



PRESIDENT'S MESSAGE:

President's Letter:

Dear Friends in Family Law,

We generally think of Family Law in its private-law aspect; family law defines legal relationships among family members, allocates rights and responsibilities based on those relationships, and provides rules and procedures for resolving disputes about those rights and responsibilities. But family law also has a public aspect; there is a web of rules and legal doctrines that regulate the relationship between the family and the state, and most of today's most pressing family-policy questions fall on the public side of the family-law aisle.

One of these pressing issues is how to maximize the chances that children will have the love, care, and support of both of parents; family law describes the legal grounds for divorce and provides rules for allocating the economic support and residential care of children, but it offers no guidance at all on whether and how to help parents achieve high-quality relationships that are less prone to separation or on how to cooperate effectively when separation does occur. Another pressing issue is population policy. I will write about the first of these issues in a future newsletter, but sitting here in Taiwan, where I have been welcoming my first grandchild into the world, I am drawn to population policy as a topic, and that is what I will discuss here.

Population policy is a pressing concern virtually everywhere. In the most impoverished nations of the world, families who cannot afford more children continue to have them. All but one (Afghanistan) of the countries with the highest fertility are in Africa; war-torn Somalia, for example, has the fourth highest fertility rate (5.99) on earth. In plain English, this means that the average Somali woman gives birth to 6 children. Of course, Somalia also has a very high infant mortality rate; one reason for high fertility is high chances of losing children. But lack of access to contraception and poor educational opportunities for women are also key. In countries and regions where women typically achieve literacy and can access the means to control their own fertility, fertility declines sharply.

In the industrialized world, by contrast, the problem is that children are becoming a vanishing resource. I am particularly conscious of this problem at this moment as I write from Taiwan. Taiwan's total fertility rate (TFR) in 2015 is 1.12. Only Singapore (0.81) and Macau (0.94) have lower TFRs, but a number of large nations are not doing much better. South Korea comes in at 1.25, Poland at 1.33, Japan at 1.40, Italy at 1.43, and Germany at 1.44. These numbers are alarming because replacement-level fertility (the number of births necessary to sustain the current

population) is about 2.1 in the developed world. And the impact on national population and age distribution of so-called “lowest low” fertility (1.3 or less) is dramatic. Continuing TFR levels at or below 1.3 “*imply a reduction of the annual number of births by 50% and a halving of the population size in less than 45 years.*”¹

In 2015, looking across the wealthy industrialized nations of the world, only three (New Zealand 2.04, France 2.08, and Ireland 1.99) had TFRs at or near replacement value. Even China (1.60), which had long sought to lower its population through the one-child policy, is now striving, instead, for a higher TFR. As long as a decade ago, the majority of the world’s population lived in countries/regions with below-replacement fertility, a pattern that shows no sign of abating. As one group of demographers put it then, “earlier notions that fertility levels may naturally stabilize close to replacement level—that is fertility levels with slightly more than two children per woman -- have been shattered. Sustained below-replacement fertility has become commonplace, and Europe has been a leader in the trend”²

What is also notable is how little relationship fertility seems to bear to a nation’s wealth or traditional culture. In the low-TFR camp, Italy and Germany are virtually tied at a dismally low rate. At the high end, Catholic Ireland is just a hair below secular New Zealand.

We are only beginning to understand the causes of low fertility and even further from a clear understanding of how to reverse it. There are success stories. France is perhaps the most notable. France had a much lower birthrate a couple of decades ago. Government policy makers took the issue seriously, and their varying actions have clearly had an effect. A keystone of French population policy is cash benefits. Monetary transfers to families represent 2.6 % of French GDP. Childcare is also heavily subsidized by the government, and represents 1.6 % of GDP. The family that produces three children gets a range of additional benefits.

Low-fertility nations have been flocking to France to learn from the French success. But one cannot assume that French policy is the only factor in producing the French success. France tops the Scandinavian countries, which have also invested heavily in family transfers and employment policy. And while the Scandinavian countries are doing relatively well by European standards (Denmark 1.73, Finland 1.75, Norway 1.86 Sweden 1.88), the United States – which offers comparatively few family benefits and has virtually no employment policies benefiting families with young children – essentially ties (1.87) the best of the Scandinavian nations.

