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For

**RECONCEIVING THE FAMILY:**
**CRITICAL REFLECTIONS ON THE AMERICAN LAW INSTITUTE’S PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION**
(Robin Fretwell Wilson, ed., Cambridge University Press, 2006)

**Foreword** by Mary Ann Glendon, *Learned Hand Professor of Law, Harvard Law School*

**Introduction** by Robin Fretwell Wilson, *Associate Professor of Law, University of Maryland School of Law*

**Part 1 – Fault**

- **Beyond Fault and No-Fault in the Law of Marital Dissolution**, by Lynn D. Wardle, *Professor of Law, Brigham Young University Law School*
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- Economic Consequences of Divorce: A Scandinavian Perspective on the ALI Principles, by Peter Lodrup and Tone Sverdrup, Professors, Institute of Private Law, Oslo

Afterword by Carl Schneider, Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law, University of Michigan Law School
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Working Title:  
Reconceiving the Family: Critical Reflections on the American Law Institute’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION

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This proposal is being submitted exclusively to Cambridge University Press. This volume provides a critical examination of and reflection on the American Law Institute’s ("ALI") PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS ("PRINCIPLES"), arguably the most sweeping proposal for family law reform attempted in the U.S. over the last quarter century. Perhaps the most remarkable aspect of this volume is the diversity of perspectives contained within it. Among our contributors are feminists and child advocates, social conservatives, liberals, and moderates. They have utilized a wide range of analytical tools, including economic theory, constitutional law, social science data, and linguistic analysis. This volume also offers comparative perspectives missing in many academic volumes on family law. Unlike other recent family law scholarship, this volume includes the perspectives of U.S. judges and legislators, the groups who will decide whether or not to adopt the PRINCIPLES’ law reform proposals. To better inform those decisions, the volume also provides the perspectives of leading family law scholars in the United Kingdom, Europe, Canada and Australia, jurisdictions that have experimented to varying degrees with the subjects of the PRINCIPLES’ proposals.

In October of 2004, leading family law scholars in the U.S. convened in Cambridge, Massachusetts to workshop draft chapters. Co-chaired by Professor Mary Ann Glendon, Learned Hand Professor of Law at Harvard Law School, and Professor Robin Fretwell Wilson of the University of Maryland School of Law, the group engaged in a lively discourse and offered constructive feedback, resulting in the chapters now submitted for editing. Professor Wilson will edit this volume.
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- 1 additional legislator or state court judge will also be invited to participate

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Chapters by leading scholars of family law in Europe and Canada will also be included

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Summary

This volume primarily follows the architecture of the PRINCIPLES. The first seven Parts correspond to chapters in the PRINCIPLES, while the eighth and ninth Parts offer the perspectives of sitting judges and legislators and leading international scholars of family law, respectively.

Note: With two exceptions, all chapters in Parts 1 - 7 and Chief Justice Corrigan’s chapter in Part 8 have been received for editing. Authors of the Foreword, Afterword, Introduction, and remaining chapters in Parts 8 and 9 have committed to a May 15, 2005 deadline, with the exception of Professor Eekelaar who anticipates submitting his chapter in September.

Introduction

The Introduction discusses the historical influence of the American Law Institute and describes the PRINCIPLES, focusing on their development, purposes and scope. The Introduction should be especially helpful to international readers and others who may not have prior familiarity with the PRINCIPLES or the ALI.

Part 1 – Fault

The PRINCIPLES eliminate fault from consideration at divorce in important respects. Professor Wardle describes and explains the basis for the ALI’s rejection of fault and then demonstrates that this repudiation of fault reflects a long-established generational perspective favoring the elimination of all obstacles to the exercise of absolute individual autonomy in exiting marriage. He examines fault and no-fault in divorce, quantitatively, conceptually, and jurisprudentially, suggesting that the fault/no-fault language is dated and restricting, and proposing the substitution of the language of accountability and responsibility and alternatives to divorce. Professor FitzGibbon argues that the PRINCIPLES’ rejection of fault extend a trend of the past several decades towards the development of the no-fault marriage, the no-fault family, and the no-fault legal system. He aims to show how these general trends are deleterious, and develops the merits of obligation, ascription, and acceptance of blame or fault, with special attention to the obligations of marriage.

Part 2 – Custody

Professor Levy examines the PRINCIPLES’ substantive custody standard, the “approximation standard,” that requires judges to award each parent time and responsibility post-divorce according to the time that parent spent with the child during the marriage. He places the approximation standard in the historical context of efforts to lessen the indeterminate qualities of the “best interests of the child” standard and finds it subject to the same kind of interpretive manipulation. He also examines two of the PRINCIPLES’ procedural reforms—the “Parenting Plan” proposal and rules to govern the judicial appointment of lawyers or guardians for children.

1 For more detailed information, please see the abstracts of chapters contained in Appendix A.
in custody dispositions. **Professor Wilson** addresses the PRINCIPLES’ proposal to confer custody rights on unrelated adult co-residents who shared caretaking responsibility for a child, showing that the Reporters give little consideration to the concomitant risks of granting such “de facto parents” continued access to a child. She focuses her discussion on one such risk, sexual abuse, and marshals a significant body of research suggesting that more children will be sexually exploited if legislators and judges embrace this expanded definition of parenthood. **Professor Meyer** addresses the constitutionality of the custody provisions. He argues that the Constitution imposes meaningful limits on the state’s ability to deny parent status to traditional parent figures but imposes fewer limitations than is often assumed on the creation of new parenting roles. He concludes that the ALI’s approach is constitutionally permissible and may well be the best means available for securing the welfare of children.

**Part 3 – Child Support**

**Professor Baker** takes up the difficult question of what makes someone financially responsible for a child. She shows that the PRINCIPLES evince a clear resistance to imposing parental obligation on non-traditional parents in significant contrast to its willingness to embrace an expansion of custody and visitation rights for non-traditional parents. She demonstrates how this differing treatment of rights and obligations demonstrates different perspectives on the binary parent model, biological parenthood, and the state's role in a child's well-being. She then offers both justifications for and criticisms of the divergence. **Professor Strasser** argues that the result of the PRINCIPLES’ attempt to balance conflicting interests of the parents while at the same time doing the least damage possible to children is an impressive, careful, balanced treatment of an area fraught with difficulty. He focuses on one question to illustrate some of the competing interests and notions of fairness involved in child support issues, namely, the conditions under which income should be imputed to a stay-at-home parent.

**Part 4 – Property Division**

Focusing on chapter four of the PRINCIPLES and to some extent chapters five and six, **Professor Gregory** examines the extent to which the PRINCIPLES relating to property division in divorce proceedings have affected state law in the five years since their initial publication in draft form. He assesses whether the PRINCIPLES will have an observable impact on the body of law that state courts and legislatures have developed over the last three decades, and whether they accord sufficient respect to the practical considerations that have animated state property division law. **Professor Silbaugh** examines the PRINCIPLES’ separation of the financial and non-financial aspects of marriage, concluding that the document represents conflicted and incoherent views toward its own dichotomy. While the division into financial and non-financial is predictable, she asserts it is not coherent, a prominent goal of the ALI. **Professor Westfall** argues that the PRINCIPLES may not only impede much needed reforms but may even lead the legislators, judges, and rule makers to whom they are addressed to adopt unsound policies. He addresses three basic flaws and three recurring deficiencies in the PRINCIPLES and shows how they characterize the problems with the division of property. He concludes that the PRINCIPLES
can serve as an important research tool even though they ultimately fail as a proposal for family law reform.

