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The development of an international RCSL research group on family law at IISL Oñati: An illustration of the value of community in scholarship

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Introduction

The publication of the 2020-2022 lectures on the development of the IISL Oñati and its contribution to the sociology of law by senior scholars with long experience and long memories is of great interest and importance not only as a historical record, but as an inspiration to the coming generation of how ideas can be generated, shared, and above all can feed into new research questions and new projects. When asked to contribute my memories of the development of the IISL and the Sociology of Law, and of the impact of the Institute on my own work, it was an honour to accept. But despite the number of times my name appears as editor on the ten Oñati International Series books about family issues, listed at the end of this chapter, this is not the work of an individual. The story I wish to tell is about the development of an extraordinarily gifted and productive international community of scholars interested in law, family and policy. The names of those who carried out this research are inside the covers of our books as chapter authors, the name on the cover of each book simply indicates the person who put it all together. This work could not have been contemplated, never mind completed, by these contributors without the great benefits derived from being part of the RCSL community through the Working Group on Legal Professions, and above all by being part of the Oñati Community with a home at the IISL, where we have been able to walk and talk, think and write, and publish our thoughts to the wider world. What follows is a brief account of the work produced by the family law group as part of the Oñati Community.

The IISL Institutional Memory Lecture series began with the splendid account from Vincenzo Ferrari of the history of the sociology of law, outlining the move from seeing law as rules to seeing law as rights, the development of empirical work and action, and recent moves away from trials towards Alternative Dispute Resolution. This paper will build on his foundation, adding empirical and policy related work in the area of family law and policy where we have seen as the next stage, in some jurisdictions, a development which might indicate the start of a move on from family law as rights to what we might describe as a welfarist view of family law as meeting needs. This question is addressed in the group's tenth book currently in press with Hart-Bloomsbury, entitled *What is a Family Court for*?, to which I will return shortly. But firstly, if the reader will forgive the repetition, as this example demonstrates again that it is rare to work alone in the IISL, and that this paper is not only about family law but about the importance of community and continuity in scholarship, here in the international Oñati Community. My role has always been convenor and scribe, amply rewarded by the pleasure of working with

scholars from other jurisdictions and social science disciplines, in particular Polish colleagues Jacek Kurczewski[1] and Malgorzata Fuszara, Jean van Houtte in Belgium, Benoit Bastard in France, John Eekelaar in Oxford, Barbara Willenbacher in Germany, and Teresa Picontó in Spain, Verda Irtis in Istanbul, Anne Griffiths in Scotland, and those from further away including Belinda Fehlberg in Australia, Rachel Treloar in Canada, and Nazila Ghanea from Iran. And there are many more. The Hart-Bloomsbury website lists the full contents of every volume, and includes in total nearly 150 contributors. We have worked together in various combinations on family matters almost AS a family, supported by the intellectual stimulus of the RCSL, and by being able to meet in Oñati. In reviewing the corpus of work for this article, it was pleasing to be reminded of how exciting and truly international it is!

The Family Law and Policy Volumes in the Oñati International Series in Law and Society: an Outline

At the time of writing, i.e., June 2021, the "Family Law and Policy" group had published altogether 10 books over the last 25 years. They have all since 1997 appeared in the International Oñati series first with Hart and now with Hart at Bloomsbury and are listed at the end of this paper referenced by numbers 1 to 10 in the text. These books record a journey, exploring the relationship between individual, family and state in different jurisdictions. The journey has had three stages so far, Stage 1 (books 1-3) looking at politics and policy in family law; Stage 11 (books 4-5) moving to the impact of political and social action on family law, and Stage 111 (books 6-9) dealing with the specific issues of diversity, austerity ,and digitalisation. The first three books on policy and politics asked why, when, and how the state should intrude into the privacy of the family, sometimes referred to as the "black box". This was a key issue when we first met in the 1990s as communist regimes in Central and Eastern Europe were rolling back, and restrictions on individual freedom were being lifted, sometimes with unexpected consequences. In the second stage we moved on to political action in book four, looking at which areas of family regulation had come to the top of the legislative agenda in different countries at different times. This led us in the fifth book to move back to our sociological roots in order to look at social action, and the impact on law and policy of

[1] Jacek Kurczewski also contributed a memory lecture of his own.

changing social norms, asking what was meant by the term family, e.g.,in the debates about regulating same sex relationships.