We have much to learn. And family law experts can and should play a role in research and debates on this very important issue.

¹ Hans-Peter Kohler, Francesco C. Billari and José A. Ortega (2006). “Low Fertility in Europe: Causes, Implications and Policy Options.” In F. R. Harris (Ed.), *The Baby Bust: Who will do the Work? Who Will Pay the Taxes?* Lanham, MD: Rowman & Littlefield Publishers, 48-109.

² *Id.*

Marsha Garrison

marsha.garrison@brooklaw.edu

REPORT OF THE INTERNATIONAL SURVEY EDITOR:

The 2015 edition of the International Survey of Family Law was published in August. Members should have received their copy by now. The General Editor, Bill Atkin, is happy to consider submissions for the 2016

Survey, especially from countries that are not usually represented. He can be contacted by e-mail: bill.atkin@vuw.ac.nz

REPORT OF THE WEBMASTER:

We are continuing to develop and improve the website. Please feel free to suggest content, or to send reports on recent developments in your country.

The generic password for members is ISFL2014 (it is not case-sensitive). If you want to change to your personal password, go to Update Member Details and then Update Password.

The website also allows you to find out when your membership expires if you are a current member. If your membership has already

expired, it will ask you to renew.

To renew your membership, just log in with your email address. There have been a few problems because the last email address we have is out of date. If you have any difficulties please contact me at patrick.parkinson@sydney.edu.au. I can look up the email address we have for you.

Prof. Patrick Parkinson
University of Sydney

REPORT OF THE NEWSLETTER EDITOR:

I (and the Executive Council with me) welcome comments about the general format of the newsletter. This edition features two brief articles about family law changes in Italy and New Zealand for the “What’s New?” section. This type of addition would be particularly welcome in the times, like the present, between World Congresses, and we are thrilled that the contribution from Koreaa is by a junior scholar and new member of the Society.

We also include a new feature inspired by the Colloquium Hugues Fulchiron and his team conducted in Paris in April. The team posed a problem in the handling of family property that we’ve reproduced, and various council

members and younger scholars under their supervision have added “answers” from their countries’ perspective. We hope it will not only be informative but also useful for comparative family law. We plan to draft and “answer” a question dealing with child custody for the next issue. If you would like to contribute, please send me an email, and I will send you the problem once Jo Miles and I have drafted it.

Many of you kindly send me updates of changes to your email addresses. This is very important, since otherwise not only will you miss the Family Letter, but also other notices that the Board sends out increasingly often from the website. When you get these

notices, please do not reply to me but to the address indicated in the notice. The most important place to send changes of address is to Masha Antoloskoia, our Treasurer, though I will forward her your notes about address changes that are sent to me.

Masha and Patrick Parkinson have been hard at work reconciling our membership lists and finally think they are up to date on paid members. (In fact, this Letter should be sent out through the website for the first time.) In doing this arduous work, we have discovered that we have lost many members for a variety of reasons. While we have always been interested in attracting new members to the ISFL, at this time it is particularly important to do so. We ask you please to contact us about your associates who might have not updated addresses and emails, so that they have been dropped from membership.

Further, if you know of junior colleagues in family law who might be interested in the Society, kindly let them know how you personally have profited from the Society.

For me personally, the knowledge gleaned over more than 25 years now from the ISFL community of family law scholars has been really significant. I have benefited even more from the friends from all over that I have made and what I have learned about family cultures around the world and how we handle our similar issues in our various ways.

The instructions for reaching the membership directory are included below, in Patrick's notes.

Margaret F. Brinig, Editor
The Family Letter
mbrinig@nd.edu

A special publication offer for ISFL members:

Thomson Reuters

a) *The Practical Law Family Global Guide*

ISFL members enjoy complimentary access to the complete Practical Law Family Global Guide published by Thomson Reuters.

