–54). Second, the Great Depression exacerbated the changes wrought by the Industrial Revolution, leaving adult children much less likely to be in a position to support their aging parents.[24] Third, as the century wore on, old people began to live longer lives, ostensibly benefiting from medical advances, but as Professors Grossman and Friedman put it, living "perhaps *too* long" and finding themselves "in the twilight of their lives, unable to take care of themselves and their property" (p. 252).

What legal devices stepped in to fill this gap? Social Security, Medicare, and a new apparatus of guardianships that included more ward-protective

22. Lawrence M. Friedman, *A Dead Language: Divorce Law and Practice Before No-Fault*, 86 VA. L. REV. 1497, 1523–25 (2000); *see also* Lawrence M. Friedman, *Rights of Passage: Divorce Law in Historical Perspective*, 63 OR. L. REV. 649, 659, 664 (1984) [hereinafter Friedman, *Rights of Passage*] (exploring the historical evolution of divorce law toward modern-day no-fault divorce).

23. *See* chapter 11.

24. *See* pp. 253–54.

features than the guardianships of the nineteenth century. *Inside the Castle* does a marvelous job of showing that while on the surface federal programs such as Social Security and Medicare seem intended to benefit the elderly, "the benefits also flow to their children and grandchildren" (p. 254). They then tie the existence of these federal benefits to a seemingly unrelated area of law—state statutes criminalizing or providing civil penalties for the non-support of aged parents by adult children (pp. 252–53). These statutes, they show, have decreased in number, and even in those states that still have them on the books, "[t]here is little evidence that *any* of these statutes are actually enforced, except sporadically" (pp. 252–53). As the social obligation to support one's aging parents has diminished for social and scientific reasons, the *legal* obligation has diminished as well.[25] And new legal devices, such as federal assistance programs, have arisen to ensure that *someone* cares for aging parents (pp. 253–54). The cost of their care has simply been spread across the public at large (pp. 253–54).

Inside the Castle also makes some astute observations about changes in the law of guardianship. Guardianships, the authors argue, used to give guardians extraordinary power over their wards (p. 259). But as the population has aged and life spans have lengthened, the law has stepped in to protect aging wards by limiting the rights of guardians (pp. 257–59). "The general principle," Professors Grossman and Friedman conclude, "is to give the guardian only so much power as is absolutely necessary; and let the ward continue to live and do, as much as he can" (p. 259). They acknowledge that, despite this trend, there are undoubtedly widespread abuses of the elderly and suggest that this area of law will be one to watch in the coming years (pp. 259–60). "A dollar spent on caregivers, nursing homes, and medical care is a dollar that will not pass to the heirs," they point out (p. 260). The tension between the expectation that children deserve their inheritance and the reality that some elderly people will spend years—or even decades—in assisted living has, they suggest, led to new legal schemes that "safeguard[] the rights . . . of old but vulnerable people."[26]

II. The Law "Outside" the Castle

Inside the Castle pushes the boundaries of family law in one direction—toward recognizing the importance of legal regulation of the intergenerational family—but it refuses to push the boundaries in other directions. Most noticeably, it assumes that the family in question is middle class and married or the modern equivalent—a cohabiting couple who "acts" married. It's here where I wish the authors had been bolder, more willing to take on the vast swaths of late-twentieth-century law that affect working-class and poor families. Granted, a book can only be so long, and *Inside the Castle* is rich and impressive without tackling the law "outside" the castle. I wonder, however, whether taking into account the law of the

25. *See* pp. 253–54 ("As the family ties got weaker, the state stepped in.").

26. *See* pp. 260–61.

poor family would have affected the book's understanding of the relationship between law and society.

Early in their book, Professors Grossman and Friedman characterize nineteenth-century law as respecting and supporting a family that conformed to a traditional stereotype of the middle-class family:

> Here is the cozy home; in it, a man and a woman, married and faithful to each other, sit at the head and foot of the table; he is the breadwinner, and the head of the family, ruggedly masculine, in charge, ruler of the roost, but a benign despot, firm but understanding, an object of respect and not of dread. She, on the other hand, inhabits a "separate sphere." She is the homemaker, the soft and delicate core of the family, neat and feminine, the loyal and trustworthy wife, obedient and helpful, darning the socks and baking the bread; the primary caregiver of the children; a warm and tender presence, who teaches the children religion and ethical values, who instructs them to honor their father, and blankets them with the unique blessing of mother love. And the children too—the apple-cheeked boy and girl—are enveloped in sweetness and affection, as they grow up in the image of their parents. And, of course, the family is middle class and white. (pp. 3–4)

