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Annual Survey of Periodical Literature

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Annual Survey of Periodical Literature

Abstract

The Annual Review of Periodical Literature provides a sampling of law review articles published between November 1, 2008, and October 31, 2009. The survey highlights the variety and depth of family law scholarship produced during the year and calls attention to currently debated "hot topics." Readers are encouraged to read articles of interest in their entirety because the summaries included in the survey are necessarily abbreviated.

Keywords

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Annual Survey of Periodical Literature

BY NANCY VER STEEGH*

The Annual Review of Periodical Literature provides a sampling of law review articles published between November 1, 2008, and October 31, 2009. The survey highlights the variety and depth of family law scholarship produced during the year and calls attention to currently debated “hot topics.” Readers are encouraged to read articles of interest in their entirety because the summaries included in the survey are necessarily abbreviated.

Adoption

General Adoption Issues

James G. Dwyer, *First Parents: Reconceptualizing Newborn Adoption*, 37 *CAP. U. L. REV.* 293 (2008). The author advocates eliminating terms and concepts in parentage laws that distinguish between biological and adoptive parents. The article examines how the current distinctions are detrimental to children and adoptive parents and asserts that eliminating legal distinctions would reduce adoption stigma in the United States.

Mary Eschelbach Hansen & Josh Gupta-Kagan, *Raising the Cut-Off: The Empirical Case for Extending Adoption and Guardianship Subsidies from Age 18 to 21*, 13 *U.C. DAVIS J. JUV. L. & POL'Y* 1 (2009). This article provides a statistical analysis of the effect of increasing the termination age for adoption subsidies from eighteen to twenty-one has on the rate of adoptions. The article describes current federal and state subsidy structure, highlighting the incentive to caregivers to continue as foster parents rather than pursuing adoption or permanent guardianship. For the analysis, states are categorized by the availability of extensions and by extension conditions, such as disability or school attendance. The authors compare the rate of adoption between categories and, for states that instituted extensions, before and after the enactment of extensions, compiling strong evidence that prolonging subsidies results in more adoptions.

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Solangel Maldonado, *Permanency v. Biology: Making the Case for Post-Adoption Contact*, 37 *CAP. U. L. REV.* 321 (2008). The author argues that post-adoption contact with a child's biological family poses many advantages for children, particularly in cases involving transracial adoptions. The author examines several approaches to postadoption contact regulation and suggests further consideration of the benefits of postadoption contact.

Margaret Ryznar, *Two to Tango, One in Limbo: A Comparative Analysis of Fathers' Rights in Infant Adoptions*, 47 *DUQ. L. REV.* 89 (2009). This article examines the rights of fathers in contested adoption through comparison of American and English approaches. The author suggests that the best interests of children are furthered by recognizing the rights of fathers and children to preserve their relationships. The author concludes that legal severance of parental rights of both parents should occur prior to any adoption proceedings.

International Adoption Issues

Arun Dohle, *Inside Story of an Adoption Scandal*, 39 *CUMB. L. REV.* 131 (2008–2009). The author focuses on one adoption agency, Preet Mandir, to chronicle corruption and scandal associated with Indian adoptions.

Shani King, *Challenging Monohumanism: An Argument for Changing the Way We Think About Intercountry Adoption*, 30 *MICH. J. INT'L L.* 413 (2009). This article summarizes the history of intercountry adoption and scholarship through a postcolonialist lens. The author urges reforms aimed at creating a system more responsive to the needs of children and placing more emphasis on preservation of families.

Johanna Oreskovic & Trish Maskew, *Red Thread or Slender Reed: Deconstructing Prof. Bartholet's Mythology of International Adoption*, 14 *BUFF. HUM. RTS. L. REV.* 71 (2008). This article scrutinizes the assertion that human rights organizations are overstating abuses with respect to international adoption and consequently preventing orphans from finding permanent homes. The authors identify inaccurate assumptions, including the premise that millions of available orphans meet Western preferences and that sufficient governmental protections exist.

Same-Sex Adoption Issues

Annette R. Appell, *The Endurance of Biological Connection: Heteronormativity, Same-Sex Parenting and the Lessons of Adoption*, 22 *BYU J. PUB. L.* 289 (2008). This article examines how lessons learned from traditional adoption proceedings, where one or both genetic parents are removed from a child's life, can benefit modern family law. The author suggests that maintaining a child's genetic connections, such as through open adoption, may provide a beneficial model for regulating families, including same-sex parents.

Christine Metteer Lorillard, *Placing Second-Parent Adoption Along the "Rational Continuum" of Constitutionally Protected Family Rights*, 30 WOMEN'S RTS. L. REP. 1 (2008). The author calls attention to the refusal by some jurisdictions to recognize second-parent adoptions for children of same-sex couples and examines whether the right to such an adoption is constitutionally protected. The author concludes that the unitary family unit formed by a natural parent, a second parent who planned for the child's conception and embraced the role of parenthood since birth, and the couple's child fits directly within the continuum of protected family relationships.

J.A. Robinson, *An Overview of Recent Legal Developments in South Africa with Regard to the Position of Lesbian Parents and Children with Specific Reference to the Adoption of Children*, 22 BYU J. PUB. L. 383 (2008). The article examines South African law with respect to gay and lesbian adoption and parenting. The author analyzes several recent constitutional court decisions to show how far South Africa has advanced in protecting equal rights, while also acknowledging areas for improvement.

Mark Strasser, *Interstate Recognition of Adoptions: On Jurisdiction, Full Faith and Credit, and the Kinds of Challenges the Future May Bring*, 2008 BYU L. REV. 1809 (2008). This article assesses the legal landscape facing same-sex couples who establish a parent-child relationship in one state and then wish to protect that relationship across state lines. The author dissects two notable cases on point, *Finstuen v. Crutcher* from the Tenth Circuit and *Miller-Jenkins v. Miller-Jenkins* involving decisions by the Vermont Supreme Court and the Virginia Court of Appeals, while interjecting plausible hypotheticals to push the analysis further. He discerns clear protections including the Full Faith and Credit Clause and the Parental Kidnapping Protection Act, which he concludes was not modified by the Defense of Marriage Act. The author also pinpoints areas of vulnerability, including the ability of states to apply their own statutes to determine what benefits flow from a judgment.

Terry L. Turnipseed, *Scalia's Ship of Revulsion Has Sailed: Will Lawrence Protect Adults Who Adopt Lovers to Help Ensure Their Inheritance from Incest Prosecution?*, 32 HAMLIN L. REV. 95 (2009). This article examines situations where a person adopts his or her lover for inheritance reasons. The author considers whether subsequent sexual relations with the "adopted" lover constitutes incest and discusses whether post-*Lawrence* bans on incest between a parent and his or her adopted adult child are unconstitutional.

Tanya M. Washington, *Throwing Black Babies Out with the Bathwater: A Child-Centered Challenge to Same-Sex Adoption Bans*, 6 HASTINGS RACE & POVERTY L.J. 1 (2009). The author examines the negative impact that bans on same-sex adoption have on black children in the child welfare system, contending that such bans unconstitutionally infringe on a child's liberty interest by limiting the pool of potential adoptive parents.

Robin Fretwell Wilson, *A Matter of Conviction: Moral Clashes Over Same-Sex Adoption*, 22 *BYU J. PUB. L.* 475 (2008). This article explores whether adoption agencies should be able to exclude same-sex couples from using their services. The author considers analogous conflicts, such as those concerning abortion rights, to inform discussion of systems that could accommodate moral clashes while protecting access to adoption for same-sex couples.

Alimony/Maintenance

David A. Hardy, *Nevada Alimony: An Important Policy in Need of a Coherent Policy Purpose*, 9 *NEV. L.J.* 325 (2009). The author urges the Nevada legislature and Supreme Court to clarify the law with respect to alimony because it is unnecessarily vague and inconsistently applied.

J. Thomas Oldham, *Changes in the Economic Consequences of Divorces, 1958–2008*, 42 *FAM. L.Q.* 419 (2008). This article summarizes demographic and statistical trends regarding divorce outcomes and reflects on divorce awards over the past half-century. Looking to the future, the author considers whether the American legal profession could learn from Canada's experience developing advisory spousal support guidelines.

Alternative Dispute Resolution

Julia Alanen, *When Human Rights Conflict: Mediating International Parental Kidnapping Disputes Involving the Domestic Violence Defense*, 40 *U. MIAMI INTER-AM. L. REV.* 49 (2008). The article addresses the use of mediation when domestic violence is asserted as a defense in an international parental kidnapping case.

Connie J. A. Beck, Michele E. Walsh & Rose Weston, *Analysis of Mediation Agreements of Families Reporting Specific Types of Intimate Partner Abuse*, 47 *FAM. CT. REV.* 401 (2009). This article explores reporting of intimate partner violence in mandatory mediation, the extent to which cases were screened out of mediation, and whether access to children was restricted in mediated agreements.

Leonard Edwards, *Child Protection Mediation: A 25-Year Perspective*, 47 *FAM. CT. REV.* 69 (2009). This article chronicles the advent and growth of child protection mediation since the 1970s, from a judicial perspective.

Gregory Firestone, *Empowering Parents in Child Protection Mediation: Challenges and Opportunities*, 47 *FAM. CT. REV.* 98 (2009). This article explores the issues of power imbalance, confidentiality, party competence, and domestic violence in the context of child protection mediation.

Marsha B. Freeman, *Love Means Always Having to Say You're Sorry: Applying the Realities of Therapeutic Jurisprudence to Family Law*, 17 *UCLA WOMEN'S L.J.* 215 (2008). The author examines therapeutic-based models of dispute resolution and concludes that they have potential to address emotions and promote lasting solutions in the best interest of the parties.

