

Louisiana Family Law in Comparative Perspective

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Preface

At my first conference as a law professor, I was informed by more seasoned (presumably well-meaning) academics that family law was part of the “pink ghetto.” The term, of course, refers to those areas of the law considered intellectual backwoods—areas devoid of the scholarly rigor and social prestige of, say, constitutional law or federal courts. In other words, family law is women’s work.

Let’s set aside, for a moment, the obvious sexist implications of the term. The suggestion that family law is an area that somehow lacks the academic rigor of other areas of law is misinformed, at best. To the contrary, family law involves all of the traditional areas of academic prestige—constitutional law, federal jurisdiction, and civil procedure. On top of those traditionally challenging topics, family law adds additional layers of private law, public policy, and evolving social and political values. This text adds another scholarly consideration—comparative law. American family law is as much of a melting pot and source of innovation as America itself. Some important family law doctrines that are widely accepted in the United States have their roots in the civil law of France, Spain, and even Rome. Similarly, family law in Louisiana has adopted some distinctly common law notions. There are even some aspects of family law that are uniquely American and which have since been exported to other countries.

In the years I have taught family law, I have often warned students that family law is hard. It is quite unlike some of the traditional law school classes where you can study a subject in a vacuum. Family law is more like a blender—all the legal doctrines are combined together at once and it can be messy—just like most families.

This text covers three broad topics: (1) the marriage relationship, (2) the parent-child relationship, and (3) jurisdictional issues. The first three chapters consider the legal regulation of marriage by states and the constitutional implications of that regulation. Chapters 4 through 6 consider some of the many legal consequences of marriage and the effects of defective marriages. Chapters 7 through 9 address divorce and its consequences. Chapter 10 considers the contractual freedom afforded to spouses who wish to modify the default rules governing marriage and divorce. Chapters 11 through 13 involve the creation and establishment of the parent-child relationship and the related constitutional implications. Chapters 14

and 15 discuss two important aspects of parenting—child custody and child support. Finally, Chapters 16 and 17 address important federal and state procedural matters.