While addressing these broad questions in the first stage, we came across more specific problematic issues which we addressed in Stage 111 with the next group of four books. The first addressed the question of how parenting works after partners separate (book six. The second addressed questions about access to justice for all in diverse societies with differing customs and practices (book seven). The third investigated how justice systems were affected in the attempts to economise during the period of austerity after 2008 (book eight). The fourth book broached the issue of how justice systems have been affected through the experience of the digital revolution (book nine).

We were then ready to move to the question which we address in our latest work, (book ten), which is in press at the time of writing. This is the key question which perhaps we should have started from, though we would not have been able to give an answer at that time: What is the purpose of a family justice system? What is a family court FOR? Does it exist to provide adjudication in family disputes, or to promote alternative methods of dispute resolution in order to reach settlement? Do we want MORE from the court, perhaps a greater concern with the welfare of the children, who are often the third parties in any family dispute, or might we even ask for HELP to solve the problems which have become legal disputes? Are we looking for pure Justice, on its own, or Justice with Welfare?

This paper will return to discussing this work in more detail later, but it may be helpful first to provide some explanation of how the group began, how we first came to Oñati, and how the Family Law and Policy group, which had met and developed in the RCSL Working group on the Legal Professions, has been nurtured by the IISL community.

The Origins of the Family Law and Family Policy Research Association with the IISL Oñati

The Centre for Socio Legal Studies (CSLS) in Oxford in 1974 opened only ten years after the founding of the RCSL, when empirical interdisciplinary studies of law in society were very new (and rather different from the Law and Society studies in the US). I joined the CSLS in Oxford as a Social Policy researcher, not as a lawyer. I knew nothing about socio-legal studies until I met members of the RCSL in Oxford, particularly Philip Lewis

and Don Harris. The Oxford Law Faculty already had a close relationship with the Faculty of Law in Warsaw, and Don Harris quickly invited Jacek Kurczewski, a pupil of Adam Podgorecki, to visit the CSLS. This led me to further meetings in Warsaw, and then to RCSL Working Group meetings all over the world but especially in Aix-en-Provence, Brittany, Peyresq, and more recently Andorra. In England we had just experienced the rather grim years under Mrs Thatcher when academics generally, and social science in particular, were frowned upon. Mrs Thatcher, sometimes called The Iron Lady, had announced: “There is no such thing as society”. So, I was grateful to learn from my Polish colleagues about how to survive in a hostile and anti-intellectual environment, and also how law could be used as a social instrument to alleviate harsh conditions. In social policy, where my research career had begun, we tried to identify social needs and then find ways to meet these needs. I quickly discovered that a legal right can be a much stronger weapon than a social need, when seeking to bring about change, especially under an unsympathetic government.

This Anglo Polish connection quickly expanded, and through my interest in family law I began to work with Benoit Bastard in Paris, and Jean van Houtte (President of the RCSL in 1980) in Antwerp.[2] In December 1988 the agreement was signed by the RCSL and the Basque government which established the IISL, to be situated in the building of the Ancient University of Oñati, which had been founded in 1540 and functioned until 1901, when it finally was closed. The IISL fully established itself in the building, with its library and later the Antia Palace as a residence for the Scientific Director and the international masters students who would spend October to April in Oñati, being taught by visiting professors who came and left Oñati every other week. And for the rest of the academic year workshops were to be convened by international scholars, the proceedings of which were considered for the international Oñati Series. The edited collections of papers as books soon began to be published by Richard Hart from Oxford who had done so much for socio legal studies in the UK. He had recently left Oxford University Press to become an independent publisher, free to support this new discipline, and we warmly recognise his major impact on the development of the IISL, all beginning from the kitchen of his small house in Oxford.