Marilou Giovannuci & Karen Largent, *A Guide to Effective Child Protection Mediation: Lessons from 25 Years of Practice*, 47 FAM. CT. REV. 38 (2009). The authors draw from child protection mediation practice experience to make recommendations regarding program development and operation, mediator training and support, and the process of mediation.

Wilma J. Henry, Linda Fieldstone & Kelly Bohac, *Parenting Coordination and Court Relitigation: A Case Study*, 47 FAM. CT. REV. 682 (2009). This article evaluates the use of parenting coordinators by reviewing motion filings after appointment.

Joan Kathol, *Trends in Child Protection Mediation: Results of the Think Tank Survey and Interviews*, 47 FAM. CT. REV. 116 (2009). This article features results from surveys, interviews, and discussion about child protection mediation conducted in connection with a think tank convened in September of 2007.

Melissa A. Kucinski, *Culture in International Parental Kidnapping Mediations*, 9 PEPP. DISP. RESOL. L.J. 555 (2009). This article offers guidance to mediators working on cases involving international parental kidnapping. The author recounts some of the difficulties associated with these disputes, including cultural differences, and puts forth suggestions and guidelines for mediating in international family law settings.

M. Jerry McHale, Irene Robertson & Andrea Clarke, *Building a Child Protection Mediation Program in British Columbia*, 47 FAM. CT. REV. 86 (2009). This article surveys an eleven-year period of development and implementation of child protection mediation in British Columbia.

Lawrence P. McLellan, *Expanding the Use of Collaborative Law: Consideration of Its Use in a Legal Aid Program for Resolving Family Law Disputes*, 2008 J. DISP. RESOL. 465 (2008). This article highlights the history, benefits, and process of collaborative law. Based on survey data, the author argues that legal aid programs offering collaborative law opportunities will attract additional volunteer lawyers.

Dax J. Miller, *Applying Therapeutic Jurisprudence and Preventive Law to the Divorce Process: Enhancing the Attorney-Client Relationship and the Florida Practice and Procedure Form "Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren)"*, 10 FLA. COASTAL L. REV. 263 (2009). The author discusses negative psychological effects of divorce proceedings on parents and children and ways that attorneys can mitigate them through use of therapeutic jurisprudence and changes in practice.

Kelly Browe Olson, *Family Group Conferencing and Child Protection Mediation: Essential Tools for Prioritizing Family Engagement in Child Welfare Cases*, 47 FAM. CT. REV. 53 (2009). This article analyzes how family group conferencing and child protection mediation can be used to empower families, improve case planning, and reach resolutions not possible through traditional litigation.

Joy S. Rosenthal, *An Argument for Joint Custody as an Option for All Family Court Mediation Program Participants*, 11 N.Y. CITY L. REV. 127 (2007). The author criticizes the judicial mandate of New York's Kings County Family Court prohibiting joint custody in mediated agreements. The author notes the decision disproportionately affects unmarried parents who are poor and persons of color. A composite real-world example is interwoven into the article to illustrate that taking joint custody off of the table undermines the central goal of mediation—self-determination.

Nancy Thoennes, *What We Know Now: Findings from Dependency Mediation Research*, 47 FAM. CT. REV. 21 (2009). This article surveys empirical research on court-based child protection mediation with focus on program structure, settlement, and benefits for families.

Nancy Ver Steegh, *Family Court Reform and ADR: Shifting Values and Expectations Transform the Divorce Process*, 42 FAM. L.Q. 659 (2008). The author chronicles changes in the process of divorce over the past fifty years, including empirical research on processes such as parent education, mediation, collaborative law, and use of parenting coordinators. The author suggests that reduced court funding and dramatic increases in unrepresented parties put these programs at risk and raise the specter of a two-tiered family law system.

Annulment

Bela August Walker, *Fractured Bonds: Policing Whiteness and Womanhood Through Race-Based Marriage Annulments*, 58 DEPAUL L. REV. 1 (2008). The author analyses thirteen race-based annulment cases to determine how race and gender stereotypes work to uphold the stability of white society.

Assisted Conception

Linda S. Anderson, *Adding Players to the Game: Parentage Determinations When Assisted Reproductive Technology Is Used To Create Families*, 62 ARK. L. REV. 29 (2009). The article examines determination of legal parentage in cases involving assisted reproductive technology and illustrates the benefits of applying an "intent-based" analysis.

George J. Annas, *The Changing Face of Family Law: Global Consequences of Embedding Physicians and Biotechnology in the Parent-Child Relationship*, 42 FAM. L.Q. 511 (2008). This article explores court cases and global human rights issues pertaining to assisted reproductive technology, in vitro fertilization, genetic engineering, and human cloning.

Susan B. Apel, *Access Denied: Assisted Reproductive Technology Services and the Resurrection of Hill-Burton*, 35 WM. MITCHELL L. REV. 412 (2009). This article describes rationing of assisted reproductive technology in light of the Hill-Burton Act, which makes federal funds available for medical care for all persons, regardless of gender, race, sexual orientation, or marital status.

Noa Ben-Asher, *The Curing Law: On the Evolution of Baby-Making Markets*, 30 CARDOZO L. REV. 1885 (2009). The thesis of this article is that sperm donation, egg donation, and gestational surrogacy are viewed by policy makers as “cures” for infertility and are consequently treated more favorably under the law than full surrogacy, which is thought of as baby-selling. The author explores the implications of this distinction and urges lawmakers to treat gestational and full surrogacy similarly.

Naomi Cahn, *Accidental Incest: Drawing the Line—or the Curtain?—for Reproductive Technology*, 32 HARV. J.L. & GENDER 59 (2009). This article explores issues that arise when use of assisted reproductive technology results in accidental incest.

Theresa M. Erickson & Megan T. Erickson, *What Happens to Embryos When a Marriage Dissolves? Embryo Disposition and Divorce*, 35 WM. MITCHELL L. REV. 469 (2009). The authors explore decision-making about the disposition of embryos at the time of divorce, including whether contractual and/or constitutional analyses should apply.

Darra L. Hofman, “*Mama’s Baby, Daddy’s Maybe:*” *A State-by-State Survey of Surrogacy Laws and Their Disparate Gender Impact*, 35 WM. MITCHELL L. REV. 449 (2009). The author surveys state surrogacy statutes and compares societal perceptions of surrogacy with other assisted reproductive technologies such as in-vitro fertilization.

Charles P. Kindregan, Jr., *Dead Dads: Thawing an Heir from the Freezer*, 35 WM. MITCHELL L. REV. 433 (2009). The author analyzes legislative and judicial approaches to posthumous reproduction and concludes with proposals regarding inheritance and benefits issues.

Kristine S. Knaplund, *Legal Issues of Maternity and Inheritance for the Biotech Child of the 21st Century*, 43 REAL PROP. TR. & EST. L.J. 393 (2008). This article explores legal issues resulting from use of assisted reproductive technologies, including problems associated with parentage determinations and estate planning in situations where a child was conceived after a genetic parent’s death. The author offers advice to practitioners dealing these unresolved legal issues.

Glenda Labadie-Jackson, *The Reproductive Rights of Latinas and Commercial Surrogacy Contracts—English Translation*, 14 TEX. HISP. J.L. & POL’Y 49 (2008). The author examines principles involved in surrogacy agreements, particularly commercial surrogacy agreements. The author raises awareness concerning the vulnerability of Latina women in the United States who engage in commercial surrogacy agreements.

Browne C. Lewis, *Dead Men Reproducing: Responding to the Existence of Afterdeath Children*, 16 GEO. MASON L. REV. 403 (2009). This article analyzes evolving legislative and judicial responses to requests for paternal inheritance and survivor benefit rights for posthumously conceived children. The author advo-

brates for state statutes permitting inheritance rights for this new class of children when outlined conditions are met, thereby balancing the interests of the state, the posthumously conceived child, other heirs, and the procreation wishes of the deceased father.

Raymond C. O'Brien, *The Momentum of Posthumous Conception: A Model Act*, 25 J. CONTEMP. HEALTH L. & POL'Y 332 (2009). This article explores legal issues related to posthumous conception, including discussion of case law and proposed statutes.

Gregory Pence, *De-Regulating and De-Criminalizing Innovations in Human Reproduction*, 39 CUMB. L. REV. 1 (2008–2009). The author argues against regulation or restriction on advancements in reproductive technology and instead proposes a self-regulating model for commercial reproductive technology.

Usha Rengachary Smerdon, *Crossing Bodies, Crossing Borders: International Surrogacy Between the United States and India*, 39 CUMB. L. REV. 15 (2008–2009). This article explores international surrogacy between the United States and India and concludes that for the protection of vulnerable women and children, it should be prohibited. The author provides an overview of current policy, discusses the high demand for surrogacy, and considers ethical implications.

Elizabeth E. Swire Falker, *The Disposition of Cryopreserved Embryos: Why Embryo Adoption Is an Inappropriate Model for Application to Third-Party Assisted Reproduction*, 35 WM. MITCHELL L. REV. 489 (2009). The article explores ideology and policy perspectives concerning adoption and donation of cryopreserved embryos. The author proposes a model for decision-making about disposition.

Bankruptcy

Karen Pearlston, *Married Women Bankrupt in the Age of Coverture*, 34 LAW & SOC. INQUIRY 265 (2009). This article presents a historical perspective on bankruptcies involving married women bound by the common law doctrine of coverture during the seventeenth, eighteenth, and nineteenth centuries. The author describes several rare cases to illustrate how married women were able to maneuver the rules of coverture and further their economic interests.