**Part 5 – Spousal Support**

Professor Carbone critiques the PRINCIPLES’ spousal support provisions as “backward looking” in important respects. She argues that the PRINCIPLES take couples dissolving their relationship as it finds them and imposes obligations on the basis of their position at the time of the split rather than the understandings they had along the way. She concludes that while the ALI approach may succeed as part of a family law of transition, to succeed more permanently in forging a new basis for family obligation will require making the terms of commitment clear at the beginning, and not just the end, of relationships. Professor Spaht examines the provisions of the PRINCIPLES that eliminate fault as a consideration, the Reporter’s commentary, and other scholars’ analyses of the PRINCIPLES to ascertain the underlying assumptions about the meaning of marriage. She finds that the meaning of marriage is central to questions regarding its dissolution. She concludes that the substitute for marriage implied by the PRINCIPLES is weak and fragile and offends basic notions of justice and fairness. She advocates restoration of the marriage concept and considers the role of law in doing so.

**Part 6 – Domestic Partnership**

Professor Brinig considers whether the PRINCIPLES’ Domestic Partnership rules meet the criteria for default rules. Because they do not, she considers whether these rules are better thought of as a set of "penalty default rules," designed to insure that the parties would contract around them, or at least that they would reveal privately held information. Building on this theoretical possibility suggested by Professors Ian Ayres and Robert Gertner in the commercial context, she argues that even a "penalty default" explanation is not likely to work as a practical matter. Professor Brinig also argues that Chapter 6, which presumably was designed to give some relief to same-sex couples, may have the unintended consequence of moving states toward same-sex marriage. In her view, if a state desires such a change, it could do so directly by amending its statutes rather than dragging along the far larger number of cohabiting, heterosexual couples. Professor Ertman also considers the underlying reasons why duty should flow between spouses or partners in a cohabiting or marital relationship. She examines the language used by cohabitants to discuss their relationships to discern the way in which persons in cohabiting relationships understand their own relationships. She then considers whether these subjective understandings should be of consequence to the law’s regulation of cohabiting relationships. In her chapter, Professor Garrison argues against adoption of the ALI’s proposed domestic partnership standards, which impose marital obligation based largely on cohabitation. Using empirical evidence demonstrating that married and cohabiting couples tend to behave and view their relationships quite differently, Professor Garrison concludes that cohabitation does not imply the traditional bases of relational obligation. She contends that the ALI proposal would thus introduce discordant values, would diminish personal autonomy in relational choices, devalue marital commitment, and harm children’s interests. Professor Scott argues that the ALI
approach to regulation of intimate relationships is unnecessary to provide financial protection to financially dependent partners, and is undesirable because it offends liberal values and limits adults’ freedom to order their intimate lives. Instead of an imposed status, Professor Scott proposes a framework of contract default rules that embody the implied understandings of parties in marriage-like unions. She would permit both married and unmarried couples to opt out by agreement.

**Part 7 – Agreements**

Professor Adolphe compares the Principles with the Canadian Law Reform Commission’s Report Beyond Conjugality: Recognizing and Supporting Close Personal Relationships. She finds that both have an inadequate vision of the human person, marriage and the State, since both, she argues, inevitably point to the abolition of State marriage laws. Professor Bix contrasts the ALI’s treatment of premarital, marital, and separation agreements with current doctrine, on one hand, and, on the other hand, with arguments for respecting greater private ordering regarding marriage. While largely agreeing with the ALI’s approach, he urges an approach more respectful of personal choice. Professor Stark draws on international law, including private international law conventions as well as the relevant international human rights treaties. She identifies the interests protected and promoted by the Principles and then focuses on the ways in which individuals deviate from or avoid domestic legal regimes. Finally, she considers the consequences for the parties—and for the institution of marriage—of such deviations in an increasingly multicultural United States and an increasingly interdependent world.

**Part 8 – Judicial and Legislative Perspectives**

Chief Justice Corrigan argues that any model for family law reform must develop processes to minimize the trauma to children from marital dissolution, and not simply deliver equitable results for the adults involved. Focusing on child support, she argues that Principles’ attention to money transfers and increasing the income of the custodial household does little to affect whether a payment will ever be received by the intended beneficiaries. She then documents how the present processing of child support judgments against many unwed fathers, especially teenage and out-of-state fathers, has created a nation of default debtors, many of whom are unlikely ever to pay child support. She argues that extending a conciliatory model to child support, in addition to custody, would result in greater investment in children by their fathers. This Part will also contain one additional chapter by a legislator.

**Part 9 – International Reflections**

Patrick Parkinson examines the ALI’s adoption of the approximation standard for child-caretaking from a comparative perspective, and argues that this standard fails to account for the sea change in community attitudes toward parenting after separation that has occurred in
Australia and Europe. John Eekelaar will address those aspects of the Principles that have dominated recent debates in the United Kingdom, focusing especially on the division of property and capital, visitation following divorce, and efforts in the United Kingdom to address unmarried relationships. The precise content of his chapter will be narrowed as his research develops. This Part will contain two additional chapters authored by scholars of family law in Canada and Europe.
Impact Statement

Contribution to Family Law, Relationship with Competing Works, & Distinguishing Features

This volume fills a critical void. It represents the only comprehensive scholarly appraisal to date on the ALI’s monumental undertaking in the PRINCIPLES. The ALI is a prestigious organization of judges, lawyers, and teachers, established in 1923 “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific work.” The ALI has been tremendously influential in the development of American Law through its publications and Restatements of Law, and the PRINCIPLES promise to be no exception.

Published in 2002 after 11 years of effort and four preliminary drafts, the PRINCIPLES represent a massive law reform and scholarly effort (1077 pages) that would leave few areas of divorce law untouched. They address fault, division of property, alimony payments, child custody, child support, domestic partnerships, and private agreements between adults who cohabit or marry. Many of the proposals contained in the PRINCIPLES would change current law dramatically. Many are extremely controversial. For example, the PRINCIPLES propose, as one Reporter explains, to treat both heterosexual and homosexual couples who cohabit “as though they were married” when “their long-term stable cohabitations come to an end.” The PRINCIPLES also propose to award custodial responsibility according to past caretaking practices of the adults in the relationship—a proposal first made by Professor Elizabeth Scott, a contributor to this volume—rather than according to the ill-defined “best interests of the child” standard. The PRINCIPLES would redefine spousal support and alter the division of marital property. They would greatly reduce judicial discretion in some areas of family law and greatly expand it in others.

The PRINCIPLES deserve a comprehensive examination. The PRINCIPLES provide a rich substratum for exploring fundamental questions about the nature of family, parenthood, obligations to support one’s child, and obligations to support persons with whom one has lived in an intimate relationship. Judges will undoubtedly rely on them as they have relied on the ALI’s Restatements. Legislators are also likely to turn to the PRINCIPLES for guidance because, in contrast to the Restatements, this work was designed to stimulate legislative reform; in the words of the PRINCIPLES themselves, “much of the relevant law is statutory, and what seemed to be needed was guidance to legislators as well as to courts.” The breadth, depth, and novelty of the PRINCIPLES also make them difficult to ignore. They will undoubtedly attract the attention of policymakers outside the United States as well as within it, and even those who disagree with the proposed reforms will likely feel obliged to consider them and explain the basis of their

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3 Robert Pear, Legal Group Urges States to Update Their Family Law, N.Y. TIMES, Nov. 30, 2002, at A1 (“The findings are likely to have a major impact, given the prestige of the [ALI].”).
4 Grace Ganz Blumburg, author of the American Law Institute, and professor at the University of California, Los Angeles. “Talk of the Nation,” National Public Radio. January 15, 2003 (“These people live like they’re married, even if they’re not formally married. They share a life together as though they were married. Therefore, when their long-term stable cohabitations come to an end, we should treat them as though they were married.”).
5 Lance Liebman, Director’s Forward, in PRINCIPLES, at xv; see also Ira Mark Ellman, Chief Reporter’s Forward, in PRINCIPLES, at xvii (stating that some sections “are addressed to rulemakers rather than decisionmakers”).
disagreement. The PRINCIPLES are thus likely to have a major impact on family law and scholarship for many years.