Professors Grossman and Friedman are surely correct, as Stephanie Coontz has taught us, in stating that this ideal family was "always something of a myth."[27] But it's a myth that the authors sometimes seem to believe, as they tell the story of the ideal family's social and legal reshaping into the modern "expressive marriage" of today (p. 58). *Inside the Castle* is the story of the social forces that have chipped away at the contours of the idealized, nineteenth-century family. The rugged, individualist breadwinner goes to work in an office and becomes less communitarian and more individualistic; the feminine, nurturing housewife does the same. Pretty soon, gender roles have blurred, both spouses are seeking more than just economic interdependence, and a lack of "spice" or "zing" in the marriage is enough to provoke divorce.

Our middle-class, white couple must now experience twentieth-century divorce court, along with the division of property, a child support order, and the pain of a child custody determination that has no clearly predictable outcome. Or perhaps the couple decides to cohabit rather than marry; then the law must decide how to treat this family when the decision to marry was never made but the actions of the couple appear to indicate a marriage-like relationship. Or perhaps the couple has difficulty conceiving; we now encounter the law of adoption and the law of alternative reproductive technologies, such as intrauterine insemination and in vitro fertilization. Maybe our couple is no longer a man and a woman at all—perhaps it is two gay men who seek to marry and enlist an egg donor and a gestational surrogate in their quest for children. Regardless of the tweaks to the hypothetical, at its core, the family imagined in *Inside the Castle* is still some version of the middle-class, nineteenth-century ideal with a twentieth- or twenty-first-century twist. To a certain extent, Professors Grossman and Friedman's

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27. P. 4; *see* STEPHANIE COONTZ, THE WAY WE NEVER WERE: AMERICAN FAMILIES AND THE NOSTALGIA TRAP 8–14 (2000).

book actually reifies the centrality of the mythical middle-class family by focusing on some aspects of "law of the family" but not others.

One need not stray far from the "canon of family law" to imagine a very different paradigm at the core of twentieth-century family law. Consider, for example, the famous Supreme Court case *Moore v. City of East Cleveland*.[28] Inez Moore was an impoverished sixty-three-year-old African American grandmother who owned a home in East Cleveland, a largely white town that was slowly becoming increasingly black.[29] Moore had at least three sons, one daughter, and twenty-two grandchildren, many of whom lived in her home from time to time.[30] At the time of the litigation that resulted in the Supreme Court's ruling, Moore was living with one of her sons, his son (her grandson), and another of her grandsons, who was the child of another one of her sons, and whose mother had died.[31] The case erupted as a result of a zoning law that "was written to avoid slums .... to avoid violence .... to avoid all the problems that the inner cities [were] experiencing throughout the country."[32] The zoning law limited the occupants of single-family homes to "not more than one dependent married or unmarried child of the nominal head of the household or of the spouse of the nominal head of the household and the spouse and dependent children of such dependent child."[33] In Inez Moore's case, this meant that although she could live with one of her adult sons and that son's son, she could not simultaneously live with the sons or daughters of her other adult children—indeed, to do so was a crime for which she was arrested.[34]

The case was a close one, with Justice Powell reportedly casting his initial vote for the City and changing his mind only after reading Justice Brennan's draft dissent.[35] The constitutional right to privacy, the Court held in an opinion authored by Justice Powell, included the right to live with family members outside the nuclear family.[36] The zoning law in question failed to respect family privacy by "slicing deeply into the family itself."[37]

Where is Inez Moore in *Inside the Castle*? She makes one inconspicuous appearance in the chapter on cohabitation (pp. 127–28). The authors use *Moore* as a foil for cases evaluating whether unmarried cohabitants can legally live together. The suggestion—I think—is that despite the ubiquity of unmarried cohabitation, the law has not caught up with social practice because it sometimes zones these families out of neighborhoods

28. 431 U.S. 494 (1977).

29. Peggy Cooper Davis, Moore v. East Cleveland*: Constructing the Suburban Family*, *in* FAMILY LAW STORIES 77, 77–80 (Carol Sanger ed., 2008).

30. *Id.* at 77–78.

31. *Id.*

32. *Id.* at 89 (internal quotation marks omitted).

33. *Id.* (internal quotation marks omitted).

34. For a more complete narrative of *Moore*, see *id.* at 77–93.

35. *Id.* at 90.