Child Abuse and Termination of Parental Rights

Child Abuse, Neglect, and Dependency

Ramona Alaggia, Elizabeth Lambert & Cheryl Regehr, *Where Is the Justice? Parental Experiences of the Canadian Justice System in Cases of Child Sexual Abuse*, 47 FAM. CT. REV. 634 (2009). The authors present research on parental experiences with the Canadian judicial system in the context of child sexual abuse.

Susan Ayres, *Kairos and Safe Havens: The Timing and Calamity of Unwanted Birth*, 15 WM. & MARY J. WOMEN & L. 227 (2009). The article discusses the

impact of “safe haven” laws on neonaticide and the abandonment of newborn children. The author compares models adopted by other countries and affirms the need to integrate “safe havens” as a choice available to women faced with an unwanted pregnancy.

Howard Davidson, *Federal Law and State Intervention When Parents Fail: Has National Guidance of Our Child Welfare System Been Successful?*, 42 *FAM. L.Q.* 481 (2008). This article provides a historical perspective on federal legislative reforms with respect to child social service agencies and protective courts. The author offers personal observations and proposals, noting generally that federal guidance and incentives have induced necessary local oversight, but that lack of funding, particularly for prevention, has impeded real reform.

Jessica Dixon, *The African-American Child Welfare Act: A Legal Redress for African-American Disproportionality in Child Protection Cases*, 10 *BERKELEY J. AFR.-AM. L. & POL'Y* 109 (2008). This article offers an overview of racial disparities in the child welfare system and advocates for adoption of the African-American Child Welfare Act, concluding that it would pass constitutional challenge under a strict scrutiny analysis.

James G. Dwyer, *The Child Protection Pretense: States' Continued Consignment of Newborn Babies to Unfit Parents*, 93 *MINN. L. REV.* 407 (2008). Examining federal law intended to encourage early intervention to protect newborn children, the author argues that such laws have been ineffective in protecting the best interests of children, and proposes new policy designed to ensure the safety of newborn infants. The author rebuts contrary arguments based on parents' rights and asserts that these approaches would disproportionately harm minority and impoverished parents.

Phillip M. Kannan, *But Who Will Protect Poor Joshua DeShaney, a Four-Year-Old Child with No Positive Due Process Rights?*, 39 *U. MEM. L. REV.* 543 (2009). This article critiques the *DeShaney* decision and its progeny. The author proposes an alternative due process analysis.

John E.B. Myers, *A Short History of Child Protection in America*, 42 *FAM. L.Q.* 449 (2008). The author provides a historical perspective on child protection prior to 1875 (prosecution of egregious cases), between 1875 and 1962 (intermittent private intervention), and from 1962 to the present (comprehensive regulated public system).

William Wesley Patton, *To Err Is Human, to Forgive, Often Unjust: Harmless Error Analysis in Child Abuse Dependency Proceedings*, 13 *U.C. DAVIS J. JUV. L. & POL'Y* 99 (2009). This article analyzes attempts to lower the harmless error standard in child abuse and dependency cases. After reviewing statistics on reversal rates in California, the author concludes that the “harmless beyond a reasonable doubt” standard should remain in place.

Stacie Schmerling Perez, *Combating the “Baby Dumping” Epidemic: A Look at*

Florida's Safe Haven Law, 33 NOVA L. REV. 245 (2008). After describing and critiquing the Florida Safe Haven law, the author explores parental motivation for use of the law, analyzes the rights and responsibilities of the parties, and proposes ideas for reform.

Catherine J. Ross, *Legal Constraints on Child-Saving: The Strange Case of the Fundamentalist Latter-Day Saints at Yearning for Zion Ranch*, 37 CAP. U. L. REV. 361 (2008). The author asserts that zealous protection of parental rights in child protection matters is the best way to protect children from unnecessary and uncertain interference in their lives. The author examines how respect for parental rights could have offered more effective protection for the children of the Yearning for Zion Ranch.

Tracy J. Simmons, *Relinquishing Custody in Exchange for Mental Healthcare Services: Undermining the Adoption and Safe Families Act's Promise of Reasonable Efforts Towards Family Preservation and Reunification*, 10 J.L. & FAM. STUD. 377 (2008). The author examines custody relinquishment for the purpose of obtaining mental health treatment for children and offers proposals for meeting children's needs while upholding the ASFA's goal of preserving and reuniting families.

Pamela Newell Williams, *A Comparison of Child Advocacy Laws in Abuse and Neglect Cases in England and the United States*, 31 N.C. CENT. L. REV. 33 (2008). This article compares child neglect and abuse prevention in England and the United States with respect to prevalence, history, and policy responses.

Foster Care

Rebecca Bonagura, *Redefining the Baseline: Reasonable Efforts, Family Preservation, and Parenting Foster Children in New York*, 18 COLUM. J. GENDER & L. 175 (2008). The author explores the legal and social implications that flow from the high birth rate of adolescents in New York's foster care system, concluding that the system does not adequately address such cases and that substantial reforms should be initiated.

Rebekah Gleason Hope, *Foster Children and the IDEA: The Fox No Longer Guarding the Henhouse?*, 69 LA. L. REV. 349 (2009). The author details how foster children's educational needs are often ignored as they are displaced, resulting in unacceptable social costs. She criticizes IDEA's reliance on local education agencies to appoint the surrogates responsible for holding the same agencies accountable. The changes made in the 2004 reauthorization of IDEA expand who may be a surrogate parent and grants judges in dependency hearings the authority to appoint surrogate parents.

Termination of Parental Rights

Barbara Ann Atwood, *Achieving Permanency for American Indian and Alaska Native Children: Lessons from Tribal Traditions*, 37 CAP. U. L. REV. 239 (2008).

The author examines the concept of permanency in child welfare proceedings regulated by the Indian Child Welfare Act and the Adoption and Safe Families Act of 1997 and makes several proposals for how these Acts can work together to meet the needs of Indian children and tribes.

Konrad S. Lee & Matthew I. Thue, *Unpacking the Package Theory: Why California's Statutory Scheme for Terminating Parental Rights in Dependent Child Proceedings Violates the Due Process Rights of Parents as Defined by the United States Supreme Court in Santosky v. Kramer*, 13 U.C. DAVIS J. JUV. L. & POL'Y 143 (2009). This article is a call to action for the California legislature to adopt a clear and convincing evidence standard in parental termination hearings. The authors take issue with the California Supreme Court ruling in *Cynthia D.* which upheld the constitutionality of California's preponderance-of-the-evidence standard.

Anthony C. Musto, *Potato, Potahto: Whether Ineffective Assistance or Due Process, an Effective Rule Is Overdue in Termination of Parental Rights Cases in Florida*, 21 ST. THOMAS L. REV. 231 (2009). The author addresses inadequate legal representation in custody and parenting-time matters as well as potential remedies in the state of Florida. The author explores constitutional due process issues in relation to the right to counsel.

Maryann Zavez, *Use of the Adoption and Safe Families Act at 15/22 Months for Incarcerated Parents*, 33 VT. L. REV. 187 (2008). The author explores the effects of the Adoption and Safe Families Act (ASFA) on the families of incarcerated individuals and proposes exceptions to AFSA's 15/22-month timeframe.

Child Custody and Parenting Time

General Child Custody Issues

Linda L. Berger, *How Embedded Knowledge Structures Affect Judicial Decision Making: A Rhetorical Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes*, 18 S. CAL. INTERDISC. L.J. 259 (2009). The author examines how traditional metaphors and narratives interact in the family justice system resulting in disservice to today's children and families and advocates imaginative lawyering to help persuade courts and policy makers to allow for more diversity in modern families.

Margaret F. Brinig, *Children's Beliefs and Family Law*, 58 EMORY L.J. 55 (2008). This article explores the relationship between children's religious beliefs and custody and visitation decisions made in family law cases. The author provides empirical data regarding the importance of faith to youth, but concludes that the beliefs of children should not be considered without reference to parents' beliefs.

Dana Harrington Conner, *Abuse and Discretion: Evaluating Judicial*

Discretion in Custody Cases Involving Violence Against Women, 17 AM. U. J. GENDER SOC. POL'Y & L. 163 (2009). After explaining the history of trial court power in child custody cases, the author argues that the judicial system does not adequately address custody cases that involve domestic violence and proposes new standards.

Rachel Ebling, Kyle D. Pruett & Marsha Kline Pruett, *"Get Over It": Perspectives on Divorce From Young Children*, 47 FAM. CT. REV. 665 (2009). This research examines the perspectives of young children on the divorce process.

Linda D. Elrod & Milfred D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance*, 42 FAM. L.Q. 381 (2008). This article assesses legal developments related to custody determinations over the past fifty years with a critical look at the effects on children. The authors survey changes in the family, the need to protect children in high-conflict situations, changing perceptions of the best interests standard, the movement toward recognition of the rights of children, mileposts in court reform, and the implications of increased interdisciplinary involvement. The authors urge continuing focus on conflict reduction for the benefit of children.

Sara Estrin, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 LAW & INEQ. 211 (2009). The author critiques legislation providing child custody protection to servicemembers during deployment and recommends legislation to ensure that servicemembers deployed overseas do not face such custody challenges in the future.

Christine L. Jones, *The Parental Kidnapping Prevention Act: Is There Hope for a (Limited) Federal Forum?*, 18 TEMP. POL. & CIV. RTS. L. REV. 141 (2008). This article assesses whether two recent Supreme Court decisions, *Marshall v. Marshall* and *Grable & Sons Metal Prods. Inc. v. Darue Eng'g & Mfg.*, open the door for federal subject matter jurisdiction to resolve conflicting state custody adjudications under the Parental Kidnapping Prevention Act (PKPA).

