

THE REPRODUCTION OF GENDER DIFFERENCE AND HETERONORMATIVITY IN FAMILY LAW

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Introduction

- Family law a key site for the transmission of gender norms with regard to adult relationships and parenting children
- and heteronormative expectations concerning the construction of families and family relationships
- Legal rules vary between jurisdictions but similar questions arise
- Law responds to changing social practices and medical, technological and economic developments – gender differences and heteronormativity may be reconfigured and reproduced rather than transcended

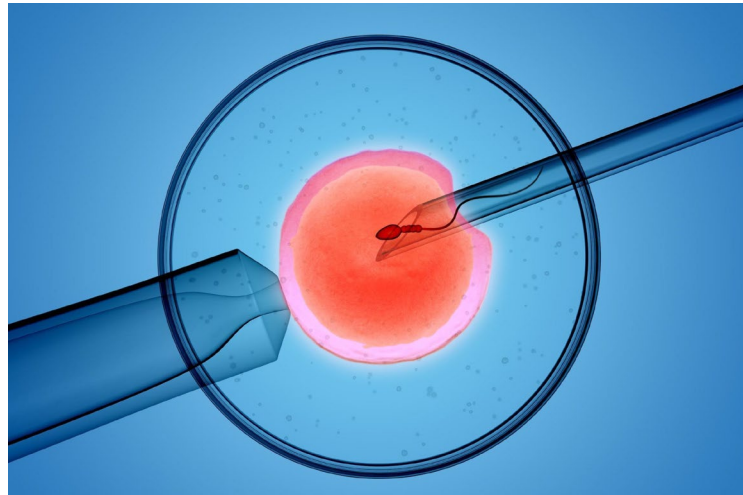
Legally recognised relationships



- Heterosexual marriage as the social and legal norm for adult relationships
 - From gender roles in marriage to a 'partnership of equals'?
- Recognition of cohabiting relationships?
- Recognition of same-sex relationships?
 - Marriage or other status?
 - Effects on heterosexual marriage?
- Recognition of mutually caring, dependent, non-conjugal relationships?

Attribution of legal parenthood

- 'Natural' heterosexual conception – within and outside marriage?
- Assisted reproductive technologies
 - Who has access?
 - Gendered ascription of parenthood: 'mother', 'father'
 - Recognition of poly-parenting?
 - Trans men?



The division of marital property on divorce

- Gender division of labour in intact families



- Gendered advantage / disadvantage if ignored on divorce
 - Valuing only financial contributions to the marriage
 - Equal division of property fails to account for unequal needs and capacities after divorce
 - Impoverishment of divorced women and their children
 - Direction of travel to women's detriment: formal equality and private ordering

Post-separation parenting

- Formal equality here too
 - Ignoring unequal contributions to child care
 - Burden of shared care falls on mothers and children
- Different normative expectations for mothers and fathers
 - Fathers financially support, mothers sacrifice
 - Blame and punishment for mothers who don't ensure or promote contact
 - Difficulties securing safety and protection
- Gay and lesbian parents?
- Transgender parents?



Conclusion

- Family laws thickly imbued with social, religious, cultural norms
- ‘Universal’ human rights standards are open-textured, indeterminate and heteronormative
 - Right to privacy
 - Right to marry and found a family
 - Equal rights within marriage and on dissolution
- Family laws continue to attach meanings to gender resulting in legal advantages and disadvantages; and continue to privilege some forms of relationship and marginalise others
- Does change equate with progress?
 - E.g. gender neutrality – effects in practice?
 - E.g. lesbian and gay male inclusion – who remains excluded?