In this guide, you'll find practical information on topical issues and country-specific Q&A overviews on family law and practice. You'll also have access to our Q&A tool, allowing you to generate custom comparison reports for the jurisdictions and legal topics of your choice.

Global guides are written by leading local law firms, working together with Practical Law's experienced editorial team and an International editorial board of expert practitioners. This helps to ensure the guide addresses the key issues facing any international lawyer doing business in an unfamiliar jurisdiction today. If you would like more information on a contributing law firm or have any feedback about this guide, please contact yani.paramova@thomsonreuters.com For information about Practical Law, please visit uk.practicallaw.com or try the service for yourself by requesting a [free trial](#) today.

[View the guide](#)

b) *Family Law Guide*

20% discount on Family Law guide

Original price: £180

Discounted price: £144

Promotion dates: 01/11/15 – 31/11/15

Customers will need to quote this code to receive the discount: 2270501E

ISFL members can order through the website at this link -
- <http://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=6405&searchorigin=family+law+&productid=665117>

Or email the order to customer services at this email address:
TRLUKI.intlorders@thomsonreuters.com

CONFERENCES AND CALL FOR PAPERS:

REPORTS ON RECENT CONFERENCES

Report on Chongqing Conference

On October 22-23, 2015, the ISFL co-sponsored a regional conference in Chongqing, China. The conference, planned and organized by Executive Council member Professor Chen Wei, was on the topic "Family Law and Family Justice in the 21st Century: Practice and Reform." Cosponsors were the China Marriage and Family Law Academy (CMFLA), China Association of Marriage and Family Studies (CAMF) and its

affiliate All China's Women Federation (ACWF), and Southwest University of Political Science and Law (SWUPL), where Professor Chen is a member of the Civil and Commercial Law School faculty and where the conference was held.

Papers were presented by family law experts from China, Japan, Malaysia, Poland, South Korea, the United Kingdom, and the United States. Simultaneous translation was provided at all sessions, enabling participants to fully understand the proceedings. Papers dealt with a range of family law issues, including divorce, cohabitation, property management for minors, guardianship of the

elderly, guardianship of the mentally incapacitated, succession rights, and single parenthood. Some papers focused on theory; others presented the results of empirical research.

For a non-Chinese participant, the opportunity to learn something about how family disputes are processed in this large and important country was particularly valuable. For example, Professor Chen Wei presented results of an empirical research project (conducted with Shi Lei and Zhang Weilun) on mutual-consent divorces, which now represent slightly more than 80% of all divorces. Mutual-consent divorces are “registered” with a local office and accessible to researchers. Professor Chen and her colleagues’ surveyed divorces registered in three Chongqing districts in 2013 and 2014; their sample included 720 case files. 40.7% of the sample had been married for seven or fewer years; 59.2% for ten or fewer years. Interestingly, 89% of the sample had minor children (or a child on the way). Following traditional Chinese cultural patterns, 48% of the couples agreed that male children would be raised by their father and female children by their mothers. But in 46.6% of the cases, the agreement specified that the opposite-sex parent would have custody. Professor Cheng and her colleagues attribute this finding to China’s long-standing policy of gender equality and its one-child policy, under which the “significance of the sex of a child is further weakened.” In the sample, only 7.6% of couples had more than one child, attesting to the continued significance of the one-child policy. In this small portion of the sample, split custody was quite common, occurring in 45% of the cases. A perhaps surprisingly large number of the files involving minor children (32%) contained an express statement that the nonresidential parent would not have any support obligation. In the majority of these cases (77%) the residential parent obtained some kind of property award

or the right to live in the family home, perhaps a trade for future child support. However, the files contained no further information on property division.

Based on their research findings, the research group found that the divorce-registration system had both strengths and weaknesses. On the plus side, the researchers concluded that the system facilitated agreements, particularly on the cost of higher education, and that counseling and other services provided by the registration offices were beneficial. On the minus side, the registration system did not produce support agreements in many cases, offered no mediation support, failed to provide adequate information about divorce law, and may not have ensured adequate provision for dependent children.

Participants at the conference also had the opportunity to learn about shared parenting in Malaysia, the decline of familialism as a guiding principle of Korean family law, a recent constitutional challenge to Japan’s succession law, and even the role of empathy and kindness in family law.