Yehiel S. Kaplan, *Child Custody in Jewish Law: From Authority of the Father to the Best Interest of the Child*, 24 J.L. & RELIG. 89 (2008–2009). This article examines the historical progression of the relationship between parent and child under Jewish law. The author suggests that the best-interest-of-the-child standard fits well within ancient Jewish thought, which emphasizes love for all humankind, including children.

Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337 (2008). The author traces the history of the best interests standard and its effect on family law jurisprudence and encourages judges to focus on the purpose behind the standard to avoid imposing subjective values on parties.

MiaLisa McFarland & Evon M. Spangler, *A Parent's Undocumented Immigration Status Should Not Be Considered Under the Best Interest of the Child Standard*, 35 WM. MITCHELL L. REV. 247 (2008). The authors assert that parental immigration status should not be considered in determining the best interests of children for the purpose of establishing child custody because doing so weakens parent-child relationships, violates human rights, and allows immigration status to be used as a tool of fear in the family law arena.

Jennifer E. McIntosh, *Legislating for Shared Parenting: Exploring Some Underlying Assumptions*, 47 FAM. CT. REV. 389 (2009). This article uses longitudinal data on high-conflict divorce to challenge three premises underlying legislative preferences for shared parenting: that shared parenting is viable for parents in conflict; that shared care improves parental cooperation; and that children are less affected by conflict in shared-parenting arrangements.

Solangel Maldonado, *Taking Account of Children's Emotions: Anger and Forgiveness in "Renegotiated Families,"* 16 VA. J. SOC. POL'Y & L. 443 (2009). This article explores the anger children may feel toward parents who divorce and suggests various policy and programming approaches including "forgiveness education."

International Child Custody Issues

Timothy Arcaro, *Creating a Legal Society in the Western Hemisphere to Support the Hague Convention on the Civil Aspects of International Child Abduction*, 40 U. MIAMI INTER-AM. L. REV. 109 (2008). The author explores the Hague Convention on the Civil Aspects of International Child Abduction and recommends incorporation of technical and advisory support and creation of a "legal society" to ensure the efficient operation of the Convention.

Merle H. Weiner, *Intolerable Situations and Counsel for Children: Following Switzerland's Example in Hague Abduction Cases*, 58 AM. U. L. REV. 335 (2008). The article describes Swiss protections, including appointment of a representative for children, implemented since the adoption of the Hague Convention. The author encourages the United States to adopt similar provisions.

Same-Sex Parent Child Custody Issues

Deirdre M. Bowen, *The Parent Trap: Differential Familial Power in Same-Sex Families*, 15 WM. & MARY J. WOMEN & L. 1 (2008). The author describes the harmful effects of uncertainty about parentage rights on same-sex parents and children and makes recommendations designed to minimize ambiguity and provide support to such families.

Harvey L. Fiser & Paula K. Garrett, *It Takes Three, Baby: The Lack of Standard, Legal Definitions of "Best Interest of the Child" and the Right to Contract for Lesbian Potential Parents*, 15 CARDOZO J.L. & GENDER 1 (2008). This article explores issues that arise when unmarried and/or lesbian women use

assisted reproductive techniques such as artificial insemination. The author suggests ways to protect parental roles while safeguarding the interests of children.

Suzanne B. Goldberg, *Family Law Cases as Law Reform Litigation: Unrecognized Parents and the Story of Allison D. v. Virginia M.*, 17 COLUM. J. GENDER & L. 307 (2008). Against the backdrop of the New York case of *Allison D. v. Virginia M.*, the author explores attempts by nonbiological lesbian parents to gain visitation rights. Even if unsuccessful, the author finds value in pursuing such cases to shape public opinion and maintain pressure on courts to reframe the issue.

Rena M. Lindevaldsen, *Sacrificing Motherhood on the Altar of Political Correctness: Declaring a Legal Stranger to Be a Parent Over the Objections of the Child's Biological Parent*, 21 REGENT U. L. REV. 1 (2008–2009). The author compares approaches to determination of parentage rights of same-sex couples and explores constitutional implications of granting custody and visitation over the objection of a biological parent.

Third-Party Custody and Visitation

Ayelet Blecher-Prigat, *Rethinking Visitation: From a Parental to a Relational Right*, 16 DUKE J. GENDER L. & POL'Y 1 (2009). The article describes difficulties faced by third parties who seek visitation with children. The author challenges traditional understandings of the “parental right” of visitation and proposes a new approach based on relational interests.

Jessica R. Feinberg, *Friends as Coparents*, 43 U.S.F. L. REV. 799 (2009). This article explores the possibility and implications of allowing friends to adopt children.

Sonya C. Garza, *The Troxel Aftermath: A Proposed Solution for State Courts and Legislatures*, 69 LA. L. REV. 927 (2009). This article traces the history of third-party visitation, including an analysis of *Troxel* and state responses to the decision, and proposes adoption of uniform third-party visitation legislation.

Michael K. Goldberg, *A Survey of the Fifty States' Grandparent Visitation Statutes*, 10 MARQ. ELDER'S ADVISOR 245 (2009). This article analyzes the legal status of grandparent visitation throughout the United States, concluding that statutes remain inconsistent but continue to evolve.

Martin Guggenheim, *Rediscovering Third-Party Visitation Under the Common Law in New York: Some Uncommon Answers*, 33 N.Y.U. REV. L. & SOC. CHANGE 153 (2009). This article explores nonparental visitation rights in the context of the New York decision in *Ronald F.F. v. Cindy G.G.*, finding the decision inconsistent with statutes and case law and urging reconsideration.

Josh Gupta-Kagan, *Children, Kin, and Court: Designing Third-Party Custody Policy to Protect Children, Third Parties, and Parents*, 12 N.Y.U. J. LEGIS. &

PUB. POL'Y 43 (2008). The author suggests reform with respect to third-party custody, including requiring proof that parental custody would harm the child and heightening the standard of proof to "clear and convincing evidence."

Pamela Laufer-Ukeles, *Money, Caregiving, and Kinship: Should Paid Caregivers Be Allowed to Obtain de Facto Parental Status?* 74 MO. L. REV. 25 (2009). This article addresses whether and when paid nonbiological nonadoptive caretakers should be allowed visitation and custodial rights to children.

Child Support

Mary Helen Carlson, *United States Perspective on the New Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, 43 FAM. L.Q. 2 (2009). This article explores the drafting of and potential United States' ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

William Duncan, *The New Hague Child Support Convention: Goals and Outcomes of the Negotiations*, 43 FAM. L.Q. 1 (2009). This article chronicles the negotiation process with respect to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance which, after a period of years, concluded in November 2007.

Pamela Foohey, *Child Support and (In)Ability to Pay: the Case for the Cost Shares Model*, 13 UC DAVIS J. JUV. L. & POL'Y 35 (2009). This author proposes a cost shares method for calculating child support obligations that is based on ability to pay. The author believes that the method will increase the likelihood that obligors will pay their obligation.

Adrienne Jennings Lockie, *Multiple Families, Multiple Goals, Multiple Failures: The Need for "Limited Equalization" as a Theory of Child Support*, 32 HARV. J.L. & GENDER 109 (2009). This article exposes the inadequacies of the current child support system in responding to the unique needs of multiple families, particularly those in poverty. The author considers states' attempts to deal with multiple families in child support guidelines, utilizing either a "first family first" or "equalization" method. She argues for a new policy of "limited equalization" incorporating the following goals: favoring existing families, addressing the complexities of families with more complex guideline calculations, considering household resources beyond that of legal parents, encouraging poverty prevention, and seeking gender equality.

Laura W. Morgan, *Child Support Fifty Years Later*, 42 FAM. L.Q. 365 (2008). The author discusses changed public policy with respect to child support, highlighting the shift from public to a private responsibility and expansion of who may be held legally liable. The article explores potential child support liability by classes of nonbiological parents, including parents by estoppel, same-sex partners, stepparents, and grandparents.

National Conference of Commissioners on Uniform State Laws, *Uniform Interstate Family Support Act (last amended or revised in 2008) with Prefatory Note and Comments*, 43 FAM. L.Q. 75 (2009). This version includes amendments to UIFSA pursuant to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

Elizabeth G. Patterson, *Civil Contempt and the Indigent Child Support Obligor: The Silent Return of Debtor's Prison*, 18 CORNELL J.L. & PUB. POL'Y 95–141 (2008). This article explores multiple facets of the problem of indigent child support obligors who are held in civil contempt and incarcerated for failure to pay child support. The author asserts that in many cases, the needs of children are not furthered by such a system.

Battle Rankin Robinson, *Integrating an International Convention into State Law: The UIFSA Experience*, 43 FAM. L.Q. 61 (2009). This article analyzes amendments to the Uniform Interstate Family Support Act (UIFSA) pursuant to the United States signing of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance in November 2007.

Marilyn Ray Smith, *Child Support at Home and Abroad: Road to the Hague*, 43 FAM. L.Q. 37 (2009). This article provides the historical context for child support enforcement, culminating with adoption of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

Children's Rights

Anne L. Alstott, *Is the Family at Odds with Equality? The Legal Implications of Equality for Children*, 82 S. CAL. L. REV. 1 (2008). This article examines conflicting values of freedom and equality in relation to child rearing in the United States. While society values the freedom to make individualized parenting choices, this freedom can mean that children from certain types of families start life on an unequal footing. The author suggests that conflicting values might be reconciled to allow family autonomy to coexist with equal opportunities for children.

