CFLQ

Articles

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To paraphrase Sheila Heti, a writer we both seem to (re)turn to again and again for solace and inspiration, it is in *conversation* with others that so much of the work of writing is done.[1] Much of the work of this project has been done, and will – we hope – continue to be done, through these (*inter*disciplinary and *intra*disciplinary) conversations between colleagues working on different aspects of the regulation of parenting. Below, we conclude our special issue by reflecting on some of the ideas, themes, and questions that emerged from these conversations, and the papers they are based on. We have drawn these ideas, themes, and questions into three threads of discussion that run throughout the issue: regulation, parenthood and parenting, and law.

On regulation

The heterogeneity of the idea and practice of regulation is one of the important themes to have emerged in this issue. We have seen that whilst the very identity of (legal) parents, their relationships with their children, and their conduct as parents are all matters that are primarily regulated through family law and policy, parenting is also impacted by – and indeed regulated through – other areas of law and policy, including immigration and citizenship, education, healthcare, technology, property, and tax. Policymakers, legislators, and courts subject parents and parenting to direct and formal regulation. But there is also the regulation that is done more *informally* and outside of court systems. As such, non-legal professionals and practitioners – social workers, doctors and nurses, registrars and bureaucrats – emerged as key characters in some of the stories shared by colleagues, especially in the *rights and support* and *scrutiny and surveillance* conversations.

What came out of the discussions of the papers in these two sections in particular was the sense that sometimes the surveillance of parents – and the rather intrusive and even coercive forms of intervention in parenting – can be couched in the benign language of support, safeguarding, vulnerability, and protection. And whilst these forms of intervention are often justified by reference to the (ever elusive) 'best interests of the child' principle, there was also a sense that the regulation of parenting can in fact be motivated by wider state policy objectives that have little to do with the actual welfare of individual children – the point here being that these objectives (including austerity policies, the drawing of the boundaries of the

[1] S Heti, 'Afterword: Other Readers' in V Woolf, *How Should One Read a Book?* (Laurence King Publishing, 2020), 53.

nation, the achievement of a sense of collective cohesion and integration, and the protection of national security) are not made explicit.[2]

Across all four sections of the project, the papers and conversations also reflected an interest in further probing the regulatory force of normative assumptions about parent–child relationships. These include assumptions about what it means to be a parent, about what is needed to be a parent, and about parenting itself. In the *ideas and norms* and *recognition and protection* conversations, there were discussions, in particular, about the way in which an account of the 'truth' of legal parenthood is constructed in the case law (both of the domestic courts and of the European Court of Human Rights), as well as about the way in which a vision of 'good' and 'bad' parents is articulated. Meanwhile, the conversations in the *rights and support* and *scrutiny and surveillance* sections highlighted the way in which there is scope for assumptions about parent–child relationships to be held by individuals working within the family justice system – and scope, moreover, for these to then influence what happens in practice.

One of the areas of discussion that arose in the context of the papers in the *rights and support* section was about the expectations that are articulated about what children should be doing, about the use of concepts such as 'parentification', and about the way in which assumptions are articulated about what is 'normal' and 'healthy'. An example raised was of the way in which in some quarters of practice there is a sense in which children are expected to be dependent on their parents for educational support and intellectual development, not just through the provision of adequate schooling but also through private tuition and an ever-growing list of extra-curricular activities. Another example was of the way in which a child might be regarded as being 'parentified' and therefore at risk on account of providing a level of care to their parents and younger siblings that is regarded as being not 'normal' or 'healthy'. Normative assumptions of this kind involve a vision of what parent–child relationships *should* look like, and an account too of a particular parenting standard; and what our conversations pointed to in this sense was what those writing about the regulation of parenting have concluded time and again in non-legal contexts: that it is the parenting of marginalised individuals and communities – including the working class, the disabled, ethnic minorities and their various intersections – that is disproportionately targeted for (and affected by) regulation.[3]

On parenthood and parenting

A second line of discussion that runs throughout this issue relates to two questions that featured prominently in many of the papers and conversations: who is – and can be – a (fully recognised and therefore protected) parent? And how should a parent be?[4] The first is a

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[2] This point was of course first made by the late Helen Reece, to whom so much of our intellectual work and inspiration is indebted. See H Reece, 'The Paramountcy Principle: Consensus or Construct?' (1996) 49 *Current Legal Problems* 267.

