ISFL North American Regional Conference: Inequality and the Future of Family Law
April 27-28, 2018 - Room 25, Mondale Hall

Conference Agenda

Friday, April 27, 2018

12:15 p.m. to 12:45 p.m.
CLE Registration

12:45 p.m. to 1:00 p.m., Room 25
Welcome and Opening Remarks
June Carbone, Robina Chair of Law, Science & Technology, University of Minnesota Law School

1:00 p.m. to 2:10 p.m., Room 5 (1.0 CLE)
Kathryn Fort, Director, Indian Law Clinic, ICWA Appellate Project, Michigan State University
College of Law
Shana King, Director, ICWA Law Center, Minneapolis, Minnesota
Shannon Smith, Parent Mentor, ICWA Law Center, Minneapolis, Minnesota

The Indian Child Welfare Act is forty years old this year. Its promise—to provide heightened protections from implicit and explicit bias for American Indian families—remains unfulfilled. In Minnesota alone, American Indian children are placed in foster care at least 14 times their presence in the population. However, the discussions and expectations surrounding family law and child welfare are just now catching up to what ICWA is supposed to provide. For example, explicit federal standards in child welfare not tied to funding, active efforts to provide for family reunification, and kinship placements for children in care, are all required by the law. In addition, the law allows for a child’s tribal government to have a place at the table and a voice in the process. This panel will discuss the specific way ICWA’s provisions help families from multiple perspectives.

1:00 p.m. to 2:10 p.m., Room 35 (1.0 CLE)
Session Two: “Family Law Casebooks”
Moderator: June Carbone, Robina Chair of Law, Science & Technology, University of Minnesota Law School
Naomi Cahn, Harold, H. Greene Professor, George Washington University Law School
Linda McClain, Professor of Law, Boston University School of Law
Rachel Rebouche, Associate Dean for Research, Professor of Law, Temple University Beasley School of Law

This panel will explore challenges in writing a casebook for U.S. family law students in 2018 and beyond. Much has evolved in the field, raising questions fundamental to how family law topics are framed, explained, and taught. How does the extension of marriage rights to couples of the same sex translate into rethinking the role of gender in casebooks’ problems and examples?
Related to another theme of the conference, how should a contemporary casebook adequately address the deep income divisions that now demarcate the resources available to and the rights conferred on families? Materials on non-marital families go some way toward addressing this question, but family law scholars also recognize the racial politics and class markers associated with decisions to marry as well as the increasing number of couples who do not look to state laws to solve their disputes. What emerges from viewing these and related trends together is a two-track system – one for the wealthy and one for the poor. Both systems present challenges to capturing how law operates for people across class, income, race, and other lines.

This panel will reflect on how casebook writing might reflect these developments while meeting the pedagogical objectives of teaching family law’s canon and equipping students with lawyering skills.

2:10 p.m. to 3:25 p.m., Room 25 (1.25 CLE)

Session One: “The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice”

Moderator: Perry Moriearty, Associate Professor of Law, University of Minnesota Law School
Author: Barry Feld, Centennial Professor of Law, University of Minnesota Law School
Hon. Pamela Alexander, Hennepin County District Court, Minnesota Judicial Branch
Nancy Dowd, David H. Levin Chair in Family Law, University of Florida Levin College of Law
Elizabeth Katz, Fellow, Stanford Center for Law and History, Stanford University

This author meets reader panel will address Barry Feld’s, “The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice.” It will include a parallel presentation on “The Forgotten Criminal Origins of Twentieth-Century Family Laws and Courts.”

2:10 p.m. to 3:25 p.m., Room 3 (1.25 CLE)

Session Two: “Intimate Lies and the Law”

Moderator and Author: Jill Hasday, Distinguished McKnight University Professor, University of Minnesota Law School
Maxine Eichner, Graham Kenan Distinguished Professor of Law, University of North Carolina School of Law
Joanna Grossman, Ellen K. Solender Endowed Chair in Women and the Law, SMU Dedman School of Law
Clare Huntington, Associate Dean for Research, Joseph M. McLaughlin Professor of Law, Fordham University School of Law

This author meets reader panel will address Jill Hasday’s forthcoming book, “Intimate Lies and the Law.” It examines how the law does and should regulate deception by family members, lovers and dates.