Sara Dillon, *The Missing Link: A Social Orphan Protocol to the United Nations Convention on the Rights of the Child*, 1 HUM. RTS. & GLOBALIZATION L. REV. 39 (2007–2008). The author critiques international child-welfare treaties concerning treatment of “social orphans” (children not currently cared for by parents who are living) and urges adoption of the Draft Protocol to the United Nations Convention on the Rights of the Child on Social Orphans.

Barbara Glesner Fines, *Pressures Toward Mediocrity in the Representation of Children*, 37 CAP. U. L. REV. 411 (2008). The author examines some of the challenges facing attorneys who represent children in court proceedings and proposes suggestions to ensure effective and competent advocacy, and to ensure that the child is the main focus of the attorney's representation.

Maria Grahn-Farley, *Neutral Law and Eurocentric Lawmaking: a Postcolonial Analysis of the U.N. Convention on the Rights of the Child*, 34 BROOK. J. INT'L L. 1 (2008). The author argues that while the Convention on the Rights of the Child (CRC) was written and ratified in a postcolonial international forum, the CRC has strong colonial structures and roots. The article recounts the history of the CRC in light of its European principles, reservations, and application.

James C. May & Alexander W. Banks, *Lawyering for Children in High-Conflict Cases*, 33 VT. L. REV. 169 (2008). This article addresses the need for legal representation of children, highlighting Vermont programs such as the "Children First! Legal Advocacy Project" and the "Attorneys for Children" program.

Sandra Keen McGlothlin, *No More "Rag Dolls in the Corner": A Proposal to Give Children in Custody Disputes a Voice, Respect, Dignity, and Hope*, 11 J.L. & FAM. STUD. 67 (2008). This article seeks expanded use of court-appointed child representatives in contested custody disputes. The article reviews children's relatively meager independent legal rights recognized to date, and considers the ramifications of shutting children out of custody proceedings, ultimately reducing the court's ability to make a meaningful best interests analysis. The author cites empirical evidence supporting use of Court Appointed Special Advocate (CASA) volunteers to fulfill needed roles as representatives and offers suggestions to garner more volunteers, including using law students.

Benjamin Shmueli, *The Influence of the United Nations Convention on the Rights of the Child on Corporal Punishment—A Comparative Study*, 10 OR. REV. INT'L L. 189 (2008). This article examines how the United Nations Convention on the Rights of the Child (UNCRC) has influenced international legal views regarding corporal punishment of children and considers how the UNCRC, if ratified by the U.S., could impact the legal standing of such punishment.

LaShanda Taylor, *A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 FAM. CT. REV. 605 (2009). The author asserts that children are legally entitled to counsel in dependency cases and explores client-directed representation and the impact of high caseloads.

Barbara Bennett Woodhouse & Kelly Reese, *Reflections on Loving and Children's Rights*, 20 U. FLA. J.L. & PUB. POL'Y 11 (2009). The authors explore how the *Loving* decision has served as a catalyst for children's rights and changed the legal landscape for "nonconforming families."

Cohabitation

Marsha Garrison, *Nonmarital Cohabitation: Social Revolution and Legal Regulation*, 42 FAM. L.Q. 309 (2008). This article analyzes the response (or lack of response) by courts and legislatures to cohabitation issues flowing from *Marvin v. Marvin*. The author concludes that a tempered response is warranted because cohabitants bring different attitudes and expectations to cohabitation relationships.

Court System

Connie J. A. Beck, Amy Holtzworth-Munroe, Brian M. D'Onofrio, William Fee & Frances G. Hill, *Collaboration Between Judges and Social Science Researchers in Family Law*, 47 FAM. CT. REV. 451 (2009). This article explores interdisciplinary perspectives on law and social science, including comparison of methods of pursuing truth and justice and standards for evaluating evidence.

Deborah Chase & Peggy Fulton Hora, *The Best Seat in the House: The Court Assignment and Judicial Satisfaction*, 47 FAM. CT. REV. 209 (2009). This article presents and examines the results of a judicial survey comparing the satisfaction levels of judges assigned to traditional courts and to problem-solving courts.

Ann Laquer Estin, *Sharing Governance: Family Law in Congress and the States*, 18 CORNELL J.L. & PUB. POL'Y 267 (2009). This article comprehensively examines three types of federalism present in family law today and concludes that Congressional action should be reserved for initiatives with strong state support and wide political consensus.

Meredith Johnson Harbach, *Is the Family a Federal Question?*, 66 WASH. & LEE L. REV. 131 (2009). The author analyzes reasons that federal courts are reluctant to address family law questions and concludes that federal courts should limit their forum to constitutional questions.

Robert F. Kelly & Sarah H. Ramsey, *Child Custody Evaluations: The Need for Systems-Level Outcome Assessments*, 47 FAM. CT. REV. 286 (2009). This article proposes a framework for systemic assessment of child custody evaluations. The authors suggest five systems-level questions and seven outcome hypotheses for investigation aimed at improving development and use of child custody evaluations.

Mary E. O'Connell, *Mandated Custody Evaluations and the Limits of Judicial Power*, 47 FAM. CT. REV. 304 (2009). This article critiques potential court system justifications for use of often intrusive child custody evaluations. The author explores issues such as the basis for requiring custody evaluations, the assertion that custody evaluations may avoid harm to children, and the extent to which participation is voluntary.

Dana E. Prescott, *Unified Family Courts and the Modern Judiciary as a "Street-Level Bureaucracy": To What End for the "Mythical" Role of Judges in a Democracy*, 27 QUINNIPIAC L. REV. 55 (2009). This article provides a systems analysis of custody determinations in unified family courts. The author critiques transformation of the judiciary from impartial adjudicator to social service provider and identifies areas for future research and scholarship.

Peter Salem, *The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation?*, 47 FAM. CT. REV. 371 (2009). This article explores the emergence and benefits of family court triage systems as well as the implications for mandatory mediation programs.

Divorce

Andrea B. Carroll, *Incentivizing Divorce*, 30 CARDOZO L. REV. 1925 (2009). This article explores laws that penalize married people and provide potential incentives to divorce. The author focuses in part on issues arising in community property jurisdictions and emphasizes the troublesome nature of such incentives from a public policy standpoint.

Gary Chartier, *Divorce: a Normative Analysis*, 10 FLA. COASTAL L. REV. 1 (2008). The author analyzes divorce through the lens of making and keeping promises and concludes that parties should be empowered to define responsibilities to and identify consequences if agreements are breached.

Michael R. Clisham & Robin Fretwell Wilson, *American Law Institute's Principles of the Law of Family Dissolution, Eight Years after Adoption: Guiding Principles or Obligatory Footnote?*, 42 FAM. L.Q. 573 (2008). This article analyzes the impact of the American Law Institute's (ALI) recommendations concluding that while they have inspired debate among academics, lawmakers have been hesitant to adopt the ALI's recommendations.

Lynne Marie Kohm, *On Mutual Consent to Divorce: A Debate with Two Sides to the Story*, 8 APPALACHIAN J.L. 35 (2008). This article lends support for proposed legislation introduced in Virginia that would prohibit divorces for couples with children if either spouse objects to the divorce. The author first outlines society's interest in supporting intact families, the benefits of empowering the protesting spouse, and addresses the many criticisms of the proposed change.

Abraham L. Wickelgren, *Why Divorce Laws Matter: Incentives for Noncontractible Marital Investments Under Unilateral and Consent Divorce*, 25 J.L. ECON. & ORG. 80 (2009). This article compares the economic repercussions of consent divorce regimes and unilateral divorce systems.

Domestic Violence

Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J.L. & FAM. STUD. 35 (2008). This article reveals the serious shortcomings of focusing solely on physical violence in domestic abuse civil protection actions. The author contends that the theory of coercive control identifies the root cause of domestic violence for which physical violence is only one mechanism used to control the victim. The author offers specific language to define coercion using a preponderance of the evidence standard.

Caroline Bettinger-Lopez, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19 (2008). This article examines the initiation of an international legal action against the United States for violating the human rights of Jessica Gonzales, a victim of domestic violence.

Jennifer Cranstoun, Christopher O'Connor, & Tracey Alter, *What's an Intimate Relationship, Anyway? Expanding Access to the New York State Family*

Courts for Civil Orders of Protection, 29 PACE L. REV. 455 (2009). This article explores practice issues related to recent expansion of persons eligible to seek protective orders in New York.

Molly Dragiewicz & Yvonne Lindgren, *The Gendered Nature of Domestic Violence: Statistical Data for Lawyers Considering Equal Protection Analysis*, 17 AM. U. J. GENDER SOC. POL'Y & L. 229 (2009). This article examines the California case of *Woods v. Horton*, striking down a local safety code that provided funding for domestic violence shelter services for women and children. The author applies an Equal Protection analysis and argues that under the California and U.S. Constitutions, the code should survive a strict scrutiny challenge.

Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191 (2008). This article explores the extent to which current treatment of domestic violence cases has worked to disempower victims and proposes that the legal system change its focus from ending violent relationships to increasing victim safety.

Jerome Nadelhaft, "The Public Gaze and the Prying Eye": *the South and the Privacy Doctrine in Nineteenth-Century Wife Abuse Cases*, 14 CARDOZO J.L. & GENDER 549 (2008). This article examines society's unwillingness to interfere in a marriage, even in situations of severe domestic abuse. The author examines the historical role of the privacy doctrine in maintaining patriarchy and pre-Civil War lifestyle.