[3] A McGillivray, 'Introduction: Governing Childhood', in A McGillivray (ed), *Governing Childhood* (Dartmouth Publishing Company, 1997), 6. See also V Gillies, 'Meeting parents' needs? Discourses of "support" and "inclusion" in family policy' (2005) 25 *Critical Social Policy* 70; V Gillies, *Marginalised Mothers: Exploring Working Class Experiences of Parenting* (Routledge, 2006); V Gillies, 'Childrearing, Class and the New Politics of Parenting' (2008) 2 *Sociology Compass* 1079; V Gillies, 'Is poor parenting a class issue? Contextualising anti-social behaviour and family life', in M Keltt-Davis (ed), *Is Parenting a Class Issue*? (Family and Parenting Institute, 2010).

[4] See further especially S Trotter's paper in this special issue, evoking S Heti's book *How Should a Person Be?* (Vintage, 2014 [2013]).

question of parenthood as a (passive) legal status. It addresses who a parent can be in and according to law, what a parent looks like in and according to law, and who is recognised as a parent in and according to law. The second is a question of how being a parent is conceived of. This is a question of what it means to be a parent in and through law; and it speaks too in another way to parenting as an activity, a day-to-day (active) relationship.

Explorations of the first question highlighted the influence of the (invariably heteronormative and Eurocentric) nuclear, two-parent family model on the law's approach to parenthood.[5] The inadequacies of limiting legal parenthood to two individuals were deemed many, and include: precluding recognition of the myriad of ways that others may contribute to the care of a child; creating an (at times painful) chasm for families whose social reality is at odds with the 'legal truth' constructed by the two-parent model; and erasing the role of surrogates and gamete donors and others whose acts of solidarity and collaboration help conceive a child. Discussions here focused on questions of the point, aim, and necessity of legal parenthood; and there was lively debate in this context about the possibilities of restructuring and rethinking it entirely. In particular, there was consideration, in the *ideas and norms* conversation, of the idea of abolishing legal parenthood; and thinking this through in the way in which Claire Fenton-Glynn had invited us to do in her paper was thought to be an especially useful exercise for illuminating the purpose of legal parenthood itself and its underlying norms. Then, in the *recognition and protection* conversation, there was discussion of the idea of degendering legal parenthood so as to enable greater recognition of family diversity and diverse family forms. This was a question that similarly provoked reflection on the norms and rationales underpinning the current system and their implications more broadly.

The point about recognition itself – and specifically about its relationship with protection – was one that was returned to time and again in both the *ideas and norms* and *recognition and protection* conversations. Discussions here spanned questions of whether recognition is necessary for protection, of whether recognition is solely about protection, and of the significance of recognition in and through the terms of legal parenthood itself (especially for those on the margins who might lack it or who might be very easily stripped of it). Some of these points could of course be extended to the question of the recognition of a relationship as a 'family life' relationship in the terms of European human rights law, and this was another theme that came up in the discussions and so too in some of the papers. The wider question here, as in the case of the more general discussion of recognition, was about the implications of recognition, and about the implications of the legal construction and interpretation of a relationship in a particular way.

Discussions of the form and structure of legal parenthood – of the construction of legal parenthood as a status, of what is required to be a legal parent, and of who is a legal parent – fed into wider discussions about the construction of norms relating to parenting. There was also discussion in this context of the way in which even though parental responsibility can be granted to more than two people, there seems to be a slight lack in the engagement of the family justice system with the interdependent reality of parenting for many. As Beth Tarleton highlighted, both in her paper and in the *rights and support* conversation, parents who ask for, and are given 'too much' state support are rebuked for receiving 'substituted parenting'. But this negative attitude towards supported parenting seems to be only directed at parents seeking the *state's* financial support. Parents who rely on the support and work of, say, private childcare centres, tutors, and nannies do not attract attention in the same way. The

[5] See further on this A Brown, *What is the Family of Law? The Influence of the Nuclear Family* (Hart Publishing, 2019).

wider question of what parenting requires (beyond recognition) and the resourcing it demands was something that was discussed in the *rights and support* and *scrutiny and surveillance* conversations, and discussions also touched on the wider structural and systematic issues that arise in this respect. The sense was that constructions of risk, parenting, and austerity politics are connected in more ways than one, with there being a relationship between the *responsibilisation* of parents, on the one hand – and their blame for a growing myriad social and political problems – and the *irresponsibilisation* of the modern welfare state, on the other. Notably, the relationship here is mostly a bilateral one between parents and the state. Parents are responsible *to* the state for their children: their childrearing is monitored and assessed *by* the state; and it is the state that has final say on its adequacy.