In sum, the conference offered ample opportunity to learn and to share.
Marsha Garrison

CALL FOR PAPERS

“Family Realities and Family Law”

INTERNATIONAL SOCIETY OF
FAMILY LAW
NORTH AMERICAN REGIONAL
CONFERENCE

May 22-24, 2016

Jackson Lake Lodge, Grand Tetons
National Park, Wyoming

Family law aims to address the realities of family life. But the past half century has witnessed profound changes in family form, gender roles, and relational ideals. Family law has, of course, changed during this period as well. But has it changed in the right way? Are the changes adequate to optimally promote family equity, harmony, and stability? The conference theme is intended to be inclusive, extending to both public and private family law as well as the social sciences. International and comparative approaches are strongly encouraged but not required. To the extent possible, the conference will feature panels in French and Spanish as well as English, but translation will not be available.

In addition to regular conference presentations, the meeting will include a limited number of workshop sessions (in English only) to provide an opportunity for discussion of scholarly work at an early stage. Workshop participants will be asked to circulate a brief (no more than five pages) summary of their projects before the meeting date.

Please send proposals to
Professor Peg Brinig at
NorthAmerica2016proposals@isflhome.org
BY February 20, 2016. Proposals will be accepted on a rolling basis.

Save the Date: 25 -29 July 2017: 16 ISFL World Congress Family Law and Family Realities, Amsterdam, The Netherlands
Venue: VU University Amsterdam. The campus of the VU University is located in the centre of the financial district of Amsterdam. It is just 10 minutes away from the city centre and from Amsterdam International Airport Schiphol, one of the biggest European airports with direct connections to almost all European and many international destinations.

Preliminary programme will appear in the next newsletter.

Call for papers and registration: June 2016.

WHAT'S NEW?

South Korea: The Supreme Court decision on the Admissibility of No-fault Divorce

Dongjin Lee
Professor of law, Seoul National University
School of Law, frangel2@snu.ac.kr

In a recent en banc decision on September 15, 2015 (2013Mu568), the Korean Supreme Court addressed one of the fundamental issues of the Korean judicial divorce law—fault-based divorce or no-fault divorce (or, the rule against the responsible party’s divorce claim).

In this case, the claimant had maintained his marriage for 24 years before he left his wife and children in January 2001; Since then he has cohabited with a woman and has a daughter between them, a minor wanting parental care; He

also needs his cohabitant's care because of diabetes; He once asked his wife and children to be a kidney donor for him in late 2011, only to be refused; He had provided them separation maintenance and child support until he filed divorce in January 2012, but not any longer; the defendant is a 65 years old woman with some diseases; she refuses divorce.

According to Korean Civil Code, there exist six grounds for judicial divorce, the most important one of which is 'other serious issue making it difficult to continue the marriage.' It seems obvious that continuing this marriage is difficult. The preexisting case law, however, would not allow judicial divorce because the claimant is the party responsible for the breakup: This kind of claim should be estopped against good faith (the rule against the responsible party's divorce claim or a weak version of fault-based divorce system), except when it is obvious that the defendant also wants to get divorced but does not agree to do so only to torture the claimant, which is not in this case.

Some expected that the Supreme Court would overrule the case law to allow judicial divorce in this case. Last year, the Supreme Court denied the betrayed spouse's pain and suffering damages against the betraying spouse if the act of infidelity had been committed after their spousal relationship had already been irretrievably

dissolved, and recently, the Constitutional Court repealed the punishment of adultery. Naturally, no-fault divorce law was regarded as the next step.

In this 7 to 6 decision, however, the majority opinion upheld the preexisting case law with a slight modification, i.e. an introduction of a new exception when the responsible party provided the spouse and child sufficient protection. Its arguments are as follows: the Korean divorce law, unlike those in other jurisdictions, allows divorce by consent, which lowers the pressure for no-fault divorce; Korean Civil Code has neither hardship clause nor divorce maintenance to protect the divorced; the punishment of adultery was abolished and that of bigamy is not introduced yet; the gender-equality in Korea has not been advanced enough. The minority opinion, contrarily, argues that overruling is required in view of the constitutional understanding of marriage and the advancement of gender-equality, and that hardship and divorce maintenance can be considered in judging the divorce ground and the division of marital property.