Amanda Jane Proctor, *Breaking into the Marital Home to Break up Domestic Violence: Fourth Amendment Analysis of "Disputed Permission,"* 17 AM. U. J. GENDER SOC. POL'Y & L. 139 (2009). The author looks at situations of disputed permission to enter the home when domestic violence is an issue and proposes that a wife's consent should support a finding of exigent circumstances to warrant police entry into the home.

Njeri Mathis Rutledge, *Turning a Blind Eye: Perjury in Domestic Violence Cases*, 39 N.M. L. REV. 149 (2009). This article explores the implications of situations where a victim of domestic violence commits perjury. The author makes recommendations for reform of the recantation defense in cases where a victim of domestic violence retracts false statements.

Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-first Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353 (2008). The author traces the evolution of domestic violence law reform over the past fifty years and identifies significant challenges for the future, including recognition of the complexity of the problem, challenges for prosecutors following *Davis*, issues related to citizenship, equality for women, and the need for continued professional skill and dedication.

Yuval Sinai & Benjamin Shmueli, *Changing the Current Policy Toward Spousal Abuse: A Proposal for a New Model Inspired by Jewish Law*, 32

HASTINGS INT'L & COMP. L. REV. 155 (2009). This article examines different legal models for addressing emotional, physical, and sexual abuse. The author suggests that Jewish law offers a better approach for addressing domestic violence and proposes revisions to the traditional Jewish model in order to make it more compatible with modern legal systems.

Jane K. Stoeber, *Stories Absent from the Courtroom: Responding to Domestic Violence in the Context of HIV and AIDS*, 87 N.C. L. REV. 1157 (2009). The author raises consciousness about HIV/AIDS-related domestic violence in America, identifying eight categories of violence and examining how the legal system can better serve the needs of these vulnerable individuals.

International Domestic Violence Issues

Michael G. Heyman, *Protecting Foreign Victims of Domestic Violence: An Analysis of Asylum Regulations*, 12 N.Y.U. J. LEGIS. & PUB. POL'Y 115 (2008). This article addresses challenges faced by those seeking asylum to escape abuse at the hands of their partners in their home country. The author analyzes the definition of "refugee" under the Geneva Convention and examines proposals to better protect asylum-seekers who have experienced domestic violence.

Adam Weiss, *Transnational Families in Crisis: An Analysis of the Domestic Violence Rule in E.U. Free Movement Law*, 30 MICH. J. INT'L L. 841 (2009). This article examines the domestic violence rule in Article 13 of the European Community Free Movement Directive, which allows a third-country national who is a victim of domestic violence to remain in the host country.

Evidence

Deborah Paruch, *The Psychotherapist-Patient Privilege in the Family Court: An Exemplar of Disharmony Between Social Policy Goals, Professional Ethics, and Current State of the Law*, 29 N. ILL. U. L. REV. 499 (2009). This article explores the pros and cons of abrogating the psychotherapist-patient privilege as it applies to the protection of children in family court. The author discusses empirical research and exceptions to the privilege before offering alternative proposals.

Eileen A. Scallen, *Coping with Crawford: Confrontation of Children and Other Challenging Witnesses*, 35 WM. MITCHELL L. REV. 1558 (2009). This article analyzes the consequences of the Supreme Court's decision in *Crawford v. Washington* decision for prosecution of domestic violence, elder abuse, and child abuse cases. The author maps the current landscape for admissibility and exclusion of evidence in such cases.

Families and Society

Margaret F. Brinig & Steven L. Nock, *The One-Size-Fits-All Family*, 49 SANTA CLARA L. REV. 137 (2009). The authors use social science data to consider

whether and how black, white, male, and female children may be differently affected by changes in family legal status and living arrangements.

Margaret F. Brinig & Steven L. Nock, *Legal Status and Effects on Children*, 5 U. ST. THOMAS L.J. 548 (2008). The authors use empirical data to show that family structure, particularly marriage, can significantly impact a child's development. To promote child welfare, the authors suggest enacting and maintaining laws that encourage marriage and adoption.

Don S. Browning, *Modern Law and Christian Jurisprudence on Marriage and Family*, 58 EMORY L.J. 31 (2008). The author discusses the effect of Christian jurisprudence on marriage in western cultures as well as potential consequences of distancing family law from traditional Christian values.

June Carbone & Naomi Cahn, *Judging Families*, 77 U. MO. KAN CITY L. REV. 267 (2008). The article analyses the role of the judiciary in moral debates found in family law. The authors examine political partisanship, American divisions regarding family values, and types of government involvement to highlight the challenges that judges face in controversial social-values cases.

Jennifer M. Chacon, *Citizenship and Family: Revisiting Dred Scott*, 27 WASH. U. J.L. & POL'Y 45 (2008). The author argues that the U.S. Supreme Court's decision in *Dred Scott v. Sanford* can be read as favoring a human rights-based definition of family and suggests related legal and policy changes.

Jane E. Cross, Nan Palmer & Charlene L. Smith, *Families Redefined: Kinship Groups That Deserve Benefits*, 78 MISS. L.J. 791 (2009). This article argues in favor of expanding the definition of family to include kinship relationships. The authors evaluate the definition of family in several states and countries, concluding that all children and families should be given the legal and economic benefits of being a recognized family unit.

Charlotte K. Goldberg, *The Normative Influence of the Fifth Commandment on Filial Responsibility*, 10 MARQ. ELDER'S ADVISOR 221 (2009). This article analyzes filial responsibility laws, and the author suggests ways to promote the public policy of encouraging children to financially support elderly parents.

Vivian E. Hamilton, *Expressing Community Values Through Family Law Adjudication*, 77 U. MO. KAN. CITY L. REV. 325 (2008). The author considers the role of community values in adjudicating private and public law disputes in family law cases. The article examines the extent to which judicial outcomes may reflect societal norms of a community.

Clare Huntington, *Happy Families? Translating Positive Psychology into Family Law*, 16 VA. J. SOC. POL'Y & L. 385 (2009). This article explores the implications of positive psychology for reform of family law.

Yehiel S. Kaplan, *A Father's Consent to the Marriage of His Minor Daughter: Feminism and Multiculturalism in Jewish Law*, 18 S. CAL. REV. L. & SOC. JUST.

393 (2009). This article explores Jewish law with respect to marriage of minor females and the extent to which lessons learned in the Jewish faith can be applied to other religious traditions. The author concludes that international respect for human rights is furthered through recognition of the foundational role of religion throughout the world.

Linda C. McClain, *Red Versus Blue (And Purple) States and the Same-Sex Marriage Debate: From Values Polarization to Common Ground?*, 77 U. MO. KAN. CITY L. REV. 415 (2008). This article describes political polarization around “moral” issues with constitutional implications such as same-sex marriage and abortion. The author discusses the future of the “red-blue” dichotomy and explores whether and how morals should influence the judiciary.

Melissa Murray, *Strange Bedfellows: Criminal Law, Family Law, and the Legal Construction of Intimate Life*, 94 IOWA L. REV. 1253 (2009). This article examines the interaction between criminal and family law in regulating private family life. The author argues that in order to achieve an intimate zone free from legal regulation, it is essential to understand how criminal and family law have worked together to define the current regulation of intimate affairs.

Angela Onwuachi-Willig & Jacob Willig-Onwuachi, *A House Divided: The Invisibility of the Multiracial Family*, 44 HARV. C.R.-C.L. L. REV. 231 (2009). Drawing on their own experiences as an interracial family, the authors describe the persistent failure of society and law to recognize and support interracial marriage. The article focuses on the shortcomings of the Fair Housing Act in providing a classification for interracial discrimination. The authors distinguish the prejudice toward the relationship of persons of different races from the prejudice toward an individual based on that person’s race alone, building on Kimberlé Crenshaw’s work on intersectionality. They suggest the addition of interraciality as a recognized category for discrimination claims.

Allen E. Shoenberger, *Alternative Visions of the Family: The European Constitutional Perception of Family Law: Comparison with American Jurisprudence*, 18 TRANSNAT’L L. & CONTEMP. PROBS. 419 (2009). This article examines how the European Court of Human Rights (ECHR) has resolved various family law issues. The author focuses on provision of protections to families based on family self-identification and urges the United States to incorporate a broader spectrum of society into the definition of family.

Robert G. Spector & Bradley C. Lechman-Su, *International Family Law*, 43 INT’L LAW. 489 (2009). The authors review international family law conventions and analyze how issues such as international child abduction and same-sex marriage have been resolved in various jurisdictions.

John Witte, Jr., *Afterword: Exploring the Frontiers of Law, Religion, and Family Life*, 58 EMORY L.J. 87 (2008). This article describes Emory University’s Center for the Study of Law and Religion and its recent projects examining the relationship between world religions and sex, marriage, children, and family.

History

Sanford N. Katz, *Five Decades of Family Law*, 42 FAM. L.Q. 295 (2008). This article chronicles major change in family law over the past fifty years including a decade-by-decade analysis of societal, political, and judicial developments and controversies.

David D. Meyer, *The Constitutionalization of Family Law*, 42 FAM. L.Q. 529 (2008). The author explains and explores the constitutionalization of family law over the past fifty years concluding that courts are likely to recognize additional rights in the future.

Rebecca Probert, *Control Over Marriage in England and Wales, 1753-1823: The Clandestine Marriages Act of 1753 in Context*, 27 LAW & HIST. REV. 413 (2009). This article examines the history of marriage regulation in England through the Clandestine Marriage Act of 1753, considering how the Act worked to control young girls in wealthy families.