As the definitive scholarly appraisal of the ALI’s proposals, this volume is intended to be on the shelf side-by-side with the PRINCIPLES, to be consulted by decision makers as a source for critical perspectives. Each chapter will elucidate the assumptions underlying the policy choices made by the ALI and defend or challenge those assumptions.

The impact of the PRINCIPLES is already beginning to be felt. West Virginia statutorily adopted the proposed “approximation standard” as a substitute for the “best interests” standard that now prevails everywhere else.6 In Florida, an intermediate appellate court attempted to adopt the “approximation standard” judicially, but was overruled.7 Supreme Courts in Rhode Island and Massachusetts have looked favorably upon the PRINCIPLES’ definition of “de facto parent” in justifying an award of custodial rights to long-time caregivers who lacked formal legal ties to a child.8 And while the Maine Supreme Judicial Court recently refused to adopt the PRINCIPLES’ conception of parenthood, it acknowledged that the PRINCIPLES will be extremely influential.9

The credentials of our contributors are a hallmark of this volume. The group represents a virtual “who’s who” of family law in the U.S. and abroad and includes some of the most established in the field, as well as “rising stars.” Three of our contributors acted as advisors to the Reporters for the PRINCIPLES, and another six were members of the Consultative Group for the Reporters. Our contributors have authored or co-authored nearly 20 casebooks and published their own works with academic presses, such as New York University, Harvard, Chicago, Cornell, and Oxford, among others. Included in this group is the immediate past Chief Justice of the Michigan Supreme Court, Maura Corrigan, and the immediate past president of the International Society of Family Law, Lynn Wardle.

Perhaps the most remarkable aspect of this volume is the diversity of perspectives contained within it. Among the twenty scholars of family law who have already written chapters are feminists and child advocates, social conservatives, liberals, and moderates. They have utilized a wide range of analytical tools, including economic theory, constitutional law, social science data, and linguistic analysis. The volume also offers comparative perspectives missing in many academic volumes on family law, including perspectives from judges and policy makers—the groups who will decide whether or not to adopt the PRINCIPLES’ law reform proposals—and perspectives from scholars of family law in the United Kingdom, Europe, Canada and Australia.

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7 A judicial advisor to the ALI’s work on the PRINCIPLES purported to adopt the “approximate the time” standard for custody dispositions following divorce as a matter of common law. Young v. Hector, 740 So.2d 1153 (Fla. Dist. Ct. App., 1999). At rehearing on en banc, the District Court of Appeal of Florida withdrew the panel decision and rejected the ALI standard. See Young v. Hector, 740 So.2d at 1158.
8 See, e.g., Rubano v. DiCenzo, 759 A.2d 959, 974-75 (R.I. 2000) (drawing support from PRINCIPLES for holding that “a person who has no biological connection to a child but has served as a psychological or de facto parent to that child may . . . establish his or her entitlement to parental rights vis-à-vis the child.”); E.N.O. v. L.M.M., 711 N.E.2d 886, 891 (Mass. 1999) (relying in part on PRINCIPLES in holding that “the best interests calculus must include an examination of the child’s relationship with both his legal and de facto parent[s]”), cert. denied, 528 U.S. 1005 (1999); Youmans v. Ramos, 711 N.E.2d 165, 167 n.3 (Mass. 1999) (adopting the ALI’s definition of “de facto parent” in holding that child’s former guardian was entitled to seek court-ordered visitation).
9 C.E.W v. D.E.W., 845 A.2d 1146, 1152 (Me. 2004) (declining to adopt the ALI’s definition of parenthood).
Some countries have already experimented with the subjects of the ALI’s proposals. For example, every state in Australia has extended marital property rights to cohabitants who have lived together for at least two years or have a common child. France has adopted Civil Solidarity Pacts that permit couples to receive marriage-like benefits under the law. Each nation offers an “experimental laboratory” in which to test the ALI’s assumptions. Their individual policy decisions and experiences should greatly benefit rule makers and decision makers in the U.S. and elsewhere.

Because of its comprehensiveness, varied analytical approaches, and comparative perspective, this volume is unique within the field of family law scholarship. Appendix C contains a partial listing of competing or related works published recently on family law. The length of this list reflects the considerable interest in the general topic of the legal regulation of families and divorce. But most of these books are insular, drawing thinkers from a single country. Most utilize a single analytical perspective. None examines the ALI’s path-breaking proposals for reform in the PRINCIPLES. The comprehensive and inclusive nature of coverage in this volume—providing a chapter-by-chapter examination of the PRINCIPLES and placing the ALI’s policy choices within the larger set of challenges facing state courts and legislators as well as alongside similar developments in family law in the United Kingdom, Europe, Australia and Canada—will distinguish this book, as will its deliberately comparative structure.

While the Brigham Young University Law Review, Duke Journal of Gender, Law and Policy, and Journal of Law & Family Studies published symposium issues on the eve of the PRINCIPLES’ publication, each allowed authors little time and space in which to reflect on this massive work. One specifically charged authors with evaluating the PRINCIPLES’ impact through the lens of gender. No other published volumes have considered the PRINCIPLES in depth and neither the editor nor any contributor is aware of a similar volume proposed to or under consideration by another publisher.

Audience & Potential for Required/Supplemental Reading

As a comprehensive critique of the PRINCIPLES, the audience for this volume is as broad as the PRINCIPLES itself. This book will be of primary interest as the ultimate resource and reference work on the PRINCIPLES. With its explicit policy focus, a natural interest exists among the National Governors Association; the National Council of State Legislatures; the National Council of Juvenile and Family Court Judges; the American Bar Association’s Section on Family Law and its Center on Children & the Law; state court libraries; and state legislative institutes, to name a few. Any judge or policy maker confronted with the adoption of a specific reform in the PRINCIPLES, and organization seeking to defend or challenge the PRINCIPLES, will want to consult this volume as a first step.

Among law schools, the volume will be attractive as a core text in advanced Family Law courses, seminars, and clinics, including those at Hofstra University School of Law (which houses the Center for Children, Families and the Law); Harvard Law School (The Hale and Dorr Legal Services Center on Family and Children’s Law Practice); Loyola Law School, Los Angeles (Family Law Track); Northwestern University School of Law (Children and Family Justice Center); University of Florida College of Law (Center for Children and Families); Washburn University School of Law (Children and Family Law Center); Seton Hall University Law School (Family Law Clinic); University of Baltimore School of Law (Family Law Clinic); New York University School of Law (Family Defense Clinic); University of Wisconsin Law School (Frank J. Remington Center Family Law Project); Quinnipiac University School of Law (Center for Children & Family); and University of Southern California Law School (Harriet Buhai Center for Family Law).

Because so much of this volume assesses how children fare under the PRINCIPLES, this volume may also be used in specialized children’s law concentrations, courses and clinics offered around the country, including those at Capital University Law School (Children & Family Law concentration); Whittier Law School (Center for Children’s Rights); Suffolk University Law School (Juvenile Justice Center); Drake University Law School (Joan and Lyle Middleton Center for Children’s Rights); Massachusetts School of Law (Children and the Law course and Family Law Advocacy Clinic); Brooklyn Law School (Children’s Law Center Clinic); University of Michigan Law School (The Michigan Child Welfare Law Resource Center); Rutgers School of Law (Child Advocacy Clinic); University of Minnesota Law School (Child Advocacy Clinic); Indiana University School of Law—Bloomington (Child Advocacy Clinic); University of Missouri Kansas City School of Law (Child and Family Services Clinic); Nova Law School (Children’s & Families Clinic); University of Washington School of Law (Child Advocacy Clinic); and Columbia University School of Law (Child Advocacy Clinic); Hofstra University School of Law (Child and Family Advocacy Fellowships); and Emory University School of Law (Barton Child Law and Policy clinic). As a measure of this audience, a recent Google search for “Family” and “Center” OR “Program” only in the title of webpages and only within the .edu domain returned 11,200 results.