[2] I understand that it was during Jean van Houtte’s presidency that Volkmar Gessner took the train journey where he met with key figures from the Basque Country and began to discuss ways to develop Basque socio-legal scholarship.

In 1990 I was invited to teach on the IISL Masters programme in Oñati. This was a challenging task for a non-Spanish speaker, and on arriving in Bilbao where it was late and dark, I was met by a silent man who drove into the mountains without a word and left me outside a flat in Oñati. I remained a little nervous, but in the morning, in the sunshine, at the beautiful university building, I was warmly welcomed by Susana Arrese. The library was a treasure house, Mr Goyenaga, the Administrative Director, had everything running smoothly, and Dr Azpiazu who dealt with publications was both scholarly and charming. I had a delightful time, happily walking alone in the surrounding hills. I later visited the silent driver and his family in his home. He became a dear friend named Gregorio, and we found that we had Latin as a common language (his from the seminary mine from school). In future we were able to converse, as I came again and again to teach, and every year learned far more than I taught from everyone connected with the IIISL: students, staff and the kind ladies in the Cooperative and the Market, who showed me what to buy and how to cook, explained *cuadrillas* (the small life long friendship groups formed at about 11 years of age) and the *sociedades gastronómicas*, (groups of men cooking together) and succeeded in making me feel part of the local community despite the language barrier.

Sadly, I never managed to bring an English student with me, perhaps an intimation of the Brexit problems to come. But our Oñati family law course was adopted as part of an open university course in Spain. The students were attentive, and several have become valued colleagues, including Michelle Cottier now in Geneva who is contributing to our current book. Most importantly, while Jacek Kurczewski was Scientific Director of the IISL, he did not only offer academic leadership, he also led the student group into becoming a community, partly by requiring them to cook and eat their evening meal together at the Antia Residence. They learned a great deal. I remember a boy from Nigeria who was horrified at the thought of doing “women’s work” in the kitchen, but found that without it he had to live on breakfast cereal. Another interesting and sweet, yet sad story centred around the kitchen. Two Hungarian boys fell in love with two local students, beautiful girls from Oñati. They were all happy to cook together, but split up over what time to eat! The boys thought 5pm was the proper time for the evening meal, but the girls were horrified at the thought of eating before 9pm. So, they went their separate ways.

My command of Spanish never improved, but I was helped by a Council of Europe expert in speaking English with non-Anglophones. The helpful hints included: (1) beware of jokes when speaking, and (2) when writing, use plenty of commas and hyphens to show

how words are grouped together. It was also important to remember that English takes several forms. One of my classes included a boy from California, and a boy from India. Both spoke "English" but could not understand each other. I was asked to adjudicate and say which one of them was really speaking English. This was instructive for me. I could hardly understand the soft accent of the boy from the US, but the boy from India spoke precise clear English, like my grandmother's generation. My verdict was questioned by the class, but the Indian student went on to practice law successfully in New York.

In 1994 Vincenzo Ferrari, then president of the RCSL, asked me if I would stand for election as his successor. He explained that as the first nomination of a woman for the position I had little chance of being elected. However, I was elected, a rather daunting prospect for a non-linguist, but a pleasure to become even more involved with IISL in Oñati.

Family Law and Policy Research in Oñati

The subgroup "Family Law and Policy Research" of the RCSL "Legal Professions Working Group" has met regularly for many years. It is still chaired by Benoit Bastard and myself, and always increases our range of contacts and ideas to bring to Oñati. We have not simply collected factual information about the various jurisdictions represented in the subgroup. We have thought and argued hard and long to reach a better understanding of each other's jurisdictions, and in doing so have become more able to see our home situation more clearly when reflected in the international mirror of the experience of others.