2:10 p.m. to 3:25 p.m., Room 15 (1.25 CLE)

Session Three: “Taking Baby Steps”

Moderator and Author: Jody Madeira, Professor of Law, Louis F. Niezer Faculty Fellow, Indiana University Maurer School of Law
Susan Appleton, Lemma Barkeloo & Phoebe Couzins Professor of Law, Washington University School of Law
Melanie Jacobs, Senior Associate Dean, Admissions & International Programs, Professor of Law, Michigan State University College of Law
Richard Storrow, Professor of Law, CUNY School of Law

In “Taking Baby Steps,” Jody Lyneé Madeira takes readers inside the infertility experience, from dealing with infertility-related emotions to forming treatment relationships with medical professionals and confronting difficult medical decisions. Based on hundreds of interviews, this book investigates how women, men, and
medical professionals negotiate infertility's rocky terrain to create life and build families—a journey across personal, medical, legal, and ethical minefields that can test mental and physical health, friendships and marriages, spirituality, and financial security.

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3:25 p.m. to 3:35 p.m.
BREAK

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3:35 p.m. to 4:50 p.m., Room 15 (1.25 CLE)
Session One: "Family Courts Adjudicating Family Violence and Parental Alienation: Empirical Findings from U.S. and Canada"
Moderator: Joan Meier, Professor of Clinical Law, George Washington University Law School
Adrienne Barnett, Lecturer in Law, Brunel University London Law School
Hon. Eugene M. Hyman, Judge of the Superior Court of California (Retired), Lecturer in Law, Santa Clara University
Linda C. Neilsen, Professor Emerita, University of New Brunswick

This panel will bring together leading scholars and experts in family court responses to domestic violence and child abuse from the United States and Canada. Professor Joan Meier will present her NIJ-funded empirical study of over 4,000 custody and visitation opinions, examining courts' responses to abuse and parental alienation allegations. Some findings include confirmation of protective parents' reports that mothers who report child abuse very often lose custody to the alleged abuser. Professor Emerita Linda C. Neilson will present empirical data from her research into the same issues in Canadian courts. Hon. Eugene M. Hyman will comment on findings from both countries from a judicial perspective.

3:35 p.m. to 4:50 p.m., Room 35 (1.25 CLE)
Session Two: "The Nature of Parentage"
Moderator: Jody Madeira, Professor of Law, Louis F. Niezer Faculty Fellow, Indiana University Maurer School of Law
Ayelet Blecher-Prigat, Senior Lecturer, The Academic Center for Law and Science
Jessica Feinberg, Associate Professor of Law, Mercer University School of Law
Melanie Jacobs, Senior Associate Dean, Admissions & International Programs, Professor of Law, Michigan State University College of Law
Karin Carmit Yefet, Senior Lecturer, University of Haifa

This panel examines the changing foundations of legal parentage, considering the issue in a comparative framework, and contrasting the issues that arise in the context of assisted and natural reproduction, with consideration of sperm donation fraud, surrogacy, and other issues.

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Session One: “Children and Human Rights”
Moderator: Fionnuala Ni Aolain, Regents Professor & Robina Chair in Law, Public Policy, and Society, University of Minnesota Law School
Ann Estin, Aliber Family Chair in Law, University of Iowa College of Law
Kristian Gustafsson, Doctoral Student, Lund University
Kim Hai Pearson, Associate Dean for Research and Development, Associate Law Professor, Gonzaga University School of Law
Clare Ryan, Ph.D. in Law Candidate, Yale Law School
Richard Storrow, Professor of Law, CUNY School of Law

This panel explores family law through the lens of children’s rights, both within the international human rights framework and American domestic law. It examines the particular vulnerability of children, considering the distinct role of adolescence, the impact of relocation and migration, the interaction with race, poverty and refugee status and the implications for framing “childhood” as a subject of family law.

Session Two: “Marriage, Race, Equality and the Family”
Moderator: Jill Hasday, Distinguished McKnight University Professor, University of Minnesota Law School
Susan Appleton, Lemma Barkeloo & Phoebe Couzins Professor of Law, Washington University School of Law
Nancy Dowd, David H. Levin Chair in Family Law, University of Florida Levin College of Law
Robin Lenhardt, Faculty Director of the Center on Race, Law and Justice, Professor of Law, Fordham University School of Law
Linda McClain, Professor of Law, Boston University School of Law
John Wamwara, Doctoral Candidate, Emory University

This panel examines the definition of family relationships generally and marriage in particular as sources of societal privilege. State sanctioned marriage has been an important dividing line between state sanctioned relationships, entitled to affirmation and support, versus other relationships, which could be stigmatized or marginalized. This divided line has severed to reinforce hierarchies based on race, gender, ethnicity and sexual orientation. This panel considers the continuing role of state recognition as a source of privilege and examines what the future of such recognition should entail.
Saturday, April 28, 2018