36. Moore v. City of East Cleveland, 431 U.S. 494, 506 (1977).

37. *Id.* at 498.

(pp. 127–28). In contrast, *Moore* represents—in the story told by *Inside the Castle*—the traditional family, protected by the Constitution (p. 128).

Moore is a fascinating case, one that could productively spark an examination of many facets of the modern "law of the family." For example, *Moore* is an excellent example of how the state disproportionately intrudes into the family lives of the poor and highlights how this intrusion can be racially charged. It shows how laws that do not fall within the traditional ambit of "family law," such as the zoning law at issue in *Moore*, can nevertheless be used as a regulation of family life. It also shows that regulation of the "deviant" family can take extremely punitive forms, criminalizing a family's decision to do something as simple as living together. But in *Inside the Castle*, *Moore* instead becomes a stand-in for the "traditional" family against which cohabitating adults are judged and found wanting.

This unusual reading of *Moore* appears to be the result of the authors' decision to exclude the law affecting poor families from the book almost entirely. As Professors Grossman and Friedman candidly explain, this is not a book about poor families, which are not traditionally covered in the field of family law (p. 2). The other "vast field, which deals with poor families," they explain, "is a significant factor in American law, and has a huge literature of its own" (p. 2). Hence, "[w]e will refer to this alternate system of family law from time to time, but we do not deal with it in much detail" (p. 2). The decision to largely omit poor families from the book has important effects on the narrative Professors Grossman and Friedman tell. It enables them to focus effectively, in a book covering a sweeping time period and a variety of legal doctrines, on the coherent theme of increasing autonomy and individualism. But it also has the result of masking how the law affects many Americans, perhaps even most. Here, I'll suggest just a few ways in which I think this editorial decision skews the story.

First, the story that *Inside the Castle* tells about marriage is the story of shifting priorities. There was a real shift, the authors argue, "in the late nineteenth and early twentieth centuries—for middle-class families in particular—from traditional to companionate marriage" (p. 57). And "[t]here have been two big marriage stories in the twentieth century," they explain: "the decline of anti-miscegenation laws and the emergence of gay marriage" (p. 142).

With regard to middle-class families, I think that *Inside the Castle* gets it right. It seems indisputable that there was a major shift from marriage as a gendered, hierarchical, and economic relationship to "*expressive* marriage" in which "[h]usband and wife were looking for personal fulfillment; they evaluated their marriage 'in terms of self-development, as opposed to the satisfaction they gained through pleasing their spouse and raising their children.' "[38] This development explains the increasing acceptance of interracial and same-sex marriages. If marriage is not the building block of social and

38. P. 58. Here, the authors cite ANDREW J. CHERLIN, THE MARRIAGE-GO-ROUND 88 (2009), which extensively documents the shift from traditional marriage to expressive marriage.

economic life, but rather a private relationship that fosters happiness in individual people, then society has no interest in restricting it.

But surely the biggest "marriage story in the twentieth century" is neither of these stories, but instead the decreasing importance of marriage itself. In 1960, 72 percent of the adult population was married, and the median age at which a woman married was 20.3.[39] In 2010, just fifty years later, barely half of the adult population was married, and the median age of first marriage for women was 26.5.[40] The changes were substantially larger for poor women and black women.[41]

Instead of the story of shifting marital goals told by Professors Grossman and Friedman, the story of the twentieth-century family could be the displacement of the married couple with children from its privileged central seat in family law's legal universe. Marriage, of course, is still one of the key operating principles in family law, but it has had to make way for alternative family structures. June Carbone, for example, has argued that family law fundamentally changed during the latter half of the twentieth century from regulating the married couple to regulating the parent–child relationship.[42] Professor Carbone argues that two forces led to this change: "the dismantling of marriage as the exclusive determinant of family connections" and "the revitalization of the law of custody, child support, and community obligation addressing parental relationships."[43]

A story about the displacement of marriage as the core of family law and a new emphasis on the parent–child relationship would help us understand the importance of litigants like Inez Moore. For Moore and her family, "expressive marriage" was likely beside the point. The relationship at issue, the network of "kin care" of which Moore was the hub, was focused on giving children the care that they needed, not on the spiritual and social enrichment of individualistic husbands and wives. As Peggy Cooper Davis has noted, the kin care network has a long tradition in the United States.[44] The Supreme Court's willingness to recognize the importance of kin care in *Moore* may have been the first sign of a change in legal attitudes toward

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39. D'VERA COHN ET AL., PEW RES. CENTER, BARELY HALF OF U.S. ADULTS ARE MARRIED—A RECORD LOW 1, 9 (2011), *available at* http://www.pewsocialtrends.org/2011/12/14/barely-half-of-u-s-adults-are-married-a-record-low/.