This decision frustrated or at least postponed the introduction of no-fault divorce law by judicial overruling for years. A legislative intervention would be better, but the legislative body might be reluctant to intervene in this controversial issue.

In New Zealand, domestic violence has been the subject of various reviews. Another one is under way. Professor Bill Atkin was part of a Law Society team that made submissions to the Ministry of Justice on its latest discussion document. The following news item was distributed to the legal profession and the media:

Law Society submits on family violence review
12 October 2015

The New Zealand Law Society has welcomed the government's review of family

violence legislation and supports initiatives to address domestic violence, but believes the scope of the discussion should be broader to include analysis of all relevant laws.

In its submission on the Family Violence Review discussion document, released in August by Justice Minister Amy Adams, the Law Society says a more comprehensive and interdisciplinary review was preferable.

This would involve a review of the Domestic Violence Act 1995 and related legislation including the Care of Children Act 2004, Children, Young Persons, and Their Families Act 1989, Legal Services Act 2011, Victims'

Orders Against Violent Offenders Act 2014, Criminal Procedure (Transfer of Information) Regulations 2013 and any other relevant regulations, to ensure consistency.

Further, the discussion document leaves the recent family justice reforms, eligibility for legal aid, Prosecution Guidelines and funding for support services outside the scope of review. The Law Society says that these aspects of the fight to reduce family violence are essential to any considered review of the legislation, and it is "unfortunate they have been excluded from the current review".

"In particular, eligibility for legal aid is outside the scope of review but is a significant barrier for many victims of domestic violence."

Overall, the Law Society considers that legislation already in place to protect victims of domestic violence is adequate, although amendments in some areas are recommended.

"The Law Society does not consider that creation of a standalone family violence offence, or class of family

violence offences, as suggested in the discussion document, is necessary."

Victim safety could also be improved by better coordination of services and responses when complaints are laid, and increased information sharing between agencies.

One example of an improved response could involve implementing a policy of mandatory investigation by the Ministry of Social Development where there are more than two instances of domestic violence notified within six months.

"Any initiatives that will reduce the incidences of domestic violence and break the cycle of violence are welcomed," the Law Society says in the submission.

But while the Law Society recognises that amendments to laws can lead social change, it considers that the "high rate of domestic violence in New Zealand requires more than an improved legal response".

"Ultimately it requires a shift away from a culture where domestic violence is tolerated".

FAMILY LAW IN A GLOBAL SOCIETY, A NEW SHORT MONOGRAPH SERIES
PUBLISHED BY BRILL

Members of the Society are encouraged to submit to Jason Prevost (prevost@brill.com) a proposal for a short monograph of 20,000-40,000 words of text or 50-100 pages to be published by Brill as part of its Family Law in a Global Society quarterly short monograph series. Taking a national, comparative, or international perspective, monographs in the series will address specific issues found in case law and statutory law that have an impact on the formation, maintenance, and termination of family relationships. At a time when family

law has undergone a major transformation in most of the countries in the world, this publication will fulfill the function of providing academics practitioners, and policy-makers worldwide with information regarding the changes that have occurred and the approaches being taken in specific countries toward particular family law doctrines. As more and more individuals move from one country to the next either by choice or by necessity and form new family relationships with persons from other countries and cultures, there is a need for an

understanding of the possible conflicts in family law that will govern their new relationships. This publication will meet that need. Each monograph is expected to be based on solid research with footnotes and a bibliography. Professor Sanford Katz is the Editor-in-Chief of the series.

Each proposal will be evaluated and reviewed by the Acquisitions Editor and the Editor-in-Chief or a member of the Board of Editors, which includes Masha Antokolskaia, Bill Atkin, Ursula Basset, Marsha Garrison, Jonathan Herring, and Jinsu Yune.