8:00 a.m. to 8:30 a.m.
Registration and Continental Breakfast

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8:30 a.m. to 10:00 a.m., Room 3 (1.5 CLE)
Session One: “The Neoliberal Family”
Moderator: Maxine Eichner, Graham Kenan Distinguished Professor of Law, University of North Carolina School of Law
Erez Aloni, Assistant Professor, University of British Columbia Peter A. Allard School of Law
Wendy Bach, Associate Professor of Law, University of Tennessee Knoxville College of Law
Barbara Stark, Hofstra Research Fellow, Professor of Law, Maurice A. Deane School of Law
Emily Stolzenberg, Associate in Law, Columbia Law School

In the later part of the twentieth century, a related group of ideas that work to limit the scope of the government gained political ascendance in the United States. Proponents of what is sometimes called “neoliberalism” define the proper role of government narrowly, largely in terms of maintaining free markets. In this conception state actions to further objectives beyond open markets -- for example, to support wellbeing or to limit inequality -- are cast as ineffective, paternalistic, and exceeding the government’s proper scope.

Neoliberalism’s effects have been pervasive in the U.S. regulation of families. A 1986 Reagan Working Group Report on the Family wrote that “democratic capitalism through its devotion to individual freedom, its creation of wealth, and its demand for personal responsibility -- made the modern family possible.” Consistent with this neoliberal vision of the proper relationship among family, government and market, U.S. law has rolled back earlier welfare state supports for families and insisted that families go it alone in the market.

Members of this panel will chart the ways that neoliberalism has affected the regulation of the family in the United States, consider the extent to which neoliberal family law can and can’t provide the conditions that support sound families; explore fixes to existing neoliberal family law presuppositions, and propose alternative paths forward that would better support families.

8:30 a.m. to 10:00 a.m., Room 7 (1.5 CLE)
Session Two: “Non-Traditional Family Relationships”
Moderator: June Carbone, Robina Chair of Law, Science & Technology, University of Minnesota Law School
Susan Appleton, Lemma Barkeloo & Phoebe Couzins Professor of Law, Washington University School of Law
Marianne Holdgaard, Professor in Family and Inheritance Law, Aalborg University
Eva Ryrstedt, Doctor of Laws (LLD), Professor in Private Law, Lund University
Ruth Zafran, Assistant Professor, Radzyner Law School

This panel considers how to define the family relationships that should receive legal protection. It considers these issues in a comparative context, examining the treatment of unmarried couples, the creation of alternative family statuses, recognition of sibling relationships, and evolution of these notions over time.

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10:00 a.m. to 10:15 a.m.
BREAK

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10:15 a.m. to 11:45 a.m., Room 3 (1.5 CLE)
Session One: “The Law and the Status of Cohabitation”
Moderator: Naomi Cahn, Harold, H. Greene Professor, George Washington University Law School
Albertina Antognini, Assistant Professor of Law, University of Kentucky Law School
Barbara Atwood, Co-Director of the Family and Juvenile Law Certificate Program, Mary Anne Richey Professor Emerita of Law, University of Arizona James E. Rogers College of Law
Courtney Joslin, Professor of Law, University of California Davis School of Law
Suzanne Kim, Judge Denny Chin Scholar, Professor of Law, Rutgers Law School
Kaiponanae Matsumura, Associate Professor of Law, Arizona State University Sandra Day O’Connor College of Law

This panel will discuss various aspects of the economic rights of unmarried cohabitants in the United States. Participants will consider rights of cohabitants during their ongoing relationships, upon separation, and at death. States currently have a multitude of approaches, and participants will address current approaches as well as offer recommendations for the future.

10:15 a.m. to 11:45 a.m., Room 7 (1.5 CLE)
Session Two: “The Family and Wealth”
Moderator: Margaret Brinig, Fritz Duda Family Chair in Law, University of Notre Dame Law School
Marie Goransson, Doctoral Student, Lund University
Allison Tait, Associate Professor of Law, University of Richmond School of Law
Danaya Wright, Clarence J. Teselle Endowed Professor, University of Florida Law

This examines the relationship between family relationships and wealth. It provides a comparative examination of the role of formal family statuses including domestic partnerships in wealth allocation and management, the impact of alternative family relationships on children and inheritance, and the guiding values that should govern family wealth management.