40. *Id.* at 1.

41. RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE? 7 (2011) (noting that black women are only half as likely as white women to be married and three times as likely never to marry); NAOMI CAHN & JUNE CARBONE, RED FAMILIES V. BLUE FAMILIES 118–19, 121, 124 (2010) (discussing declining marriage rates among poor women).

42. JUNE CARBONE, FROM PARTNERS TO PARENTS 227 (2000).

43. *Id.*

44. Davis, *supra* note 29, at 78 (discussing the tradition of family networking that "supported immigration to and adjustment in the United States[] [and] sustained working-class families in times of hardship" and tracing this tradition to as far back as early families living in slavery who supported "friends and extended family members . . . and saw collectively to the needs of all their children").

nonmarital families, reflecting an understanding that marriage is not the only socially acceptable family form.

Inside the Castle does gesture at the decreasing importance of marriage, but it does so in a way that keeps what Martha Fineman calls "the sexual family" at the forefront of the discussion, rather than adult-child caretaking relationships.[45] Many couples that would have married generations ago, the authors suggest, now cohabit instead (pp. 125–27). Thus, cases about sexual rights—the repudiation of antisodomy laws in *Lawrence v. Texas*,[46] for example, as well as cases about the right to use sex toys, the tort of seduction, and criminal adultery laws—get ample airtime. Cohabitation itself gets a whole chapter, and a very interesting one at that, in which the authors show how indeterminate the current law of cohabitation is as it tries to respond to rapidly changing social norms and expectations surrounding nonmarital relationships (Chapter Six). But even the chapter on cohabitation seems to miss the reality of many people's lives. "Few modern-day couples have faced a sheriff's pounding on their door in the middle of the night demanding to see a marriage license," the authors explain (referring to the harrowing experiences of couples such as Henry Thomas and Mary Long, convicted in 1897 of lewd cohabitation, and Richard and Mildred Loving, forced to leave Virginia in the 1960s for violating the state's ban on interracial marriage).[47] But of course, many twentieth-century couples *did* experience caseworkers snooping around to determine whether they were having sex—thus committing "welfare fraud" by disguising the presence of a man who, in the eyes of the law, should have been providing for his sexual partner, regardless of his marital status.[48] Welfare law imposed a marital obligation on people who were emphatically not married; it used the force of the law to limit the sexual freedom and family privacy of poor women—hardly an example of increasing sexual freedom.

Sometimes, the relentless focus on the marital, middle-class family takes *Inside the Castle* into murky waters, turning causal relationships on their head. For example, the rise of child support guidelines and the unprecedented amount of federal, rather than state, involvement in child support are described primarily as a function of no-fault divorce (pp. 224–26). At first,

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45. *See* MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES 143–76 (1995) ("I use the term 'sexual' to modify 'family' to emphasize that our societal and legal images and expectations of family are tenaciously organized around a sexual affiliation between a man and woman.").

46. 539 U.S. 558 (2003).

47. Pp. 121–23 (citing Thomas v. State, 22 So. 725 (Fla. 1897)); p. 35 (citing Loving v. Virginia, 388 U.S. 1 (1967)).

48. *See* King v. Smith, 392 U.S. 309, 313–14 (1968) (striking down an Alabama regulation that made a woman ineligible for welfare if she had a sexual relationship with a man); Parrish v. Civil Serv. Comm'n, 425 P.2d 223, 233–34 (Cal. 1967) (determining, in the course of considering a wrongful termination claim brought by a welfare caseworker, that California's practice of conducting mass early-morning raids on welfare recipients' homes in order to ferret out fraud violated their constitutional rights); *see also* Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 698 n.242 (noting that the raids were intended to find men who might be cohabiting with female welfare recipients).

this simply appears to be a convenient organizational decision; there is a chapter on "the children of divorce" and there are two important determinations regarding children that courts must make in a divorce proceeding—child custody and child support (Chapter Ten). Since the authors made the decision at the outset to focus on traditional "family law" rather than "welfare law," there's no other obvious place to put this discussion. But placing it in a chapter on divorce implies that most children who receive child support get it because their parents have divorced. In fact, *Inside the Castle* goes further than just placing the discussion under the heading of "divorce"; it makes divorce the *cause* of federal involvement in child support (pp. 224–26). Congress took an interest in child support guidelines, it argues, because divorce pushed women and children into welfare: "Many divorced moms and children depended on welfare, sometimes because fathers were not paying" (p. 225). Likewise, *Inside the Castle* describes Congress's interest in enforcement—getting "deadbeat dads" to pay—as a problem of *divorce*: "Many fathers simply did not pay; this left many children of divorce in poverty" (p. 225).