On law

Many aspects of our discussions reached wider questions about law: questions about the purpose(s) and function(s) of family law, the capacities and incapacities of law, and the connections between family law and other fields of law when it comes to the regulation of parenting. We would like finally to reflect on the ways in which these questions emerged across the issue.

The question of the purpose(s) and function(s) of family law was one that was an undercurrent throughout, and there was a sense in which family law is pursuing quite a few functions when it comes to the regulation of parenting. One is about *identification*: about identifying (and being able to identify) a person who is responsible for a child and about attributing (and being able to attribute) responsibility for a child. Insofar as this involves the identification of a parent, there is a close connection between identification and *recognition*, although of course in relation to that there is then a question of what recognition is of: a particular conceptualisation of parent? Lived experience? Reality? (And if so, whose reality?) What, moreover, are the circumstances in which recognition does not occur? And what are the implications of that? Where, furthermore, does this all leave the *protective* function of family law?

There is then the *structuring* function of law: the way in which it distinguishes and creates categories such as ‘parent’, ‘mother’, and ‘father’ and constructs and expresses norms and ideas relating to these. Discussions here spanned the very construction of categories, the language that is used in the articulation of these categories, the way in which lines are drawn in and through law in this context, the norms and ideas underpinning these categories, and the relationship between legal categories and concepts such as child welfare. Reference was also made to the normativity of law and the necessity of categories, rules, and structures in the first place, including for the *problem-solving* function of family law and its role in responding to family conflict. The question was then of the way in which these categories and rules were being constructed and the role of different actors (including judges and courts) in the process.

Moving next to the theme of the capacities and incapacities of law, here discussion related to the role of law (including in addressing and/or responding to psychological and/or social needs), the limits of family law, and the capacity of the legal system to cope with difficulty. There was also reflection on wider questions of what it is that we expect of law and demand of law (and of who the ‘we’ is here), particularly in relation to ideas of certainty. There was a sense, for example, that law articulates an idea of certainty in relation to the child–parent relationship, but this was then problematised, with there being a questioning of the idea and implications of (the idea of) certainty itself in this context.

The third question about law that ran through many of the conversations was about the connections between family law and other fields of law when it comes to the regulation of

parenting. These connections emerge both in the sense that the way in which family law regulates the child–parent relationship and constructs parenthood has wider implications for other areas of law and in the sense that the child–parent relationship is, independently, regulated in and through areas of law that go beyond family law. The point about this that emerged from the conversations was fundamentally one of a need for attention to these connections, a need for a willingness and openness to engage with these other areas of law.

Concluding thoughts

What are we talking about when we talk about the regulation of parenting? When we decided to put that question at the heart of our special issue, we did so because it seemed, to us, to be a question that reflected and invited a way of thinking through and with the many different ways of conceiving of and thinking about the regulation of parenting. The reflection pieces and conversation pieces that make up this issue reveal and reflect that range and enable an engagement with it. The reflection pieces do so in the way in which they stem from different disciplines, address different topics, and take different methodological approaches to the questions themselves. And so we have in this issue contributions that are comparative, theoretical, socio-legal, empirical, historical, and analytical in nature, with each approach reminding us of something different. For instance, the comparative method reminds us that legal concepts as foundational as parenthood, and state policies as entrenched as those related to parental choices regarding children's education, are historically and culturally contingent, based as they are on socio-political factors and choices. The pieces that take more of a theoretical approach look at fundamental questions of the nature and trajectory of the categories of parenthood and parenting and examine how we might think about these categories. The more socio-legal pieces focus on what is happening in practice, and they situate the regulation of parenting in its wider context. The empirical pieces – involving, for instance, interviews – set out accounts of lived experiences of and with the law. The pieces that touch on or examine the history of the regulation of parenting (or a specific aspect relating to the regulation of parenting) study the continuities and discontinuities in this context. And the pieces that are more analytical in approach focus primarily on the construction of categories and the way in which particular concepts are interpreted in and through law.