Charles J. Reid Jr., *Marriage in Its Procreative Dimension: The Meaning of the Institution of Marriage Throughout the Ages*, 6 U. ST. THOMAS L.J. 454 (2009). This article explores the emphasis on marriage as a vehicle for procreation in four societies: pre-Christian classical Rome, the medieval West of the sixth through eleventh centuries, the High Middle Ages, and the early modern period.

Merle H. Weiner, *Codification, Cooperation, and Concern for Children: The Internationalization of Family Law in the United States Over the Last Fifty Years*, 42 FAM. L.Q. 619 (2008). The author reviews the evolution of international family law over the past fifty years and suggests that central authorities and special commissions have increased the likelihood that the United States will participate in international initiatives.

Marriage

Noryamin Aini, *Inter-Religious Marriage from Socio-Historical Islamic Perspectives*, 2008 BYU L. REV. 669 (2008). This article explores the historical reasoning behind the prohibition of interreligious marriage under Islamic law and explains what would be required of a couple in Indonesia seeking to legalize an interreligious union.

Donald R. Collins, *A Legal Doctrine for the Starter Marriage*, 33 OKLA. CITY U. L. REV. 793 (2008). This article explores the shortcomings of traditional divorce in cases involving short-term "starter marriages." The author considers the evolution of marriage, the effect of no-fault divorce, and the potential for "term-of-years" marriage.

Kristin A. Collins, *Administering Marriage: Marriage-Based Entitlements, Bureaucracy, and the Legal Construction of the Family*, 62 VAND. L. REV. 1085 (2009). The author recounts the historical evolution of public marriage-based entitlements and evaluates how these entitlements have affected the institution of marriage and the status of women in society.

Elliot N. Dorff, *Making Marriages Stronger: a Multi-tiered Approach Based on Traditional Jewish Understandings of Marriage*, 5 U. ST. THOMAS L.J. 580 (2008). The author examines three levels of marriage found in traditional Judaism (personal, social, and religious) and suggests how their adoption might strengthen marriages in the United States.

Ann Laquer Estin, *Golden Anniversary Reflections: Changes in Marriage After Fifty Years*, 42 FAM. L.Q. 333 (2008). The author summarizes changing societal and legal views of marriage over the past fifty years, noting that marriage is no longer as important for the purpose of legitimizing children or providing financial security for women. The author's review of constitutional issues related to marriage frame the current debate over same-sex marriage.

Marsha Garrison, *Reviving Marriage: Could We? Should We?*, 10 J.L. & FAM. STUD. 279 (2008). This article reviews social science data on marriage and explores public benefits that flow from encouraging formal marriage commitments. The author urges establishment of a middle ground between support for traditional marriage and proposals to end government regulation of marriage, and explores how the impact of state marital status classifications might be minimized.

John Witte, Jr. & Joel A. Nichols, *More than a Mere Contract: Marriage as a Contract and Covenant in Law and Theology*, 5 U. ST. THOMAS L.J. 595 (2008). This article explores covenant marriage in comparison to traditional contracts and in light of religious traditions. Given the growing cultural diversity in America, the author asserts a need for legal flexibility in defining marriage laws and customs.

Same-Sex Marriage Issues

Kerry Abrams & Peter Brooks, *Marriage as a Message: Same-Sex Couples and the Rhetoric of Accidental Procreation*, 21 YALE J.L. & HUMAN. 1 (2009). This article asserts that marriage has historically existed for reasons beyond accidental procreation and that if courts continue to rely on such a basis for defining marriage, the institution will lose legitimacy and influence in society.

M.V. Lee Badgett et al., *The Impact on Maryland's Budget of Allowing Same-Sex Couples to Marry*, 7 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 295 (2007). The authors analyze the fiscal impact of allowing same-sex marriage in Maryland, concluding that it would have a positive impact on the state's budget.

Patrick J. Borchers, *The Coming Collision: Romer and State Defense of Marriage Acts*, 2008 BYU L. REV. 1635 (2008). The author addresses the constitutionality of state and federal defense of marriage acts in light of the U.S. Supreme Court's *Romer v. Evans* decision, concluding that the principles of equal protection will continue to conflict with Defense of Marriage acts.

Gerard V. Bradley, *Three Liberal—But Mistaken—Arguments for Same-Sex Marriage*, 50 S. TEX. L. REV. 45 (2008). The author rebuts arguments in favor of

same-sex marriage addressing issues such as those involving procreation, “optimal settings” for children, and “equal respect.”

Thomas H. Burrell, *Judicial Regimes and Same-Sex Marriage: Enforcing Judicially Determined Personal Autonomy at the Expense of Majoritarian Democracy*, 35 OHIO N.U. L. REV. 619 (2009). The author reviews the *Marriage Cases* decision, concluding that such judicial activism is contrary to democratic processes.

Brenda Cossman, *Betwixt and Between Recognition: Migrating Same-Sex Marriages and the Turn Toward the Private*, 71 LAW & CONTEMP. PROBS. 153 (2008). The author urges application of conflict-of-laws analysis to the same-sex marriage debate, noting the problems faced by same-sex couples as they cross state borders.

Barbara J. Cox, “A Painful Process of Waiting”: *the New York, Washington, New Jersey, and Maryland Dissenting Justices Understand That “Same-Sex Marriage” Is Not What Some Same-Sex Couples Are Seeking*, 45 CAL. W. L. REV. 139 (2008). This article analyzes dissenting opinions from four state supreme courts regarding same-sex marriage.

John G. Culhane, *Marriage Equality? First, Justify Marriage (If You Can)*, 1 DREXEL L. REV. 485 (2009). The author examines the social science arguments surrounding the institution of marriage and argues in favor of legal recognition of same-sex marriages in order to expand the societal benefits of marriage recognition to all families.

William C. Duncan, *Marriage on Trial*, 12 J. GENDER RACE & JUST. 493 (2009). This article analyzes the Iowa court battle over the definition of legal marriage. The author argues that *Varnum v. Brien* was based on improper logic.

William C. Duncan, *Speaking Up for Marriage*, 32 HARV. J.L. & PUB. POL’Y 915 (2009). The author examines the definition of marriage throughout the presidency of George W. Bush and advocates a legal definition of marriage that would include only a man and a woman in order to protect the best interests of children in our society.

Randall P. Ewing, Jr., *Same-Sex Marriage: A Threat to Tiered Equal Protection Doctrine?*, 82 ST. JOHN’S L. REV. 1409 (2008). The author proposes a modified framework for analysis of equal protection claims related to same-sex marriage based on whether the public purpose of the classification outweighs the harm to the disadvantaged class.

Bryan K. Fair, *The Ultimate Association: Same-Sex Marriage and the Battle Against Jim Crow’s Other Cousin*, 63 U. MIAMI L. REV. 269 (2008). The author suggests that restrictions on same-sex marriage may ultimately be compared to the struggle against Jim Crow laws because the rights to privacy and freedom of intimate association render restrictions on same-sex marriage unconstitutional.

Christy M. Glass & Nancy Kubasek, *The Evolution of Same-Sex Marriage in Canada: Lessons the U.S. Can Learn from Their Northern Neighbor Regarding Same-Sex Marriage Rights*, 15 MICH. J. GENDER & L. 143 (2008). This article compares the social, political, and legal history of same-sex marriage in Canada and the United States, identifying causative factors for the divergence, most notably the power, given to American states to enact criminal and family law.

Suzanne B. Goldberg, *Marriage as Monopoly: History, Tradition, Incrementalism, and the Marriage/Civil Union Distinction*, 41 CONN. L. REV. 1397 (2009). The author critiques the use of history, tradition, and incrementalism as bases for failing to legalize same-sex marriage.

Suzanne B. Goldberg et al., *Equality Opportunity: Marriage Litigation and Iowa's Equal Protection Law*, 12 J. GENDER RACE & JUST. 107 (2008). This article analyzes the Iowa case of *Varnum v. Brien* and its potential impact on equality jurisprudence.

Darren Lenard Hutchinson, *Sexual Politics and Social Change*, 41 CONN. L. REV. 1523 (2009). This article explores the importance of "social movement" and political advocacy in achieving change such as the recognition of same-sex marriage.

Bennett Klein & Daniel Redman, *From Separate to Equal: Litigating Marriage Equality in a Civil Union State*, 41 CONN. L. REV. 1381 (2009). This article chronicles the *Kerrigan v. Comm'r of Pub. Health* litigation in Connecticut with a focus on history and legal strategy.

Nancy J. Knauer, *Same-Sex Marriage and Federalism*, 17 TEMP. POL. & CIV. RTS. L. REV. 421 (2008). This article analyzes the lack of uniformity among state laws regarding same-sex marriage. The author uses descriptions of hardship situations to illustrate deficiencies in the state-based approach.

Jeffrey L. Johnson, *Privacy, Authenticity, & Equality: The Moral and Legal Case for the Right to Homosexual Marriage*, 3 FLA. A & M U. L. REV. 21 (2008). The author explores moral, right to privacy, and equal protection implications of restrictions on same-sex marriage.

Shahar Lifshitz, *A Potential Lesson from the Israeli Experience for the American Same-Sex Marriage Debate*, 22 BYU J. PUB. L. 359 (2008). The author offers the Israeli approach to same-sex cohabitation as a potential model for resolving the ongoing dispute in the United States about same-sex marriage rights.

Adam J. MacLeod, *The Search for Moral Neutrality in Same-Sex Marriage Decisions*, 23 BYU J. PUB. L. 1 (2008). This article examines the implementation of same-sex marriage in Massachusetts, California, and Connecticut. The author asserts that because there is no morally neutral resolution, more open debate is needed.