But, of course, child support isn't just about divorce. In fact, much of the modern law of child support stems from an entirely different social and scientific development—paternity testing. This focus is evident from the structure of the law itself, as the authors of *Inside the Castle* acknowledge in passing: "[T]he first step toward getting a child support award" is establishing paternity (p. 228)—not usually difficult in the case of a divorcing couple but quite complicated when the parents are unmarried and the mother has had multiple sexual partners or does not want the father of her child in her life. In fact, the field of child support is a particularly fascinating piece of the history of family law because of the unprecedentedly coercive actions taken by Congress in the face of marital decline. Throughout the 1980s and 1990s, Congress passed statutes intended to force mothers to identify the fathers of their children or forgo welfare, and to force states to set up systems to facilitate paternal identification.[49] The history of these statutes is telling, both as a case study in the sudden federalization of what had traditionally been a matter of state control and because of how states have responded to the federal demand to identify "fathers" by passing a variety of statutes, some privileging biology and others function.[50] *Inside the Castle* refers to some of these schemes (pp. 292–96), but it does so by focusing on the constitutional rights of fathers as set forth by canonical Supreme Court cases,[51] not by acknowledging the complex relationship between federal legislation and state practice and the proliferation of theories of paternity.

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49. Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 346–50 (2005).

50. *See id.* at 365–69 (discussing Maryland's approach); *see also* Naomi Cahn & June Carbone, *Marriage, Parentage, and Child Support*, 45 FAM. L.Q. 219, 234 (2011) (discussing various forms of identifying nonmarital parents, including "functional" doctrines such as "de facto parents").

51. P. 292 (discussing Stanley v. Illinois, 405 U.S. 645 (1972), and other cases analyzing paternal identification statutes).

The emphasis on the middle-class, marital family, then, obscures the existence—and the substantial legal regulation—of families that did not fit this norm. It also obscures another important feature of twentieth-century family law: the great variety in the extent to which the state treated families as "public" (and therefore ripe for regulation) or "private" (and thus untouchable). Early in the book, Professors Grossman and Friedman state that "[t]here are no legal rules about how to raise children" (p. 17). True, the homemaking wife "who teaches the children religion and ethical values, who instructs them to honor their father, and blankets them with the unique blessing of mother love" is not scrutinized by actors with legal power (pp. 3–4).

But of course this is not true for all families. The zoning law at issue in *Moore* was surely a "legal rule about how to raise children"—a rule flatly stating that two grandchildren with different parents could not be raised together by their grandmother.[52] And zoning wasn't Inez Moore's only problem. The East Cleveland Deputy Housing Inspector visited her home frequently to record housing code violations such as a leaky sink, a defective light, and walls that needed plastering.[53] These housing code requirements may only incidentally regulate the raising of children, but they are rules nevertheless.

Poor families know much better than wealthy families how easy it is to allow a home to slide into disrepair when a work schedule is demanding and resources are scarce. Children can be removed from families due to abuse or neglect, even where the "neglect" at issue is in fact largely the result of poverty.[54] Families that receive state assistance experience even more scrutiny of their parenting; those that receive assistance, for example, have to submit to frequent home visits in which social workers judge their parenting and, if it is found wanting, may institute proceedings to remove their children from the home.[55] And this heightened scrutiny for poor families appears to hit black families with particular force.[56] Dorothy Roberts, in her masterful study of the child welfare system, found that children in foster care in major urban centers—children who actually *have* been removed from their homes—are disproportionately black, and shockingly so.[57] Focusing on poor families helps us to see that there actually *are* legal rules about how to raise children, but the rules only lead to a cognizable complaint against parents in circumstances where the state has reason to pierce the veil of family privacy

52. Moore v. City of East Cleveland, 431 U.S. 494, 496 n.2 (1977).

53. Davis, *supra* note 29, at 88.

54. Clare Huntington, *Rights Myopia in Child Welfare*, 53 U.C.L.A. L. REV. 637, 666–67 (2006) (noting that approximately 50 percent of child welfare cases involve "poverty-related neglect," including substance abuse, inadequate housing, or inappropriate child care arrangements).