Taken together, the reflection pieces in this issue offer a rich account of questions relating to the regulation of parenting; and these questions are then opened up and taken in new and interesting directions in the conversation pieces that follow. To us, the ideas, themes, and questions that fill the pages of the conversation pieces can be drawn into three threads, relating to regulation, parenthood and parenting, and law; and so it is through the lens of those threads that we have gathered together our concluding thoughts here. But our hope really is that readers of this special issue will find other threads too, and that the issue itself is a helpful tool with which to think through and debate the regulation of parenting.

Further readings

We would like to end with a list of readings that influenced the project and the thinking behind the individual reflection pieces:

– F Ahdash, 'The familialization of terrorism and the securitization of the family: gendered narratives of infantilization and demonization' (2024) 51 *Journal of Law and Society* 212.
– G Baars, 'Queer Cases Unmake Gendered Law, Or, Fucking Law's Gendering Function' (2019) 45 *Australian Feminist Law Journal* 15.

- A Bainham, S Day Sclater, and M Richards (eds), *What Is a Parent? A Socio-Legal Analysis* (Hart Publishing, 1999).
- A Brown and K Wade, 'The incoherent role of the child's identity in the construction and allocation of legal parenthood' (2023) 43 *Legal Studies* 29.
- J Buterman, 'The Birth Certificate as Fetish object in the Governance of Citizenship and its Presumed Sex and Gender Norms' in T Bloom and L Kingston (eds), *Statelessness, Governance, and the Problem of Citizenship* (Manchester University Press, 2021).
- L Devine, *The Limits of State Power & Private Rights: Exploring Child Protection & Safeguarding Referrals and Assessments* (Routledge, 2017).
- C Fenton-Glynn, 'Deconstructing parenthood: what makes a "mother"?' (2020) 79 *Cambridge Law Journal* 34.
- S Flacks, *Law, Drugs and the Politics of Childhood: From Protection to Punishment* (Routledge, 2021).
- L Franklin et al, '"They don't think I can cope, because I have got a learning disability …": Experiences of stigma in the lives of parents with learning disabilities' (2021) 35 *Journal of Applied Research in Intellectual Disabilities* 935.
- F Grillo, *Muslim Families, Politics and the Law: A Legal Industry in Multicultural Britain* (Routledge, 2015).
- S Heti, *How Should a Person Be?* (Vintage Books, 2014 [2013]).
- E Jackson, *Regulating Reproduction: Law, Technology and Autonomy* (Hart Publishing, 2001).
- E Jackson, 'What is a Parent?' in A Diduck and K O'Donovan (eds), *Feminist Perspectives on Family Law* (Routledge-Cavendish, 2006).
- CG Joslin and D NeJaime, 'Multiparenthood' (2024) 99 *New York University Law Review* 1242.
- R Levi and M Valverde, 'Studying Law by Association: Bruno Latour Goes to the Conseil d'État' (2008) 33 *Law & Social Inquiry* 805.
- N Lunn, *Conversations on Love* (Viking, 2021).
- J McCandless and S Sheldon, 'The Human Fertilisation and Embryology Act (2008) and the Tenacity of the Sexual Family Form' (2010) 73 *The Modern Law Review* 175.
- D Monk, 'Theorising Education Law and Childhood: Constructing the Ideal Pupil' (2000) 21 *British Journal of Sociology of Education* 355.
- H Reece, 'The Paramountcy Principle: Consensus or Construct?' (1996) 49 *Current Legal Problems* 267.
- H Reece, 'Was There, is There, and Should There be a Presumption against Deviant Parents' [2017] CFLQ 9.
- HB Sigurjonsdottir and JG Rice, 'Stigmatic representation of intellectual disability and termination of parental custody rights' in K Scior and S Werner (eds), *Intellectual Disability and Stigma: Stepping Out from the Margins* (Palgrave Macmillan, 2016).
- K Seear, *Law, Drugs and the Making of Addiction* (Routledge, 2020).
- D Spade, 'Law as Tactics' (2011) 21 *Columbia Journal of Gender and Law* 40.
- S Spyrou, 'An ontological turn for childhood studies?' (2019) 33 *Children & Society* 316.
- S Trotter, 'The Child in European Human Rights Law' (2018) 81 *Modern Law Review* 452.