The Early Work

The development of the family group through the IISL Oñati workshops began with a meeting, called by Valerio Pocar and Paola Ronfani. It examined the relationship between family and state, and led to the publication of the first Oñati series book in this area edited by the convenors, *Family and Social Policy*, 1991. At the time, in a number of jurisdictions, the state was tending to step back from interference in family matters, as described by Paola Ronfani in the first chapter of the book, titled "Towards a dejurification and a dejurisdictionalisation of the Family?". This chapter opened the volume by noting the demographic changes in Europe towards lower fertility and lower marriage rates, and an increase in cohabitation. Valerio Pocar closed the volume with his chapter on

"Transformation in Families and Legal Change in Western Europe" describing the reduction of limitations on individual freedom in family matters, which had, however, been accompanied by increasing vulnerability particularly for women and children. I was present at the meeting, and spoke in chapter six about how in the UK there was less prescription about grounds for divorce, and a greater willingness to rely on individual decision making about whether a marriage had broken down, instead of relying on the concept of a marital offence which required proof and acceptance by the court. This issue of the relationship between the state, the individual and the family was then developed in an Anglo Polish Workshop in Oxford, the proceedings of which were edited by myself and Jacek Kurczewski. This second book from the Family Law Group was published by Oxford University Press in 1994 as *Families, Politics and the Law*,[3] acknowledging that the family had become a battleground in both East and West. In the East the concern to retain welfare provision without reducing individual liberty required a delicate balancing act, while in the West the political right held the family as combining independence from the state with interdependence within the self-sufficient family unit. The political left in the West actually saw it as posing a challenge to ways of safeguarding the rights of individual family members, while still supporting the institution. Rolling back collectivist family law was clearly having complex implications in Poland. With the reestablishment of democracy, law reformers moving to privatise the family had also in effect de-secularised family law, and this made actions which the Catholic Church did not accept, especially abortion, more likely to be proscribed. This remains a live issue in Poland to this day, and no resolution is in sight.

In 1990 we were given funding from the British Foreign Office Know How Fund, and were then able to take this area of research further, joined by Stefka Naumova from Bulgaria. We carried out empirical work into perceptions of family obligations and the law, and some of our findings were included in the third book ,*Family Law and Policy in the New Europe*, published in the Oñati International Series by Dartmouth in 1997 and edited by Jacek Kurczewski and myself.[4] The volume includes supranational theoretical analysis in the first two chapters by Jacek Kurczewski and Katherine O Donovan, followed by intriguing local studies such as Emily Jackson's discussion of how the House of Lords in Westminster regards the legal status of the child who is also a mother. And in chapter four, Stefka Naoumova from Sofia, Professor of Law and Member of Parliament,

[3] Families Politics and the Law in the New Europe (1997) ed Kurczewski J and Maclean M, Oxford, OUP.
[4] See also Kurczewski, J. (1993). *The Resurrection of Rights in Poland*. Oxford: Oxford University Press.

presented some of her survey data on ethnicity and family law in Bulgaria. During transition there had been stresses arising from economic restructuring and women's employment, changes to household formation and welfare provision, as well as increasing levels of social deviance, and the need for protecting children after divorce or during adoption. Naoumova highlights the role of ethnicity in both the incidence of these issues and the form they take. Five hundred years of Turkish rule, followed by the communist regime, had left a complex legacy. The family code under communism had been based on subjecting individual wishes to the public good. The family had been a powerful agency for supporting the state. But with transition the ethnic differences between the majority group of Bulgarians and the three small minority groups of Turks, Roma, and Pomaki (Muslim Bulgarians) began to reappear. For example, Naoumova told the story of the Roma father who was asked in the survey what makes a good son: he replied that his son was very good, because he always handed over everything he stole to his father immediately! Family values and the law, in this example the criminal law, were clearly a little entangled. The political experience of colleagues made a stimulating and informative contribution to this comparative work. In addition to Naoumova's parliamentary role, Kurczewski served as Vice Marshall to the Sejm during the first post transition parliament in Poland. While in a more modest role as academic adviser to the Lord Chancellor in London, I also learned about the working of the legislative and executive branches of government. In order to use this experience to good effect Kurczewski and I wrote *Making Family Law: a Socio-legal Account of Legislative process*, published by Hart in 2011. The practical aspects of democracy were intriguing. For example, in the Sejm, it happened that the number of votes cast by members pressing the button beside their seat would sometimes exceed the number of members present in the chamber. In Westminster the solution was simple, if a little old fashioned: MPs voting must leave the chamber by separate doors marked "yes" or "no".