55. *See, e.g.*, Wyman v. James, 400 U.S. 309, 326 (1971) (upholding New York's home visitation requirement against a Fourth Amendment challenge).

56. DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 9 (2002).

57. *Id.* (reporting that 95 percent of foster care children in Chicago are black, and only 3 percent of foster care children in New York are white).

and intervene. Poverty is both the cause of state intervention and, all too often, the reason a family is found lacking. This level of state intervention, as Professors Grossman and Friedman briefly acknowledge, "would be legally and socially intolerable with regard to middle-class families" (p. 2).

III. STORMING THE CASTLE: THE LAW "OUTSIDE" MOVES IN

So far, I've argued that *Inside the Castle* helpfully expands traditional notions of what counts as "family law" in the direction of intergenerational families but hews to unnecessarily narrow doctrinal limitations in its treatment of poor families. I want to spend the last part of this Review considering whether the doctrinal scope of the book matters in judging its causal, historical claims. Or, to use the metaphor suggested by the book's title, can we understand what's going on "inside the castle" without considering what's happening outside as well?

The historical approach Professors Grossman and Friedman use is consistent with the historical methodology that Professor Friedman has developed throughout his career. Professor Friedman is well known as the originator of the "mirror" thesis, a rejection of the idea that law is autonomous and an embrace of society as the agent of change.[58] Or, as he and Professor Grossman put it in *Inside the Castle*, "the dependent variable . . . is the law that affected the family. Changes in family life itself act as the independent variable—the motor cause" (p. 7). Professor Friedman's methodological shift has been an extraordinarily important contribution to legal history, quite rightly questioning the autonomy of the law and showing how it works in tandem with social change.[59] But his work has also been widely critiqued for taking this move too far and underestimating the importance of the law in particular contexts.[60] I think it's worth thinking here about how the strengths and weaknesses of Professor Friedman's "law as mirror of society" approach play out in the context of the history of the law of the family.

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58. *See* LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 12 (1973) (stating in prologue that "this book is a *social* history of American law"); *id.* ("This book treats American law, then, not as a kingdom unto itself, not as a set of rules and concepts, not as the province of lawyers alone, but as a mirror of society."). For an analysis of Friedman's "mirror" thesis in the development of legal history methodology, see Christopher Tomlins, *Framing the Field of Law's Disciplinary Encounters: A Historical Narrative*, 34 LAW & SOC'Y REV. 911, 959–60 (2000).

59. FRIEDMAN, *supra* note 58, at 12.

60. *See, e.g.*, Mark V. Tushnet, *Perspectives on the Development of American Law: A Critical Review of Friedman's "A History of American Law"*, 1977 WIS. L. REV. 81, 81, 83–84 (arguing that "Professor Friedman's perspective leads to serious distortions when particular problems are examined"); G. Edward White, Book Review, 59 VA. L. REV. 1130, 1134–35, 1140 (1973) (reviewing LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (1973)) (criticizing Friedman's work for placing too little emphasis on constitutional law and jurisprudence).

For many features of the modern law of the family, the approach taken by *Inside the Castle* has a tremendously compelling explanatory value. The speed with which same-sex couples have obtained marriage rights in a number of states, for example, has come as a surprise to many in the field[61]—even those who strongly support such rights. Legal change just doesn't usually happen that quickly, or so we tend to think. But according to Professors Grossman and Friedman, same-sex marriage is just the tip of a larger iceberg. Marriage itself changed substantially in the twentieth century. A definition of marriage that focuses on rigid gender hierarchy and economic roles would be hostile to same-sex couples, but a definition that focuses instead on self-expression and mutuality has little problem accommodating them. Although the authors refuse to speculate on the future of same-sex marriage (p. 155), their argument suggests that its acceptance is inevitable. Just as no-fault divorce finally came into official, legal being after years of "creeping decay" (p. 172), we might expect to see a similar dynamic with regard to expanding the categories of who may marry. Rather than looking to the existence of same-sex marriage statutes, we might instead want to look at the underenforcement of sodomy statutes to understand and predict how same-sex couples will ultimately be treated. Judges looked the other way when they saw collusive divorces in fault-based jurisdictions.[62] And, as noted in the discussion of elder law above, laws requiring adult children to support their aging parents are rarely enforced today.[63] A theme underlying much of *Inside the Castle* is not just that law follows society but also that society sometimes underenforces law if the politics of the day prevent law from officially catching up to society.