Significant interest should also exist outside of law schools. For instance, there are a number of interdisciplinary centers and graduate programs examining various aspects of family dynamics. In the U.S. alone, these include centers and programs at the University of Virginia (The Center for Children, Families and the Law), Princeton University (Bendheim-Thoman Center for Research on Child Wellbeing), the University of Oregon (Child and Family Center, Harold Schnitzer Family Program in Judaic Studies), and the University of New Hampshire (Family Research Laboratory), among others.

Potential U.S. Scholars to Review Manuscript

Donald G. Alexander, Associate Justice, Maine Supreme Judicial Court

Emily Buss, Professor of Law and Kantor Director of Chicago Policy Initiatives, University of Chicago Law School

Linda Elrod, Distinguished Professor of Law, Washburn University School of Law
William Eskridge, *John A. Garver Professor of Jurisprudence*, Yale Law School

Martin F. Guggenheim, *Professor of Clinical Law*, New York University School of Law

Clare Huntington, *Associate Professor of Law*, University of Colorado School of Law

Sanford Katz, *Professor of Law*, Boston College Law School

Harry D. Krause, *Max L. Rowe Professor Emeritus*, University of Illinois College of Law

Margo Melli, *Professor of Law Emerita*, University of Wisconsin Law School & ALI Reporter, 1989-1994

Sarah Ramsey, *Professor of Law*, Syracuse University College of Law

Jana Singer, *Professor of Law*, University of Maryland School of Law

Barbara Bennett Woodhouse, *David H. Levin Chair in Family Law and Co-Director of the Center for Children and Families*, University of Florida Levin College of Law

**Potential International Scholars to Review Manuscript**

William Atkin, *Reader of Law*, Victoria University of Wellington (New Zealand)

Nicholas Bala, *Professor of Law*, Queen’s University Faculty of Law (Canada)

Ruth Deech, *Independent Adjudicator of Higher Education*, United Kingdom and *former Principal*, St. Anne’s College, Oxford University

Robert Rowthorn, *Professor of Economics*, Cambridge University

Jane Fortin, *Reader of Law*, King’s College, London

Gillian Douglas, *Professor of Law*, Cardiff Law School, Wales
Appendix A: Abstracts of Chapters

Part 1 – Fault

Beyond Fault and No-Fault in the Law of Marital Dissolution, by Lynn D. Wardle, Professor of Law, Brigham Young University Law School

Two of the most curious qualities introduced in Chapter one of the PRINCIPLES are the vigorous repudiation of “fault” as a valid principle to be applied in dealing with divorce and divorce-related issues, and the neglect of ameliorative procedures and principles in divorce cases. Examining “fault” and “no-fault” in divorce — quantitatively, conceptually, and jurisprudentially — suggests that the “fault/no-fault” dichotomy is dated. This chapter proposes the language of accountability and responsibility as a substitute for fault.

A City Without Duty, Fault or Shame, by Scott FitzGibbon, Professor of Law, Boston College Law School

The PRINCIPLES’ elimination of fault from consideration at divorce extends the decades-long trend towards the development of the no-fault marriage, the no-fault family, and the no-fault legal system. There have even been tendencies towards the emergence of a no-fault public culture and a no-fault system of social morality. This chapter demonstrates how these general trends are deleterious, and develops a fairly extensive account of the good of obligation and the good of the ascription and acceptance of blame or fault on the part of someone who falls short in performing his obligations. It gives special attention to the obligations of marriage.

Part 2 – Custody

Partners, Caregivers, and the Constitutional Substance of Parenthood, by David Meyer, Professor of Law, University of Illinois College of Law

The PRINCIPLES’ expansive reconstruction of legal parenthood has drawn fire from diverse groups, which have argued this definition violates the constitutional rights of either traditional parents or of individuals imbued with parental recognition under the PRINCIPLES. This chapter charts a middle course between these understandings of the Constitution’s protection of parenthood, arguing that the Constitution imposes meaningful limits on the state’s ability to deny parent status to traditional parent figures and therefore significantly qualifies the state’s freedom simply to reassign traditional parenting prerogatives to non-traditional caregivers. At the same time, the Constitution imposes fewer limitations than is often assumed on the creation of new parenting roles. On these assumptions, the route taken by the PRINCIPLES—preserving the identity of traditional parents while allowing for the simultaneous extension of parenting status to additional, non-traditional caregivers—is not only constitutionally permissible, but may well be the best means available for securing the welfare of children.
Custody Law and the ALI’s PRINCIPLES: A Little History, a Little Policy, and Some Very Tentative Judgments, by Robert J. Levy, Emeritus Professor of Law, University of Minnesota Law School

This chapter examines the substantive legal standard for custody adjudication recommended by the PRINCIPLES—a standard which requires judges to award each parent post-divorce time with and responsibility for children of the marriage in accordance with the time that parent spent with the child while the marriage persisted. The chapter places this standard in historical context by relating its provisions to two previous scholarly and judicial efforts to lessen the indeterminate qualities (and therefore the relatively unbridled judicial discretion allowed by) the most common judicial custody substantive standard, the “best interests of the child.” The chapter also explores the exceptions and limitations to the PRINCIPLES “approximate the time” standard and finds them subject to the kind of interpretive manipulation that in the past has led scholars to seek more determinate substitutes for the “best interests” standard. The chapter then examines two “procedural” reforms endorsed by the PRINCIPLES to improve fact-finding and decision-making in custody cases—a “Parenting Plan” proposal which, in the interests of minimizing conflict and saving judicial time and energy, requires parents to negotiate their own custody arrangements and terms to arrange for their modifications, and rules to govern the judicial appointment of lawyers and/or guardians for children in custody dispositions.

Undeserved Trust: Reflections on the American Law Institute’s Treatment of De Facto “Parents,” by Robin Fretwell Wilson, Associate Professor of Law, University of Maryland School of Law

In an unprecedented expansion of the legal concept of parenthood, the PRINCIPLES propose to confer custody and visitation rights on unrelated adult cohabitants who shared equal caretaking responsibility for as little as two years. The PRINCIPLES assert that giving parental rights to “de facto parents” is critically important for a child’s welfare and necessary to conform to the lived experience of many children, who are often cared for by adults other than legal parents, such as stepparents and a residential parent’s partner. This unqualified endorsement gives little consideration to the concomitant risks of granting unrelated adults continued access to a child. This chapter reviews a significant body of research suggesting that more children will be sexually exploited by men previously in relationships with the children’s mothers, who—if the ALI proposal is adopted—will have unsupervised access to their ex-lover’s children after the break-up.

Part 3 – Child Support

Asymmetric Parenthood, by Katharine Baker, Professor of Law and Associate Dean, Chicago-Kent College of Law

The ALI’s approach to child-support, like most current state approaches to child support, ignores the theoretical question of why parents are obligated to provide for their children. Traditional reasoning holds that parents must provide for their children because they can and what they must provide is a function of what they have. This “non-theory theory” functions well when parenthood is uncontested. However, the need for a theory for why parents are obligated to provide for their children becomes more important as it becomes less clear who counts as a parent. The PRINCIPLES do not attempt to answer these difficult questions, but when one
examines the ALI’s approach to parental obligation in cases of ambiguous parenthood, one can discern strands of a theory of support: promises must be honored, reliance matters, and lost opportunity costs are grounds for recovery. These are, of course, contract law principles and they figure prominently in other parts of the PRINCIPLES governing spousal support, domestic partnership, and child custody. This chapter takes a critical look at when and where the ALI relies on contract principles to determine parental rights and obligations.