RECENT PUBLICATIONS OF NOTE BY ISFL MEMBERS:

(Please send any submissions for future newsletters to Ursula Bassett, ucbasset@yahoo.com).

1. Family Law in General: History; Theories; Overviews

ATKINS, Bill, »The Revised Family Court System in New Zealand: Secret Justice and Privatisation” in Mavis Maclean, John Eekelaar, Benoit Bastard (eds) *Delivering Family Justice in the 21st Century* (Hart Publishing, Oxford, 2015) pp 39-50.

BASSET, Ursula C., *Nuevo Código Civil y Comercial Comentado. Tratado Exegético. Relaciones de Familia* (New Civil and Commercial Code. Exegetical Treaty. Family Relations, Buenos Aires, 2015, Thomson Reuters, T. III, 800 pp.

DETHLOFF, Nina, *Familienrecht. Ein Studienbuch* (Family Law, A Study Book), CHBeck, 2015, 570 pp.

MILES, Jo, *Family Law: Text, Cases, and Materials* with Sonia Harris-Short and Rob George, OUP, 3rd edition, June 2015, 1144 pp.

PARKINSON, Patrick, *Australian Family Law in Context: Commentary & Materials - 6th Edition* Thomson Reuters, 2015,

SIMAO, Jose-Fernando, *Diccionario de Direito de Familia* (Dictionary of Family Law), Atlas, Grupo Gen, Sao Paulo, 2015, 504 pp.

WARDLE, Lynn, »The Future of the Family: The Social and Legal Impacts of Legalizing Same-Sex Marriage”, 13 *Ave Maria L. Rev.* 237 (2015)

2. Before/Creation of Spousal or Quasi - Spousal Relations

3. Before/Creation of Parent-Child or Similar Relations

WARDLE, Lynn, “Legal Perspectives on Some Causes of and Remedies for Declining International Adoptions” published in *The Intercountry Adoption Debate: Dialogues Across Disciplines 277-302* (Robert L. Ballard, et al, eds., Cambridge Scholars Publishing, 2015)

4. Parent-Child Relations in the Ongoing Family or Similar Relations

5. Termination/Post-Relations of Spouses & Quasi-Spouses

Ferrand, Frédérique and FULCHIRON, Hugues, *La rupture du mariage en droit comparé* (The Breakdown of Marriage in Comparative Law), Société de Législation Comparée, Paris, 2015, 298 pp.

OLDHAM, Thomas, “Why a New Uniform Equitable Distribution Jurisdiction Act Is Needed to Reduce Forum Shopping in Divorce Litigation,” 49 *Fam. L. Q.* 359 (2015)

6. Termination/Post-Relations of Parents and Children

BRINIG, Margaret F.. “Substantive Parenting Arrangements in the USA:

Unpacking the Policy Choices,” *Child & Fam. L. Q.*, vol. 27, No. 3, at 249-259 (2015)

OTHER PUBLICATION NOTES:

DETLOFF, Nina. “BOELE-WOELKI/DETHLOFF/GEPHART (EDS.), FAMILY LAW AND CULTURE IN EUROPE – DEVELOPMENTS, CHALLENGES AND OPPORTUNITIES, EUROPEAN FAMILY SERIES, VOL. 35, INTERSENTIA 2014”

Hrušáková, M., KRÁLÍČKOVÁ, Z., Westphalová, L. et al. **Rodinné právo**. 1. ed. Praha: C. H. Beck, 2015.

Academia iuris. ISBN 978-80-7400-552-7 (Family Law Textbook).

Hrušáková, M., KRÁLÍČKOVÁ, Z., Westphalová, L. et al. Občanský zákoník II Rodinné právo § 655-975: Komentář. 1. ed. Praha: C. H. Beck, 2014. ISBN 978-80-7400-503-9.

(Commentary on Civil/Family Code)

News about Members:

Marsha Garrison reports that she will be a Fulbright Scholar at Yangon University in Yangon, Myanmar from December 2015-March 2016.

J. Thomas Oldham reports that he will be a Fulbright Senior Scholar at the Australian National University and the University of Sydney in November and December 2015.