But sometimes *Inside the Castle* goes too far in its emphasis on society over law. Professors Grossman and Friedman are undoubtedly right that much of twentieth-century family law resulted from social change and the needs and desires of the middle-class family.[64] But by excising poor families from their book, they are able to ignore the way in which the law channeled, regulated, and even coerced poor families into conformity. In other words, I'm not sure a "history of the middle-class family" makes sense as an analytical category. Too much of family law is influenced by the areas of law that challenge the boundaries of the traditional family-law casebook. And even when it is initially poor families that are regulated by the law, the law has a way of coming back to haunt the middle class, redefining what is possible and creating a feedback loop that regulates the regulators. The families that still live "inside the castle"—and they are fewer and fewer in number—may find that their "castle" is remarkably leaky.

Throughout the book, we are told that the law developed because "society" wanted it that way. For example, we have no-fault divorce today because

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61. *See* p. 153 (noting the "somewhat surprising cascade" of state legislatures adopting laws that permit same-sex marriage).

62. Friedman, *Rights of Passage*, *supra* note 22, at 662.

63. *See supra* text accompanying notes 24–25.

64. *See* p. 7.

people want it.[65] Easy access to divorce, Professors Grossman and Friedman tell us, is not the cause of the family's erosion, but the effect: "A happy marriage does not end because divorce is available at bargain-basement prices" (p. 180).

But what about those areas of the law where the "we" asking for the regulation differs from the "they" who are regulated? If law is a "mirror of society," what are we to make of welfare reform that demands that mothers of small children work (thus demonstrating "personal responsibility") even when no adequate childcare is available to them? What are we to make of welfare law's family caps? Of state welfare laws that require mothers to demonstrate that their children are maintaining a minimum GPA?[66] Who is the "society" demanding this law, the "we" at work?

The answer has to be something like "those who are not on welfare." But the devil is in the details. How does the middle class define itself over and against the poor? How does it become a unified whole, capable of imposing its normative view of family onto others? And why is the normative view of family that the middle class applies to itself (autonomous, flexible, privately chosen) so different from the one it would apply to the poor (monitored, regulated, publicly controlled)? *Inside the Castle* provides no answers to these questions.

If the idea of the "we" of "society" is underdeveloped in *Inside the Castle*, so is the idea of what law is and what law can do. In fact, the answer to the questions I outlined above may simply be "law." Law itself may provide the ideology that further supports the imposition of its values, with little self-reflection, on the poor by the middle class. The division, for example, of public benefits into "earned" ones, such as Social Security (even though the majority of women collecting it do so not because they paid into it but because they are or were married), and "charity" or "welfare," may in turn influence how individual people understand what the government owes them.[67] We can make distinctions between the autonomous, private middle-class family and the monitored, controlled poor family in part because the structure of law shapes an ideology of difference.

Had *Inside the Castle* paid more attention to the poor, I think it would have had to paint the "law of the family" as less benign, less a function of what "society" really wants, and more punitive, controlling, and—possibly—pernicious. But the poor aren't the only ones affected by this broader understanding of the law of the family. Law intended to regulate the poor can function as repressive and regulatory, even for the middle-class society that, in theory, created it. For example, *Inside the Castle* gives short

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65. *See* pp. 13–16, 176–80.

66. For a summary of the family restrictions that welfare law places on recipients, see Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 246–47, 256–68 (2000).

67. For a discussion of Social Security as "contract" and welfare as "charity," see Nancy Fraser & Linda Gordon, *Contract Versus Charity: Why Is There No Social Citizenship in the United States?*, *in* THE CITIZENSHIP DEBATES 113, 124–27 (Gershon Shafir ed., 1998).

shrift to the massive federalization of law affecting the family in the twentieth century.[68] We are left with the impression that the twentieth century left us as autonomous individuals, free to lead self-directed lives. But more attention to federalization might have revealed an interesting feedback loop that goes something like this: "Society" demands federal intervention into the family, whether through federal child-support enforcement statutes,[69] the Violence Against Women Act ("VAWA"),[70] the Family and Medical Leave Act ("FMLA"),[71] or federal law mandating state-level sex offender registries.[72] In turn, these federal laws put pressure on the states to comply—and often in ways that are counterproductive and likely contrary to what "society" wanted in the first place. The constraints placed on noncustodial parents whose children receive welfare expand to cover *all* noncustodial parents, rich or poor.[73] VAWA and the state-domestic-violence statutes it spawned can lead to "de facto" divorces where neither party wants separation.[74] The FMLA provides leave to family members but also creates new norms that may discourage more generous employer policies, and by its own terms effectively excludes many low-wage workers.[75] Adult individuals are "freer" to engage in consensual sex or cohabit, but the "sex offender" has grown in the public imagination, taking the place of the "homosexual" or "deviant" as the dangerous, vilified other whose presence must be tracked and controlled, even if such regulation may be counterproductive.[76]