**Paying to Stay Home: On Competing Notions of Fairness and the Imputation of Income, by Mark Strasser, Trustees Professor of Law, Capital University Law School**

The PRINCIPLES’ chapter on child support tries to do the impossible: to balance conflicting interests to yield a result that considers the interest of the parents while minimizing the damage to the children. The result is an impressive, careful, balanced treatment of an area fraught with difficulty. This chapter focuses on one difficult question to illustrate some of the competing interests and notions of fairness that arise when decisions about child support must be made, namely, the conditions under which income should be imputed to a stay-at-home parent. This chapter will contrast the treatment of imputed income in the PRINCIPLES and in various jurisdictions.

**Part 4 – Property Division**

**The ALI Property Division Principles: A Model of Radical Paternalism? by John Gregory, Sidney and Walter Siben Distinguished Professor of Family Law, Hofstra University School of Law**

This chapter examines to what extent, if any, the PRINCIPLES relating to property division at divorce have affected state statutes, regulations or judicial decisions during the scant five years since their publication. The chapter asks whether the PRINCIPLES can reasonably be expected to have an observable impact on a body of law that state courts and legislatures developed over three decades, since the PRINCIPLES do not merely restate current law but call for significant change. This chapter will also ask whether the theoretical foundations of the PRINCIPLES accord sufficient respect to the practical considerations that have animated state property division law. While Chapter 4, *Division of Property Upon Dissolution*, will be the focus of the chapter, because of the PRINCIPLES’ structure, this chapter necessarily makes reference to Chapter 5, *Compensatory Spousal Payments*, and Chapter 6, *Domestic Partnerships*.

**Money as Emotion in the Distribution of Property at Divorce, by Katharine Silbaugh, Professor of Law and Associate Dean, Boston University Law School**

The PRINCIPLES attempt to separate emotional and personal aspects of a marriage from financial ones in numerous places. This approach acknowledges and settles financial issues between the parties, but leaves non-financial disputes without legal remedy. Professor Silbaugh explains that this approach ignores the intertwining financial and emotional issues throughout the marital relationship and into the marital dissolution. By trying to separate these issues, she argues the ALI does a disservice to divorce litigation by attempting to bury a subset of issues that will reappear in different forms.
Unprincipled Family Dissolution: The American Law Institute’s Recommendations for Division of Property, by David Westfall, Carl F. Schipper, Jr. Professor of Law and John L. Gray Professor of Law, Harvard Law School

Although published with the prestigious imprimatur of the American Law Institute, the recommendations for division of property on family dissolution impede much needed reforms and may lead the legislators, judges, and rule makers to whom they are addressed to adopt unsound policies. This chapter discusses the deficiencies in the property division recommendations, including the way the value of a spouse's separate property has been enhanced by the other spouse's labor and hence is marital (and divisible on dissolution); the determination of the extent to which property was derived from earnings before marriage or represents future earnings and hence is separate (and not divisible on dissolution); and the extent to which separate property should be recharacterized as marital because of the passage of time since it was acquired. Although the PRINCIPLES are a failed effort at family law reform, they remain useful to highlight many of the potential issues that legal reforms should address.

Part 5 – Spousal Support

Back to the Future: The Perils and Promise of a Backward Looking Jurisprudence, by June Carbone, Professor of Law and Associate Dean, Santa Clara University School of Law

The PRINCIPLES delight in the existential uncertainty of arrangements whose legal consequences cannot be fixed until the point at which a relationship dissolves. They strive to suspend judgment long enough to create a private space for the creation of relationships free from the weight of regulation, but do not hesitate to intervene and provide a foundation for family members to continue arrangements based on what has come before. This chapter critiques the ALI’s “backward looking” jurisprudence, and concludes that while the ALI approach may succeed as part of a family law in transition, to succeed more permanently in forging a new basis for family obligation, the PRINCIPLES will need to make the terms of commitment clear at the beginning, and not just the end, of relationships.

Solidifying the “No-Fault” Revolution: Post Modern Marriage as Seen Through the Lens of ALI's “Compensatory Payments,” by Katherine Spaht, Jules F. and Frances L. Landry Professor of Law, Louisiana State University Law Center

The ALI attempts to complete the no fault revolution begun in the late 1960s—a revolution that experienced mixed success at best—by proposing a set of provisions that compensate a spouse for certain losses attributable to the marriage and its termination. This chapter examines the ALI’s theory for spousal payments as a tool to examine the PRINCIPLES’ theory of marriage. It reveals a theory of marriage that the Reporters themselves describe with lament, resigned acceptance, or qualified enthusiasm. It is this theory of marriage, and its potential effects on marital behavior, that receives more explicit scrutiny in this chapter.
Part 6 – Domestic Partnership

Domestic Partnership and Default Rules, by Margaret F. Brinig, William G. Hammond Distinguished Professor of Law and Associate Dean, University of Iowa College of Law

Arguing that ALI domestic partnership rules do not meet the criteria for default rules, this Chapter considers whether they instead constitute a set of "penalty default rules," designed to insure that the parties would contract around them, or at least that they would reveal privately held information. Professors Ian Ayres and Robert Gertner suggested this theoretical possibility in the commercial context. Professors Ayres and Gertner have argued that setting a default quantity at "zero," as the UCC does, forces the parties to specify some other quantity. Similarly, setting the availability of consequential damages at "zero" forces the party for whom they matter to contract for their recovery, probably at a higher contract price. After reviewing the arguments against using Chapter 6 rules as a default rule in the typical sense, this Chapter argues that even a "penalty default" explanation is not likely to work as a practical matter. This Chapter also argues that, in attempting to provide relief to same-sex couples, the PRINCIPLES may have the unintended consequence of moving states toward same-sex marriage. If a state desires such a change, Professor Brinig argues that it could do so directly by amending its statutes rather than dragging along the far greater number of cohabiting, heterosexual couples.

Private Ordering and the ALI Principles, by Martha Ertman, Professor of Law, University of Utah S.J. Quinney College of Law

Regulators have struggled with the underlying reasons why duty should flow between spouses or partners in a cohabiting or marital relationship. Some believe that duties flow from sacrament. Others grapple with whether duties flow from agreements between the parties, whether express or implied, or should be imposed by virtue of the parties’ status. This chapter examines the language used by cohabitants and spouses to discuss these relationships to discern how each understands their own relationships. It then considers whether these subjective understandings should be of consequence to the law’s regulation of cohabiting and marital relationships.

Marriage Matters: What’s Wrong with the ALI’s Domestic Partnership Proposal, by Marsha Garrison, Professor of Law, Brooklyn Law School

The PRINCIPLES impose relational obligation based on a finding that cohabitants share a common child or have “share[d] life together as a couple.” Using empirical evidence, this chapter demonstrates that married and cohabiting couples in fact tend to behave and view their relationships quite differently, with cohabitants typically believing that their arrangement is a substitute for being single, not for being married. These patterns demonstrate that cohabitation does not imply commitment, dependency, or unjust enrichment, the traditional bases of relational obligation. The ALI’s proposal would thus introduce discordant values into family law, diminish autonomy in relational choices, and devalue marital commitment.

Domestic Partnership, Implied Contracts, and Law Reform, by Elizabeth Scott, University Professor, Class of 1962 Professor of Law, University of Virginia School of Law

The PRINCIPLES attempt to establish a framework for enforcing financial obligations between individuals in long-term intimate relationships. The PRINCIPLES reject the approach of
contractual enforcement as inadequate to protect the interests of dependent partners, and instead create a status that is imposed on the couple after a period of time without their consent and even against their will. However, this approach is both undesirable and unnecessary to provide financial protection to financially dependent partners. Instead of an imposed status, this chapter proposes a framework of contract default rules that embody the implied understandings about property and support obligations of most couples in long term unions, while protecting naive parties whose expectations may not be shared by their partners. Such a default rule builds incrementally on conventional legal doctrine regulating cohabiting relationships, making it much more likely to be accepted by legal authorities than the radical reform proposed by the ALI.