Melissa Murray, *Equal Rites and Equal Rights*, 96 CAL. L. REV. 1395 (2008). The author examines the legacy of the California Supreme Court decision in *In Re Marriage Cases*, particularly how the California Supreme Court's decision has expanded discussion about same-sex marriage and the extent to which same-sex marriage ought to be the goal of the LGBT movement.

James L. Musselman, *What's Love Got to Do with It? A Proposal for Elevating the Status of Marriage by Narrowing Its Definition, While Universally Extending the Rights and Benefits Enjoyed by Married Couple*, 16 DUKE J. GENDER L. & POL'Y 37 (2009). This article explores the purpose and evolution of marriage, the merits of covenant marriage, and whether to extend marriage to same-sex couples. The author proposes a two-track system with one option available to opposite and same-sex couples (akin to civil marriage but called something else) and another option available to opposite-sex couples seeking a modified version of covenant marriage.

Marc R. Poirier, *The Cultural Property Claim Within the Same-Sex Marriage Controversy*, 17 COLUM. J. GENDER & L. 343 (2008). This article compares arguments against same-sex marriage to the arguments used in property claims to highlight the role of tradition and history in such disputes. The author suggests that accommodation might be made so that neither side is allowed complete control over marriage regulation.

Marc R. Poirier, *Name Calling: Identifying Stigma in the "Civil Union"/"Marriage" Distinction*, 41 CONN. L. REV. 1425 (2009). This article explores the implications of legal terms used to describe categories of kinship, focusing on "civil union" and "marriage."

Marc R. Poirier, *Same-Sex Marriage, Identity Processes, and the Kulturkampf: Why Federalism is Not the Main Event*, 17 TEMP. POL. & CIV. RTS. L. REV. 387 (2008). This article examines the role that federalism plays within the culture war surrounding same-sex marriage. The author asserts that the issues are too complex to be completely resolved by viewing them through a federalist perspective.

Nancy D. Polikoff, *Equality and Justice for Lesbian and Gay Families and Relationships*, 61 RUTGERS L. REV. 529 (2009). The author examines the two major positions within the same-sex marriage debate and advocates working toward marriage equality that recognizes and supports all of the diverse families within our society.

Jeffrey L. Rensberger, *Interstate Pluralism: The Role of Federalism in the Same-Sex Marriage Debate*, 2008 BYU L. REV. 1703 (2008). The author argues that protecting each state's ability to choose whether or not to recognize same-sex marriage fulfills a worthy purpose of supporting "interstate pluralism." The author provides state-by-state statistical comparisons on a wide range of social issues, from religious identifications to expenditures on pets, to rebut the argument that significant state variations do not exist. On the issue of same-sex marriage, the

author posits that permitting choice of law provides healthy temporary accommodations for communities adapting to social change at differing rates.

John R. Schleppebach, *Strange Bedfellows: Why Older Straight Couples Should Advocate for the Passage of the Illinois Civil Union Act*, 17 ELDER L.J. 31 (2009). This article explains how use of civil unions might benefit elderly persons who embark on later-life marriages by granting them state marriage rights without adversely impacting federal rights and benefits. The author encourages senior citizens and advocates to support passage of civil union legislation.

Bradley S. Smith & J. A. Robinson, *The South African Civil Union Act 17 of 2006: A Good Example of the Dangers of Rushing the Legislative Process*, 22 BYU J. PUB. L. 419 (2008). In response to several same-sex marriage cases before the South African Constitutional Court, the legislature was given one year to address discriminatory marriage provisions. This article examines the resulting legislation and discusses consequences associated with the Civil Union Act.

Edward Stein, *Marriage or Liberation?: Reflections on Two Strategies in the Struggle for Lesbian and Gay Rights and Relationship Recognition*, 61 RUTGERS L. REV. 567 (2009). The author examines the legal and political advancements for the LGBT movement in the past twenty years, concluding the movement must work for both full marriage equality and change in the legal institution of marriage in order to provide recognition and benefits to all families.

Mark Strasser, *A Little Older, a Little Wiser, and Still Committed*, 61 RUTGERS L. REV. 507 (2009). This article asserts that same-sex marriage is an important goal for the LGBT movement because establishing marriage equality would further both the LGBT movement and society as a whole.

Lynne D. Wardle, *From Slavery to Same-Sex Marriage: Comity Versus Public Policy in Inter-jurisdictional Recognition of Controversial Domestic Relations*, 2008 BYU L. REV. 1855 (2008). The author takes a historical look at conflict-of-laws issues surrounding controversial family relation arrangements, finding comity has always appropriately given way to strongly held domestic public policies. The article recounts the changes in interjurisdictional recognition of contentious domestic relations. The exercise illustrates the inverse relationship between adherence to comity and the strength of domestic opposition to a given relation, as well as the importance of factual and legal context to determine whether recognition of a particular relationship will threaten a strongly held domestic public policy.

Lynn D. Wardle, *A Response to the "Conservative Case" for Same-Sex Marriage: Same-Sex Marriage and the "Tragedy of the Commons,"* 22 BYU J. PUB. L. 441 (2008). The author explains and refutes conservative arguments in favor of legalizing same-sex marriage. The article examines negative results associated with same-sex marriage, and argues that in order to protect the interests of society as a whole, same-sex marriage should not be legalized.

Lois A. Weithorn, *Can a Subsequent Change in Law Void a Marriage That Was Valid at Its Inception? Considering the Legal Effect of Proposition 8 on California's Existing Same-Sex Marriages*, 60 HASTINGS L.J. 1063 (2009). This article evaluates how the litigation surrounding the passage of Proposition 8 in California would potentially impact the same-sex marriages that were authorized prior to the passage of the state constitutional amendment. The author concludes that Proposition 8 cannot be applied retroactively due to the lack of clear retroactive intent in the language of the amendment.

Parentage

Susan Frelich Appleton, *Parents by the Numbers*, 37 HOFSTRA L. REV. 11 (2008). The author argues in favor of a multiparent structure that would allow children to maintain relationships with genetic and nongenetic parents. The article examines the arguments for and against expanding the definition of parentage and concludes that a flexible child-centered definition would be consistent with the best-interests-of-the-child standard.

Timothy L. Arcaro, *No More Secret Adoptions: Providing Unwed Biological Fathers with Actual Notice of the Florida Putative Father Registry*, 37 CAP. U. L. REV. 449 (2008). This article explores litigation arising from Florida's Putative Father Registry and summarizes the legal rights of fathers subsequent to the Florida Supreme Court's *Heart of Adoptions, Inc. v. J.A.* decision.

Glenn I. Cohen, *The Right Not to Be a Genetic Parent?*, 81 S. CAL. L. REV. 1115 (2008). In light of modern reproductive technology, the author argues for legal recognition of the right not to be a genetic parent and asserts that, in certain circumstances, the right should be subject to advance contractual waiver. The author discusses the benefits of setting a default rule for nonuse in pre-embryonic situations.

James G. Dwyer, *A Constitutional Birthright: The State, Parentage, and the Rights of Newborn Persons*, 56 UCLA L. REV. 755 (2009). The article examines the application of parentage laws to situations involving newborn children and unfit parents.

Courtney G. Joslin, *Interstate Recognition of Parentage in a Time of Disharmony: Same-Sex Parent Families and Beyond*, 70 OHIO ST. L.J. 563 (2009). This article analyzes the role of the Full Faith and Credit Clause in same-sex parenting adjudications. The author reviews the treatment of other types of parenting adjudications, and argues that situations involving same-sex parentage deserve the same application of the clause.

Jeffrey A. Parness, *Systematically Screwing Dads: Out of Control Paternity Schemes*, 54 WAYNE L. REV. 641 (2008). This article examines paternity in the context of birth certificates, safe haven laws, and adoption. The author explores unequal treatment of mothers and fathers and offers suggestions to protect paternal interests.

Property Division

Shari Motro, *Labor, Luck, and Love: Reconsidering the Sanctity of Separate Property*, 102 NW. U. L. REV. 1623 (2008). The author proposes an alternative marital property rule where nearly all financial resources of the parties would be taken into consideration, and division of property would be based on a risk and reward model. Under the proposal, property division would take into account the economic identity of both parties during marriage, whether labor was generated or not.

Lee-ford Tritt, *Sperms and Estates: An Unadulterated Functionally Based Approach to Parent-Child Property Succession*, 62 SMU L. REV. 367 (2009). The author uses parental support cases to illustrate problems associated with property succession laws that rely on the sanguinary nexus test. The article sets forth recommendations to align succession laws with modern notions of family and parentage.

Tax Issues

Stephen T. Black, *Same-Sex Marriage and Taxes*, 22 BYU J. PUB. L. 327 (2008). The author argues that federal tax laws, which deny benefits to same-sex couples, pass the rational-basis test and, therefore, do not result in unconstitutional discrimination.

Wendy C. Gerzog, *Families for Tax Purposes: What About the Steps?*, 42 U. MICH. J.L. REFORM 805 (2009). The author argues in favor of equal treatment for steprelatives in all areas of tax law, regardless of the positive or negative tax consequences. The article examines the current status of steprelatives under tax law and makes several proposals in order to accomplish a uniform application of tax law.

Theodore P. Seto, *The Unintended Tax Advantages of Gay Marriage*, 65 WASH. & LEE L. REV. 1529 (2008). This article examines how the current Internal Revenue Code grants tax advantages to same-sex couples via the Code definition of interpersonal relationship. The author isolates inequalities in the Code and makes proposals to ensure fair tax regulation for same-sex and opposite-sex couples.

