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Introduction



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Introduction

June Carbone[†]

On April 27-28, 2018, the University of Minnesota hosted the North American Regional Meeting of the International Society of Family Law. The conference involved sixty-five participants from Canada, the United States, and a half dozen other countries. The conference, organized around the theme of “Inequality and the Future of Family Law,” addressed a broad range of issues with international and comparative dimensions. *Law and Inequality: A Journal of Theory and Practice* is pleased to be able to publish a selection of papers from the conferences that explore new areas of family. This selection represents some of the more provocative and original papers presented at the conference.

The first, Nancy E. Dowd’s article, “Equality, Equity and Dignity,” defines a children’s rights agenda in response to the Trump Administration’s policy of separating children from their families at the American border. In this article, Professor Dowd focused on the concept of equality for children. While children’s interests are often defined in the context of their family relationships, the Trump Administration’s actions give new urgency to seeing children as individual actors with rights independent of their caretakers. This article begins with a compelling metaphor: three children of different heights attempting to see over a fence. The concept of equality must take into account their situational differences; indeed, for children, notions of equality are meaningless without attention to their needs for developmental support. Dowd further draws on constitutional and criminal justice jurisprudence to create a rich notion of children’s equality tied to the principles of equity and dignity that animate discussions of equality in other contexts.

Rachel Rebouché’s “The Judicial Bypass Convening” addresses the findings of a group of stakeholders on the operation of judicial bypass proceedings that allow minors to receive abortions without parental involvement. 123 stakeholders from the 37 states with parental notification or consent laws participated in the meeting, which was held in Washington, D.C., in April 2018. Rebouché

[†] Robina Chair in Law, Science and Technology, University of Minnesota Law School.

summarizes their conclusions while protecting the anonymity of the participants. Her article emphasizes six takeaways from the meeting that would make the judicial bypass “a more humane process for young people”:

- the importance of listening to and empowering young people;
- the nuanced nature of parental involvement in abortion decisions;
- the logistical barriers, such as cost, that deter minors from gaining access to abortion services;
- the importance of forming and sustaining networks among stakeholders;
- the dearth of data on how the judicial bypass operates from state to state; and
- the need for better outreach to young people across diverse communities.

The discussion provides a rich and nuanced account of the challenges teens face in dealing with abortion. It addresses the importance of providing assistance that is attentive to the teens’ individual circumstances, and calls attention to a number of issues that have not received it elsewhere. For example, some teens in need of assistance may not be living with their parents while the caretakers with whom they reside may not have decision-making authority under state statutes. In addition, the single most important source of information for teens about judicial bypass procedures and support groups is the Internet. This finding underscores the importance of web presence for stakeholders that is mindful of the way that teens seek assistance and attentive to what may be overlapping identities (such as LGBT teens of color). The discussion also calls attention to the importance of coordinating involvement of affected groups: schools dealing with an increase in absenteeism as a result of pregnancy or volunteers addressing logistical issues like transportation. The result is a rich and useful discussion of the experiences of those in the field.

Jody Lyneé Madeira, from the Indiana University Maurer School of Law, provides a fascinating account of fertility doctors who use their own sperm to impregnate their patients in “Uncommon Misconceptions: Holding Physicians Accountable for Insemination Fraud.” The article begins with the story of Dr. Donald Cline, an Indianapolis physician who inseminated patients with his own sperm in the 1970s and 1980s, producing over forty half-siblings.¹

1. Vic Ryckaert & Shari Rudovksy, *Indianapolis Fertility Doctor Accused of*

23andMe, a genetic testing service that allows participants to identify genetic relatives, led to the discovery. Cline had told his patients that he would use donor sperm from a medical resident, and that no resident would provide sperm for more than three successful pregnancies.² One of Cline's daughters used 23andMe to look for possible siblings and found seven on her first attempt. She filed a consumer protection complaint with the Indiana Attorney General in 2014.³ In response to an inquiry from the authorities, Cline denied that he ever used his sperm to inseminate patients. After genetic tests established his paternity, Cline pled guilty in 2017 to two counts of felony obstruction of justice. He was given a suspended sentence and fined \$500. He also voluntarily surrendered his medical license in 2018.⁴

While Cline's actions were clearly unethical, it is not clear that they were illegal. The counts to which he pled stemmed from his lies to authorities rather than from the insemination itself. Madeira makes the case that Cline's activities were a violation of patient trust and physical integrity, with lifelong consequences for the children who resulted. Her article discusses potential liability under existing criminal statutes and their limitations, and presents an in-depth discussion of potential new legislation to criminalize "fertility fraud." The proposed legislation would criminalize the use of gametes or embryos without the written consent of the donor and the recipient. It would also extend the statute of limitations to five years after the discovery of the wrongful use of the gametes or embryos. Madeira further discusses potential civil remedies and the respective roles of individual and institutional accountability.

In "A Case for Legalizing Polygamy in Western Societies: Lessons from the Global South," John Joseph Wamwara draws on the Kenyan experience to argue for the legalization of polygamy. He presents a compelling account of the role of polygamy in Kenyan history and culture, and how the criminalization of polygamous practices in the developing world often stemmed from the ignorance

Using Own Sperm, INDIANAPOLIS STAR (Sept. 12, 2016), <https://www.indystar.com/story/news/crime/2016/09/12/fertility-doctor-facing-charges/90253406/>.

2. *Id.*

3. Angela Ganote, *A Need to Know: DNA Reveals A 30-Year-Old Family Secret*, FOX59 (May 12, 2015), <https://fox59.com/2015/05/12/a-need-to-know-dna-reveals-a-thirty-year-old-family-secret/>.

4. Shari Rudavsky, *Fertility Doctor Pleads Guilty to Obstruction of Justice in Insemination Case*, INDIANAPOLIS STAR (Dec. 14, 2017), <https://www.indystar.com/story/news/2017/12/14/fertility-doctor-accused-inseminating-own-patients-court-today/951397001/>.

and intolerance of Christian missionaries. He then examines the practice of polygamy today and the broad-based support for its legalization in Kenya 2014. The article maintains that legal respect for polygamous traditions is an important component of tolerant, multicultural societies. It discusses the leadership of well-educated Kenyan women in promoting the legislation. He further concludes that the failure to recognize the legal validity of polygamous unions often works to the disadvantage of the presumed “victims” of such practices. He concludes that in a globalized world, Western societies should also be open to the polygamy as a legitimate practice.

Taken together, these articles reflect the depth and breadth of the contributions of the International Society of Family Law as these scholars explore emerging issues in family law with potentially global dimensions.

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