Part 7 – Agreements

Premarital Agreements in the ALI Principles: The Move Towards Abolition of State Marriage Laws, by Jane Adolphe, Associate Professor of Law, Ave Maria School of Law

This chapter examines the attempts at family law reform undertaken by the ALI in the PRINCIPLES and by the Canadian Law Reform Commission in its report, BEYOND CONJUGALITY: RECOGNIZING AND SUPPORTING CLOSE PERSONAL RELATIONSHIPS. This chapter argues that the Canadian Law Reform Commission recommendation to abolish State marriage laws is premised on an inadequate vision of the human person, marriage, and the State. The PRINCIPLES covertly support this recommendation by advancing a limited role of the State in protecting and supporting marriage, and developing a domestic partnership scheme that undermines the public meaning of marriage.

The ALI PRINCIPLES and Agreements: Seeking a Balance Between Status and Contract, by Brian H. Bix, Frederick W. Thomas Professor for the Interdisciplinary Study of Law and Language, University of Minnesota Law School

The chapter analyzes Chapter 7 of the PRINCIPLES, which deals with agreements. It contrasts the ALI’s treatment of premarital, marital, and separation agreements with current doctrine, on one hand, and, on the other hand, with arguments for respecting greater private ordering regarding marriage. While largely agreeing with the ALI’s approach, the article urges an approach more respectful of personal choice.

The PRINCIPLES on Agreements and International Law, by Barbara Stark, Professor of Law, University of Tennessee Law School and Visiting Professor of Law, Hofstra University School of Law

This chapter will draw on international law, including private international law conventions as well as the relevant international human rights treaties, to analyze Chapter 7 of the PRINCIPLES addressing Agreements. It identifies the interests protected and promoted by the PRINCIPLES, textually and functionally. It then focuses on the ways in which individuals deviate from or avoid domestic legal regimes, whether intentionally by agreement, or inadvertently by emigrating. Finally, it considers the consequences for the parties—and for the institution of marriage—of such deviations in an increasingly multicultural United States and an increasingly interdependent world.
Part 8 – Judicial and Legislative Perspectives

A Formula for Fool’s Gold: The Illustrative Child Support Formula in Chapter 3 of the American Law Institute’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, by Maura Corrigan, immediate past Chief Justice, Michigan Supreme Court

This chapter argues that any model for family law reform must consider the procedures used in adjudication, and not simply the results. It explains how the adversarial system used in family dissolution proceedings too frequently compounds the trauma to children resulting from divorce. This chapter suggests that any model for reform must develop processes to minimize this trauma, and not simply deliver equitable results for the adults involved. Focusing on child support, this chapter argues that the rote processing of child support judgments against many unwed fathers, especially teenage fathers and men who live another State, has created a nation of default debtors, many of whom are unlikely ever to pay support or invest in their children’s lives. This chapter argues that greater attention to mediation, not just in awarding custody but in setting child support awards, would result in greater investment in children by their fathers.

Part 9 – International Reflections

Individualism and Responsibility, by John Eekelaar, Reader in Law, Oxford University

This chapter will consider those aspects of the PRINCIPLES that have dominated recent debates in the United Kingdom, focusing especially on the division of property and capital, visitation following divorce and efforts in the United Kingdom to address unmarried relationships. The precise content of his chapter will be narrowed as Professor Eekelaar’s research develops.

The ALI's Past Child-Caretaking Standard in Comparative Perspective, by Patrick Parkinson, Professor of Law, University of Sydney

This chapter examines the PRINCIPLES’ adoption of the approximation standard for child-caretaking from a comparative perspective. The chapter argues that this standard misses the extent of the changes occurring in Australia and Europe in community attitudes to parenting after separation, and that it is too focused on fairness between adults rather than fairness to children. The chapter then offers a counter-balance to the positive reception this approach has had in the United States since Professor Elizabeth Scott first proposed it.
Appendix B: Brief Biographies of the Editor and Contributors

Editor, Robin Fretwell Wilson, Associate Professor of Law, University of Maryland School of Law

Robin Fretwell Wilson is an Associate Professor of Law at the University of Maryland School of Law. A graduate of the University of Virginia and the University of Virginia Law School, Professor Wilson has published articles on the risks of abuse to children in the CORNELL LAW REVIEW, the EMORY LAW JOURNAL, the SAN DIEGO LAW REVIEW (forthcoming), the JOURNAL OF CHILD AND FAMILY STUDIES, the WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY, and the CHILD AND FAMILY LAW QUARTERLY. Together with Professors Nancy Dowd of the University of Florida and Dorothy Singer of Yale University, she is an editor of THE HANDBOOK OF CHILDREN, CULTURE & VIOLENCE, forthcoming from Sage Publications. Professor Wilson has lectured internationally on juvenile and family law matters, including presentations at the National Society for the Prevention of Cruelty to Children in London, England; the Tenth World Conference of the International Society of Family Law in Brisbane, Australia; and the IXth Regional European Conference on Child Abuse and Neglect of the International Society for the Prevention of Child Abuse & Neglect, in Warsaw, Poland. She is a member of the Executive Committee of the Section on Family and Juvenile Law of the Association of American Law Schools.

Foreword, Mary Ann Glendon, Learned Hand Professor of Law, Harvard Law School

Mary Ann Glendon is the Learned Hand Professor of Law at Harvard Law School. She received a B.A., J.D., and Master of Comparative Law from the University of Chicago. Prior to joining the faculty at the Harvard Law School, she was a professor at the Boston College Law School and a visiting professor at the University of Chicago Law School and at the Gregorian University in Rome. Professor Glendon is a past President of the International Association of Legal Science, a member of the editorial boards of the American Journal of Comparative Law and First Things, and serves on the advisory boards of the Harvard University Human Rights Initiative and the Harvard Law School Human Rights Program. She was head of the Holy See Delegation to the 4th U.N. Women's Conference in 1995, and sits on the boards of trustees at Catholic University and at St. John's Seminary. She was an advisor to the American Law Institute for the PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION. Presently, she is a member of U.S. President George W. Bush's Council on Bioethics, and in 2004 Pope John Paul II appointed her to Head the Pontifical Academy for Social Sciences. Her areas of expertise include bioethics, international human rights, and comparative constitutional law in the United States and Europe. She is the author of many books, including Comparative Legal Traditions in a Nutshell (West, 1999), A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society (Farrar, Straus & Giroux, 1994), Rights Talk: The Impoverishment of Political Discourse (Free Press, 1991), The Transformation of Family Law: State, Law and Family in the United States and Western Europe (University of Chicago Press, 1989) and Abortion and Divorce in Western Law (Harvard University Press, 1987). Her most recent book is entitled A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights (Random House, 2001). The National Law Journal named her one of the "Fifty Most Influential Women Lawyers in America" in 1998.
Part 1 - Fault

Scott FitzGibbon, Professor of Law, Boston College Law School

Scott FitzGibbon is Professor of Law at Boston College Law School. He is a graduate of Harvard Law School and Oxford University, and serves as a member of the American Law Institute and of the International Society of Family Law. He is the author of articles on business law, jurisprudence and legal philosophy, with special attention to friendship and marriage in the Aristotelean tradition. He is the author of *Marriage and the Good of Obligation*, AMERICAN JOURNAL OF JURISPRUDENCE (2002) and of *Marriage and the Ethics of Office*, NOTRE DAME JOURNAL OF LAW, ETHICS, AND PUBLIC POLICY (2004). He has presented his work at several domestic and international conferences on family law, including the International Conference on Divorce held in Beijing, China in July, 2004 and the United Nations European Regional Dialogue in Commemoration of the Tenth Anniversary of the Year of the Family, Geneva, Switzerland, August, 2004.