This research led us on to a more normative stage in our work. We began to look at how an issue could come to be politicised in a family law reform agenda in a number of different jurisdictions. In *Making Law for Families*, edited by Maclean and published in The Oñati International Series by Hart in 2000, we began with a foreword from Bill Felstiner, then a General Editor of the Series, raising the question of how the family is defined across cultural and national divides, to what extent and under which conditions should any particular state intervene, and whether it is possible to reconcile family law, which is grounded in interpersonal obligations within a family unit, with legislation based on human rights discourse that is primarily concerned with an individual's obligations to

the state? A further question raised by Felstiner was to what extent and under what conditions will the family unit endure in the future as a basic unit of social management and control? The book offers a collection of studies of legislative process, beginning with the question of what we want from the law for the family, and how do we frame the concept of a regulatory system for interpersonal behaviour? In my contribution, I began by setting up a number of models for this regulation, a residual model which would do no more than protect the citizen, a task which is already a function of the criminal law. In such a system the family may be seen as the Black Box, where individuals are trusted to organise their group, perhaps in a society with strong shared religious beliefs, or left alone by a state committed to liberal non-intervention. At the other extreme the family may be seen as a box with transparent boundaries, perhaps to be used by the state to follow a particular aim, such as imposing a particular religious regime, as in Israel. Extreme communitarianism may lead to a similar approach for example in the close legal control over children in Scandinavia. A third way might be termed a facilitative, rights-based model, which sits well with the increasing experience of multiculturalism in modern societies. Here the law aims to provide a framework within which individual choice is maximised, but within the constraints of protecting human rights. For example, different ways of raising a child according to religious beliefs are accepted, but only up to the point where a child's health and safety is not put at risk. We discussed, for example, how same sex marriage had reached the top of the law reform agenda in Catalonia in the context of the separatist debate. Catalonia as an *autonomía* could not legislate on divorce but could legislate on marriage, and did so (see chapter six by Encarna Roca Trías, now Vice President of the Constitutional Court in Madrid).

From this examination of the politics of the way in which family law was responding to normative change, and to new agendas about avoiding courts, as well as local party-political agendas, including human rights and family structures, we moved on to look at personal as well as political views of the need for change, for example concerning obligations based on new forms of relationship. In *Family Law and Family Values*, the fifth book by the Family Law Group edited by Maclean and published by Hart in the Oñati International Series in 2005,[5] had to begin on the first page by asking what is it that we mean by this entity known as the family? How does it differ from other social groups, such as work colleagues, or neighbours or friends? Martha Fineman had often suggested

[5] Maclean and Kurczewski also published *Making Family Law: a Socio-legal Account of Legislative Process in England and Wales 1985-2019*. Oxford: Hart 2010.

that the legal privileges associated with family membership should be taken away, and replaced by preferential treatment for all who are close and practice the traditional family values of support and care. We asked whether there was still a role for family law, as individual choice was becoming the dominant mode of social organisation? We considered the challenges posed by new forms of relationship between adults and children through assisted conception, post separation parenting, the emphasis on mediation rather than court based dispute resolution, the management of same sex relationships, the responsibilities of adult children to elderly parents, and over all the harmonisation of law and diversity in seeking a good fit between family law and family values. Perhaps the most important development among the different approaches in the different jurisdictions is described in chapter two, where Wolfgang Voegeli indicated a move in Germany away from social ordering towards social protection in family law.