11:45 a.m. to 1:00 p.m.
LUNCH

1:00 p.m. to 2:15 p.m., Room 3 (1.25 CLE)
Session One: “The Contested Place of Religion in Family Law”
Moderator: Robin Fretwell Wilson, Director of Family Law and Policy Program, Roger and Stephany Joslin Professor of Law, University of Illinois College of Law
Brian Bix, Frederick W. Thomas Professor of Law and Philosophy, University of Minnesota Law School
Naomi Cahn, Harold, H. Greene Professor, George Washington University Law School
Federica Giardini, Professor of Law, University of Padua
Robin Kar, Professor of Law and Philosophy, University of Illinois College of Law

The Contested Place of Religion in Family Law examines the latitude families have to express religious values on a variety of questions and whether that latitude comes at the expense of vulnerable persons, like children. The discussion draws on insights from Obergefell v. Hodges decision, which reimagined the boundaries of marriage, and Burwell v. Hobby Lobby, which breathed new life into religious claims to not to be burdened by government regulation.
This panel features contributors to the book, combined with a fresh international perspective and the insights from a student writing in family law.

1:00 p.m. to 2:15 p.m., Room 7 (1.25 CLE)  
**Session Two: “The Future of Parentage”**  
**Moderator:** Courtney Joslin, Professor of Law, University of California Davis School of Law  
Mary Louise Fellows, Emeritus Professor of Law, University of Minnesota Law School  
Douglas NeJaime, Professor of Law, Yale Law School  
Nancy Polikoff, Professor of Law, American University Washington College of Law

This panel will discuss parentage law and the modern family. Participants will discuss various law reform efforts -- with regard to parentage as well as probate law -- that seek to better align the law with the realities of family life today. Participants will also consider whether some of these legal changes are constitutionally required. In addition to thinking about how the law should and maybe must reformed to better recognize and protect families, panelists will also explore situations the state improperly intervenes in and breaks families apart and what should be done about this.

2:15 p.m. to 2:25 p.m.  
**BREAK**

2:25 p.m. to 3:35 p.m., Room 3 (1.0 CLE)  
**Session One: “Private Ordering”**  
**Moderator:** Brian Bix, Frederick W. Thomas Professor of Law and Philosophy, University of Minnesota Law School  
Elizabeth Carter, Judge Anthony J. Graphia Professor of Law, Louisiana State University Law School  
Luciana Nahas, Professor of Law, University of Southern Santa Catarina Brazil

This panel will focus on the role of contracts in ordering family relationships. It will consider in particular the role of prenuptial agreements, the validity of family agreements generally and comparisons between the role of such agreements in Brazil, and various parts of the United States.

2:25 p.m. to 3:35 p.m., Room 7 (1.0 CLE)  
**Session Two: “Handling Divorce”**  
**Moderator:** Laura Thomas, Director of Law Clinics, Vaughan G. Papke Clinical Professor, University of Minnesota Law School  
Kele Stewart, Co-Director of the Children & Youth Law Clinic, Professor of Clinical Education, University of Miami School of Law  
Terrie Vanover, Founder, Divorce and Family Coach, Choosing to Rise  
Nancy Ver Steegh, Professor of Law, Mitchell Hamline School of Law

This panel will address the dispute resolution in the context of divorce litigation with emphasis on the challenges posed by intimate partner violence, the role of counseling and coaching in facilitating better resolutions, and the limits of the family courts (and the divorce model) in dealing with the issues that affect poor families.

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3:35 p.m. to 5:00 p.m., Room 25 (1.25 CLE)
**Plenary Session: “The Role of Empirical Work in Family Law”**

**Moderator:** Naomi Cahn, Harold, H. Greene Professor, George Washington University Law School

Margaret Brinig, Fritz Duda Family Chair in Law, University of Notre Dame Law School

June Carbone, Robina Chair of Law, Science & Technology, University of Minnesota Law School

Clare Huntington, Associate Dean for Research, Joseph M. McLaughlin Professor of Law, Fordham University School of Law

Suzanne Kim, Judge Denny Chin Scholar, Professor of Law, Rutgers Law School

Douglas NeJaime, Professor of Law, Yale Law School

This session addresses the role of empirical work in family law, looking at the way such work influences our treatment of family law issues, the extent to which it depends on the availability of databases and the funding that supports them, the role of law professors in using (or failing to use) the available data to frame family law issues, the biases and limitations of existing empirical researches, and the challenges for the future.