Lynn D. Wardle, Professor of Law, Brigham Young University Law School

Lynn Wardle is a graduate of Brigham Young University and Duke University School of Law. A member of the faculty of Brigham Young University Law School since 1978, Professor Wardle has been a visiting professor at Howard University School of Law, the University of Queensland Law School (Brisbane, Australia), Sophia University Faculty of Law (Tokyo, Japan), and at the University of Aberdeen (Scotland) as a Visiting Research Fellow. He is co-author of FUNDAMENTAL PRINCIPLES OF FAMILY LAW, the lead editor of CONTEMPORARY FAMILY LAW (4 vols) (1988), and the author, co-author, or editor of seven other books and 85 law review articles, chapters, and essays about family law. He is the Immediate Past-President of the International Society of Family Law, and was a member of the Consultative Group for the American Law Institute’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION.

Part 2 – Fault

David Meyer, Professor of Law, University of Illinois College of Law

David Meyer is Professor of Law at the University of Illinois College of Law where he teaches family law and constitutional law. He earned his B.A. and J.D. from the University of Michigan, where he served as editor-in-chief of the Michigan Law Review. Upon graduation, Professor Mayer served as a law clerk to Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit, and later to Justice Byron White of the United States Supreme Court. Professor Mayer’s scholarship focuses on topics at the intersection of constitutional and family law, particularly the way in which constitutional notions of family privacy have affected the development of family law. In 2002, he served with Harry Krause as co-reporter for the United States on family law at the Congress of the International Academy of Comparative Law in Brisbane, Australia.
Robert J. Levy, Emeritus Professor of Law, University of Minnesota Law School

Robert Levy is Emeritus Professor of Law at the University of Minnesota Law School, where in 1999 he was named William L. Prosser Professor of Law. A graduate of Kenyon College and the University of Pennsylvania Law School, Professor Levy has lectured widely at law schools and conferences around the world. He is the co-author of casebooks in both Family Law and Criminal Law, was the Reporter for the Uniform Marriage and Divorce Act, and was an Advisor to the American Law Institute’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION. His recent publications have appeared in the ARIZONA STATE LAW JOURNAL and the UTAH JOURNAL OF LAW & FAMILY STUDIES among others.

Part 3 – Child Support

Katharine Baker, Professor of Law and Associate Dean, Chicago-Kent College of Law

Katherine Baker is Professor of Law and Associate Dean at Chicago-Kent College of Law. A graduate of Harvard-Radcliffe College and the University of Chicago Law School, Professor Baker served as a law clerk to the Honorable Edward R. Becker of the Third Circuit Court of Appeals in Philadelphia, and later as a trial attorney with the U.S. Department of Justice. Professor Baker teaches courses in family law, property, feminism and evidence. She has published articles on natural resource valuation, gender issues in the family, paternity law, evolutionary biology, and numerous articles on rape.

Mark Strasser, Trustees Professor of Law, Capital University Law School

Mark Strasser is the Trustees Professor of Law at Capital University Law School in Columbus, Ohio where he teaches family law, constitutional law, torts, jurisprudence, and sexual diversity and the law. He earned a B.A. from Harvard College, an M.A. and Ph.D. (philosophy) from the University of Chicago, and a J.D. from Stanford Law School. Nationally recognized for his scholarship in family law, Professor Strasser is the author of numerous books and articles in the areas of family law, bioethics, and constitutional law.

Part 4 – Property Division

John Gregory, Sidney and Walter Siben Distinguished Professor of Family Law, Hofstra University School of Law

John Gregory is the Sidney and Walter Siben Distinguished Professor of Family Law at Hofstra University School of Law where he teaches in the areas of matrimonial and family law. He received his B.A. from Howard University and J.D. from Harvard University. He is the author of THE LAW OF EQUITABLE DISTRIBUTION; UNDERSTANDING FAMILY LAW (with Peter Swisher & Sheryl L. Wolf); PROPERTY DIVISION IN DIVORCE PROCEEDINGS: A FIFTY STATE GUIDE (with Swisher, Wolf and Janet Leach Richards), and has written extensively in the areas of juvenile law, family law and constitutional law. He is a former chair of the Section on Family and Juvenile Law of the Association of American Law Schools and of the Section on Minority
Groups. He is an elected member of the American Law Institute, and served as an adviser to the Institute’s Project on the *Principles of the Law of Family Dissolution*.

**Katharine Silbaugh, Professor of Law and Associate Dean, Boston University Law School**

Katharine B. Silbaugh is Professor of Law and Associate Dean for Academic Affairs at Boston University School of Law. She is a graduate of Amherst College and the University of Chicago Law School. Professor Silbaugh clerked for the Honorable Richard A. Posner of the United States Court of Appeals for the Seventh Circuit before joining the Boston University law faculty in 1993. She is co-author with Judge Posner of *A Guide to America’s Sex Laws* (Chicago 1996). She has authored numerous articles on household labor and the work-family conflict, and edited a volume entitled *The Structures of Carework* published by the Chicago-Kent Law Review in 2001. She filed an amicus brief in the landmark Massachusetts family law case, *Goodridge v. Dep’t of Public Health* (2003).

**David Westfall, Carl F. Schipper, Jr. Professor of Law and John L. Gray Professor of Law, Harvard Law School**

David Westfall is the John L. Gray Professor of Law and the Carl F. Schipper, Jr. Professor of Law at the Harvard Law School. He received the A.B. degree from the University of Missouri in 1947 and an LL.B. from Harvard in 1950, magna cum laude, where he was an editor of the Harvard Law Review. After graduation, he was an associate at Bell, Boyd, Marshall & Lloyd in Chicago, 1950-55, with military leave to serve in the U.S. Army Judge Advocate General's Corps, 1951-53. He returned to Harvard Law School as an assistant professor in 1955 and was appointed professor in 1958. He teaches Property, Family Law, and Labor Law. He has been an Academic Fellow of the American College of Trust and Estate Counsel since 1978. His publications include *Estate Planning Law and Taxation* (4th ed. 2001, with George P. Mair), and *Family Law* (1994), and various articles on family law and labor law topics. He was a member of the Consultative Group for the American Law Institute’s *Principles of the Law of Family Dissolution*.

**Part 5 – Spousal Support**

**June Carbone, Professor of Law and Associate Dean, Santa Clara University School of Law**

June Carbone is Professor of Law and Associate Dean for Faculty Development at Santa Clara University School of Law. From 2001-2003, she served as Presidential Professor of Ethics and the Common Good. She is a graduate of the Woodrow Wilson International School of Public and International Affairs at Princeton University, and Yale University Law School. Professor Carbone has written extensively about the legal issues surrounding marriage, divorce, and family obligations, especially within the context of the recent revolutions in biotechnology. In addition to her numerous law review articles, Professor Carbone is the author of the widely regarded monograph *From Partners to Parents: The Second Revolution in Family Law* (Columbia University Press, 2000).
Katherine Spaht, Jules F. and Frances L. Landry Professor of Law, Louisiana State University Law Center

Katherine Spaht, a graduate of the University of Mississippi and the Louisiana State University Law Center, is the Jules F. and Frances L. Landry Professor of Law at the Louisiana State University Law Center. As the drafter of Louisiana's covenant marriage statute, Professor Spaht has written extensively on that subject, as well as on Louisiana's community property system and its unique law of forced heirship. She served as a member of the Consultative Group for the American Law Institute’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION. Her scholarly work has appeared in the NOTRE DAME LAW REVIEW, the LOUISIANA LAW REVIEW, and the WISCONSIN LAW REVIEW among others.

Part 6 – Domestic Partnership

Margaret F. Brinig, William G. Hammond Distinguished Professor of Law and Associate Dean, University of Iowa College of Law

Margaret F. Brinig is the William G. Hammond Distinguished Professor of Law and Associate Dean for Faculty Development at the University of Iowa College of Law. She earned an A.B. from Duke University, a J.D. from Seton Hall University Law School, and an M.A. and Ph.D. (economics) from George Mason University. She has taught family law-related courses for more than twenty-five years, with her interest in the law and economics of the family having developed more recently. In addition to more than 50 law journal articles, Professor Brinig is the author of FROM CONTRACT TO COVENANT: BEYOND THE LAW AND ECONOMICS OF THE FAMILY (Harvard University Press, 2000) examining the intersections of law, economics, and feminist thought and two casebooks in Family Law. She is a member of the International Society for Family Law, and the American Law Institute, having served as a member of the Consultative Group for the ALI’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION.