These attempts to tackle the “Big Questions” had, however, revealed some more specific issues, which we addressed in our next four workshops. We turned first to the question of the changing roles of fathers in our sixth book *Parenting after Partnering*, edited by Maclean and published by Hart for the Oñati International Series in 2007. The conflict surrounding the post-separation parental relationship was arousing considerable anxiety and disagreement in many jurisdictions. Here we looked at the quality of parent-child contact, the reasons why some couples find it so difficult to manage, and how these problems might be alleviated in the context of widespread belief in the importance of an ongoing relationship with both parents for children after separation. At the time of writing this issue remains contentious, and in England and Wales there is now pressure for repeal of an amendment which had been made to the Children Act in 2014, which is said to have created a contact culture, and failed to prevent contact where it is unsafe. This is worrying as the Children Act does not discuss how much time a child should spend with a non-resident parent, but in effect states that continuing involvement with both parents will considered to be of benefit the child, unless there is evidence to the contrary. Clearly there remains a need for further research evidence.

Our next workshop considered diversity, i.e., how the legal response to family questions differs not only between different jurisdictions, but also between different groups within a single society. Our central question was, what is the role of law in a diverse society? It is not surprising that the law tends to reflect the values of the dominant group, but this does not answer the question of how to respond to the family practices of minority groups within a society. Does multiculturalism threaten social solidarity? John Eekelaar opened and coedited the ensuing volume. It was the seventh from this group, entitled *Managing*

Family Justice in Diverse Societies and was published by Hart-Bloomsbury in 2015. In the first chapter, Eekelaar sets out the case for cultural voluntarism in preference to coercive communitarian practices. By this he means a process whereby the state accepts that members of a group MAY follow their own rules, and prohibits behaviour ONLY when it conflicts with the ordinary criminal law, BUT would enforce such rules only when they COINCIDE with the rules of the state. The volume continues with discussion of the implications of group and personal autonomy, and forms of dispute resolution, but the workshop also strongly emphasised the importance of detailed empirical work. For example, Marjorie Smith in her closing chapter on varying cultural practices around corporal punishment in England reported an interview with a Caribbean mother of a three-year-old daughter, who said that she beat her daughter often. When Marjorie, rather surprised, asked what she used to beat the small child with, the mother laughed and said “Words! Of course, words!”

Detailed empirical observational data also underpins the following volume, number 8 in the series, titled *Delivering Family Justice in the 21st Century*, on the impact of austerity on access to family justice. It was co-edited by Maclean, John Eekelaar and Benoit Bastard, and published by Hart-Bloomsbury in 2015. Here we looked carefully at how access to justice in family matters had been and was still being affected by cuts in public spending following the financial crises of 2008. In the UK the government had taken the view that family courts were high cost and even sometimes even positively unhelpful in family matters, as lawyers were thought to seek to increase their profits by stimulating disputes, especially under the legal aid system, where payment was determined by time spent. There had been no understanding of the impact of the rising divorce rate, and that the increase in the bill for family legal aid was due to case volume not cost per case. This led to renewed government interest in Alternative Dispute Resolution (ADR), especially family mediation, despite the lack of public support (mediation requires the parties to do the work of reaching settlement themselves; it does not provide solutions!). A number of other jurisdictions, including France and Spain, have been moving towards increasing the role of ADR and private ordering as quicker and cheaper, though with limited success. But in Poland, where surveys reported by Kurczewski and Fuszara in a society where there is a strong preference for maintaining the privacy of the family, and where courts had lacked public confidence in the past as organs of the communist state, there was a wish among policy makers to increase access to the protection of the court for vulnerable parties. This applied particularly to women in abusive marriages, where the Catholic Church is not sympathetic to divorce.