Or, to return to the example of same-sex marriage, "social change" may account for why same-sex couples want recognition of relationships that used to be considered immoral, but "law" may explain the form that such recognition takes. Marriage has bundled into it extensive benefits that in some societies are instead thought of as social welfare rights, accessible to all regardless of marital status.[77] Without the law of marriage, it is difficult to say whether there would be social demand for something called "marriage" in the United States, but the European experience indicates that the

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68. *See, e.g.*, pp. 40–50 (describing in detail how state marital laws developed and changed throughout the twentieth century, and only mentioning that national marriage law would have resolved interstate conflicts).

69. *See* 42 U.S.C. § 667 (mandating that all states use child support guidelines).

70. *See* Violence Against Women Act of 1994, Pub. L. No. 103–322, 108 Stat. 1902 (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).

71. *See* Family and Medical Leave Act, 29 U.S.C. §§ 2601–2654 (2006).

72. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109–248, 120 Stat. 587 (codified in scattered sections of 18 and 42 U.S.C.).

73. Brito, *supra* note 66.

74. *See* JEANNIE SUK, AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY 41–50, 126 n.7 (2009).

75. Robin R. Runge, *Redefining Leave from Work*, 19 GEO. J. ON POVERTY L. & POL'Y 445, 447–49 (2012).

76. *See* J.J. Prescott, *Do Sex Offender Registries Make Us Less Safe?*, REGULATION, Summer 2012, at 48, 53–55.

77. For a discussion of the differences between the United States and other countries in the allocation of public benefits, see Fraser & Gordon, *supra* note 67.

decoupling of welfare rights from marriage is strongly correlated with lower marriage rates.[78] Even those in a position to demand that the law follow their social desires are constrained by law.

If we consider the public, federal, and regulatory side of the marriage coin in tandem with its private, local, and facilitative sides, we see not only that society shapes law but that law creates a feedback loop that further reconstructs society. Or, as Nancy Cott so aptly puts it (describing marriage, no less): "Law and society stand in a circular relation: social demands put pressure on legal practices, while at the same time the law's public authority frames what people can envision for themselves and can conceivably demand."[79]

CONCLUSION

Inside the Castle is a remarkable achievement. It is the first attempt by legal scholars to pack all the turbulence of the twentieth-century family into one text. On many levels, it succeeds magnificently. As an adjunct to family law courses, it will be indispensable. And it makes important contributions to our knowledge of how the middle-class family understands itself today and how these understandings are reflected in law.

Indeed, I would highly recommend it as bedside reading for anyone who teaches family law, especially those who are about to do so for the first time. I also imagine that *Inside the Castle* will frequently be excerpted in casebooks on family law and other subjects because it so neatly condenses vast amounts of material into a relatively short space. In their individual work, both Professors Grossman and Friedman are marvelous writers, and *Inside the Castle* reflects their considerable talents—the prose is breezy and lively, propelling the reader forward.

There is still room, however, for a legal history of the family that considers a wider range of families and how "the law of the family"—in all its forms—affects families of all stripes. Families, as Professors Grossman and Friedman recognize, no longer live in castles, if they ever did (p. 21). The castle as a metaphor for the home creates a vision of the family that is crumbling today. But what may make the family truly different today is not that there is no castle but that there is no *inside*. Sex, the raising of children, the work of household production—all of these activities have become regulated by law, both state and federal, in ways that would not have been imaginable 100 years ago. For poor families, this new reality is exceptionally true. But even the middle-class family—the ideal that was "always something of a myth" (p. 4)—is far less private and autonomous, and far more susceptible to the disciplinary force of the law, than *Inside the Castle* suggests.

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78. *See, e.g.*, Andrew Cherlin, *American Marriage in the Twenty-First Century*, 15 J. OF MARRIAGE & CHILD WELL-BEING 33, 46, 50 (2005) (discussing differences in legal importance of marriage in the United States and Europe, and the United States' higher rates of marital instability and multiple partners over time).

79. COTT, *supra* note 1, at 8.