Martha Ertman, Professor of Law, University of Utah S.J. Quinney College of Law

Martha Ertman is Professor of Law at the University of Utah, S.J. Quinney College of Law. A graduate of Wellesley College and Northwestern University School of Law, Professor Ertman teaches courses in contracts and commercial law, as well as seminars on legal history and commodification. Her writing focuses on comparative analysis of commercial law and intimate affiliation, suggesting ways that commercial models can improve family law. Her work has been published in the STANFORD LAW REVIEW, the NORTH CAROLINA LAW REVIEW, and the COLORADO LAW REVIEW among others.

Marsha Garrison, Professor of Law, Brooklyn Law School

Marsha Garrison is Professor of Law at Brooklyn Law School. She received a B.A. degree from the University of Utah and a J.D. degree from Harvard Law School. An expert in family law, child custody issues, and equitable distribution laws, Professor Garrison’s analysis of judicial decision making in divorce cases and the impact of New York's Equitable Distribution
Law on divorce outcomes have been widely cited. She is the author of the casebook FAMILY LAW: CASES, COMMENTS, AND QUESTION (5th ed., 2003), an article on Law Making for Baby Making: An Interpretive Approach to the Determination of Legal Parentage in the HARVARD LAW REVIEW, and articles in the DUKE JOURNAL OF GENDER LAW & POLICY, CALIFORNIA LAW REVIEW and the UTAH LAW REVIEW. She is a member of the Executive Committee of the International Society of Family Law, and a member of the advisory board of the JOURNAL OF LAW AND FAMILY STUDIES, an interdisciplinary journal. In addition, she served as a member of the Consultative Group for the American Law Institute’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION.

Elizabeth Scott, University Professor, Class of 1962 Professor of Law, University of Virginia School of Law

Elizabeth Scott is the University Professor and the Class of 1962 Professor of Law at the University of Virginia. A 1977 graduate of the University of Virginia School of Law, she is a regular Visiting Professor at Columbia Law School. She has written extensively on marriage, divorce, child custody, adolescent decision making, and juvenile delinquency, with her proposal offered in a CALIFORNIA LAW REVIEW article adopted by the American Law Institute as the basis for custody decisions. She is a co-author (with Ira Ellman and Paul Kurtz) of a widely used casebook in family law, and a co-author (with Walter Wadlington, Charles Whitebread, and Samuel Davis) of a casebook on children in the legal system. She serves on the executive committee of the multi-institutional interdisciplinary Consortium on Children, Families, and the Law.

Part 7 – Agreements

Jane Adolphe, Associate Professor of Law, Ave Maria School of Law

Jane Adolphe is Associate Professor of Law at Ave Maria School of Law in Ann Arbor, Michigan where she teaches courses on family law, canon law, international law, and international human rights law. She earned a B.A. from the University of Calgary, common law and civil law degrees from McGill University, and a Licentiate and a Doctorate in Canon Law from the Pontificia Università della Santa Croce in Rome. She has served as a prosecutor with the Alberta Crown Prosecutor’s Office and a legal consultant to international law firms. She recently served the United Nations by participating in conferences on children’s rights and the International Criminal Court.

Brian H. Bix, Frederick W. Thomas Professor for the Interdisciplinary Study of Law and Language, University of Minnesota Law School

Brian H. Bix is Frederick W. Thomas Professor for the Interdisciplinary Study of Law and Language at the University of Minnesota Law School. He received a B.A. from Washington University in St. Louis, a J.D. from Harvard Law School, and a D.Phil degree from Balliol College, Oxford University. He writes and teaches in family law, jurisprudence, and contract law. He is a co-editor with Ira Ellman of FAMILY LAW: CASES, TEXT, PROBLEMS. His law
review articles have appeared in the WILLIAM AND MARY LAW REVIEW, the UNIVERSITY OF CHICAGO LEGAL FORUM, and the CREIGHTON LAW REVIEW among others. He is a member of the American Law Institute and served as a member of the Consultative Group for the ALI’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION.

Barbara Stark, Professor of Law, University of Tennessee Law School and Visiting Professor of Law, Hofstra University School of Law

Barbara Stark is Professor of Law at the University of Tennessee Law School and a visiting Professor of Law at Hofstra University School of Law. She earned a B.A. from Cornell University, a J.D. from New York University School of Law, and an LL.M. from Columbia University. She is widely known for her scholarship on both international and family law issues. She has published articles in such journals as the CALIFORNIA LAW REVIEW, HASTINGS LAW JOURNAL, and the UCLA LAW REVIEW, and has presented papers at Cornell, Columbia, Indiana, and Washington & Lee law schools, as well as at the annual meetings of the American Association of Law Schools and the American Society of International Law. She currently serves on the Executive Council of the ASIL, and the Executive Committees of the AALS International Law and Family Law Committees.

Part 8 – Judicial and Legislative Perspectives

Maura Corrigan, Justice, Michigan Supreme Court

Maura Corrigan was elected to the Michigan Supreme Court in November 1998 for an eight-year term. In 2001, and again in 2003, her fellow justices chose her to serve a two-year term as the Court’s chief justice. Chief Justice Corrigan is a magna cum laude graduate of Marygrove College, and a cum laude graduate of the University of Detroit Law School. She is a past vice-president of the Conference of Chief Justices.

Part 9 – International Reflections

John Eekelaar, Reader in Law, Oxford University

John Eekelaar is Reader in Law at Oxford University. He has written widely on legal topics, especially in the area of family law. Since the 1970s, he has been extensively engaged in collaborative empirical research especially in the areas of child protection, the economic consequences of divorce, parenting across households, the divorce work of solicitors and the obligations perceived by people in personal relationships. In 2001, he was made a Fellow of the British Academy.

Patrick Parkinson, Professor of Law, University of Sydney

Patrick Parkinson is Professor of Law at the University of Sydney. He is a specialist in family law, child protection and the law of equity and trusts. He has written and edited a number of books on these areas, as well as being the author of a book on the origins and development of
the legal system in Australia. Professor Parkinson chairs the Family Law Council, an advisory body to the Australian Government, and is also Chair of a Review of the Child Support Scheme due to report in 2005. He was previously the Chairperson of a major review of the law in New South Wales concerning child protection that led to the enactment of the Children and Young Persons (Care and Protection) Act 1998. He is a member of the Executive Council of the International Society of Family Law and has been the editor of the Sydney Law Review and the Australian Journal of Family Law.

Afterword, Carl E. Schneider, Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law, University of Michigan Law School and Professor of Internal Medicine, University of Michigan Medical School

Carl E. Schneider is Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law at the University of Michigan Law School, and Professor of Internal Medicine at the University of Michigan Medical School. He is a graduate of Harvard College and the University of Michigan Law School, where he was editor-in-chief of the MICHIGAN LAW REVIEW. Following graduation, he served as a law clerk to Judge Carl McGowan of the United States Court of Appeals for the District of Columbia Circuit, and to Justice Potter Stewart of the United States Supreme Court. Professor Schneider has written extensively about constitutional and family law. His work has appeared in the MICHIGAN LAW REVIEW, VIRGINIA LAW REVIEW, and UTAH LAW REVIEW among others.
Appendix C: Competing & Related Works


Crotty, Patricia McGee, FAMILY LAW IN THE UNITED STATES: CHANGING PERSPECTIVES. (Teaching texts in law and politics series, vol. 7) Lang, Peter Publishing (1999). 165 p. (price not available)