A second element in the austerity survival strategy lay in making greater use of digital technology for access to legal information, advice, and settlement. This movement from ADR to ODR, from Alternative to Online Dispute Resolution, became the topic for our next workshop, and resulted in the ninth volume in our series, which was co-edited by Maclean and Bregje Dijksterhuis. It was published by Hart-Bloomsbury in 2018 under the title *Digital Family Justice*. In France the courts had dematerialised, i.e., they were avoiding the use of paper documents. And in England and Wales we were seeing a Court Modernisation Programme, trying to take digital process forward, relying on government websites to provide information to the public, and providing forms to be used online for divorce application and some child related matters. Savings were made by selling some court buildings, and by limiting access to publicly funded legal aid under the 2012 Legal Aid Sentencing and Punishment of Offenders Act (LASPO), which ended public support for family matters involving a private dispute and kept it only for cases where there was evidence of a matter, which affected the state, such as domestic abuse or child protection. Litigants in person were studied (see chapter thirteen by Liz Trinder in *Delivering Family Justice*) and found to have great difficulty in presenting their case, often adding to the length of a hearing and thereby the cost. Government in 2017 reviewed the working of the Act and has agreed a limited programme to develop Legal Support. This is not likely to mean access to a lawyer, but to some form of help with legal family matters. The programme has had limited success. But when an online interactive dispute resolution service the RECHTWIJSER was developed in the Netherlands for divorcing couples, as a private enterprise but heavily subsidised by government, the experiment ended in failure. Only 6 % of separating couples had used it, and the 3% who made an agreement could not rely on getting court endorsement of their decision because the judiciary were not even confident that people making the property agreements online were who they said they were. More recently in several jurisdictions, during the COVID 19 epidemic and the closing of in-person courts, there have been great efforts to develop online court hearings. But in England contested hearings have been problematic, as the process lacks the close face to face personal contacts which can facilitate negotiation or support vulnerable parties and any support for parties in distress.

Concluding Observations

Our academic journey almost came full circle at our Online Workshop in September 2020, where we looked at the Family Justice System as a whole, asking WHAT are we

trying to achieve through such a system? What does it consist of, beyond courts? Maybe ADR? Maybe access to Welfare services? Are we concerned ONLY with justice, OR with justice AND welfare? IF SO, how do they fit together? And if justice and welfare are in conflict, which dominates? What are our family courts doing?

In my time as academic adviser in the Ministry of Justice in London I have seen a change in the straplines used to define what government sees as the purpose of the family justice system from protection of the vulnerable (up to 2000) to seeking fair and informed settlement through negotiation (in 2010), and now (since 2020) protecting and advancing the principles of justice.

The first of these was welfare driven, but expensive. The second fits better with ADR and private ordering and reflects the need for cost savings. The third and current formulation, though consistent with the rule of law, lacks any commitment to providing a specific service of any kind. No budget implications are required.

There are also variations across jurisdictions in the ways of thinking about the role of courts. Does their role consist, for example, in making decisions or in solving problems? In England we have a small number of Family Drug and Alcohol Courts, which see parties regularly and monitor their progress and need for further help. We have furthermore tried to find ways of integrating new forms of family life into society, such as in a recent case, known as the seahorse case, of a transgender male mother who wants to be recognised as the legal father.

We learned a great deal more about different models in the 2020 Workshop, though, particularly about the Danish triage between administrative and court systems, about the German judges, who are trained NOT to adjudicate, but to hold parents safe while they see a counsellor (i.e., NOT a mediator) and make their own decision, and about the busy French lawyers who stay away from the paperless courts. The proceedings of this workshop, co-edited by Maclean, Bregje Dijksterhuis and Rachel Treloar, will be published shortly under the title *What is a Family Justice System For?*

There is so much more we would like to do! New COVID 19-related issues are arising all the time about remote court hearings. Moreover, an exciting new challenge was presented by a question raised by a participant at the end of our most recent Workshop in September 2020. We were asked to think, as family law experts, about those individuals, who are not able to take legal responsibility for their own actions, so the state must become involved. In the UK we have the Office of Official Solicitor, whose 150th anniversary is approaching, and who acts as a litigation friend, stepping into the shoes

of someone who lacks legislative capacity because of age or mental or physical issues. This work is predominantly family related, and we would love to know more about what happens in other jurisdictions. The FL-Eur groups based in Vienna are currently looking at conflict of laws in this area. But there seems to be little information, research, or debate about the issues of support versus control for vulnerable family members, and the role of the state where parents lack capacity and more. Exciting legislative changes are happening in a number of jurisdictions that demand our future attention.

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