CONSCRIPTION, CONSENT, AND THE MEANING OF "FAMILY"

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ABSTRACT

Much of the literature on nonmarriage uses autonomy and choice as central values. This article explores the conscriptive side of family law, where choice is irrelevant. For example, genetic parents can often be conscripted into legal parentage, and no parent can "divorce" their adult children. These rules arguably represent substantive normative judgments about what it means to be a "parent." To be sure, the state does not have a good track record when it asserts its right to define "family." But substantive normative judgments about what a "family" is, and what membership in a "family" entails, do not have to be tools for oppression and exclusion. This article explores ways that they could support progressive projects like imposing support obligations on former cohabitants and current co-parents. Each of these reforms needs a defense that is not solely grounded in autonomy and choice. One such defense is that certain relationships constitute a "family" and members of a "family" have obligations toward one another, regardless of choice.

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INTRODUCTION

Much of the literature on nonmarriage uses autonomy and choice as central values.[1] Scholars argue that the state should respect the choices of people to form families.[2] Conversely, scholars also center autonomy and choice when determining who is *not* a family. For example, the ALI's Principles of the Law of Family Dissolution sought to impose a default sharing rule on cohabitants, but allowed them to opt out.[3]

Now consider a thought experiment to test the limits of these central values. Siblings never consented to their legal status as such. Children (and some parents) never consented to their parent-child relationship. Should an adult be able to sever her legal ties with her mother, her grandfather, her siblings, or her own adult children? Within this set of questions, this article will use two as recurring examples: Should adult siblings be able to formally exit that legal relationship? Should a parent be able to "divorce" one or more of her adult children? To ask the former question seems bizarre and to ask the latter question seems repugnant.

The first goal of this article is largely descriptive. It uses these thought experiments to reveal a two-tier system of family law that is present in marriage and uncritically reinforced in current debates on nonmarriage. In each of these contexts, families created by choice can be dissolved by choice. In contrast, family relationships created through the definitional or conscriptive power of law cannot be dissolved. This creates two family law systems, each with very different rules.

The second goal of this article is to use these thought experiments to sharpen our understanding of the role autonomy should play in the definition, creation, and destruction of family. Notions of autonomy have been used to defend robust choice in family formation.[4] These notions, standing alone, strongly suggest that adults should have robust exit rights from *all* relationships. But discomfort with allowing parents to "divorce" their adult children shows that autonomy arguments are tempered by natural law intuitions about the indissolubility of family and assumptions about

1. *See infra* notes 29 and 31.
2. *Id.*
3. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS §§ 6.01, 6.03 (AM. L. INST. 2002).
4. *See infra* notes 29 to 33 and accompanying text.

what duties family members should owe one another. These intuitions reflect hidden assumptions about the existence of a set of non-negotiable features of a "family."

Once these assumptions are surfaced, we can decide either to embrace autonomy without these constraints, or to grapple more explicitly with the limits of autonomy arguments when proposing robust families-of-choice regimes.

Centering autonomy would entail a commitment to allowing people to exit relationship statuses. Currently, autonomy arguments have a great deal of influence in debates about the choice to form legally recognized families, the choice *not* to form such families, and the choice to *leave* those families. But this last choice—the choice to leave a family—is currently only respected for horizontal romantic relationships. For example, married couples now have access to no-fault divorce. In this context, exit is seen as foundationally important.[5] Perhaps it should be foundationally important for other family relationships as well. Perhaps—at least in a first-best world—we should allow parents to divorce their adult children, and allow a sister to divorce one of her brothers, but not the other. In other work, I pursue this logic.[6] I argue that adults' autonomy interests are sufficiently weighty that we should embrace robust exit rights for many familial relationships currently governed by conscriptive natural-law regimes.[7] Perhaps most obviously, an adult who was abused by her parent as a child should be able to "divorce" her abusive parent and form other parent-child relationships that are not constrained by the narrow definitions of family stemming from natural law.[8]

Although I strongly favor autonomy arguments, there are important lessons to learn if we explore decentering autonomy and consent. Because I have written from the perspective of autonomy before, I will take a different approach here. I will explore what we can learn from taking conscription more seriously. Many people might endorse conscription because of its affinity with natural law. But other normative judgments can decenter autonomy as well. If you strongly resist the idea that a parent could

5. Ayelet Hoffmann Libson, *Not My Fault: Morality and Divorce Law in the Liberal State*, 93 TUL. L. REV. 599, 607, 614 (2019).

6. Sean Hannon Williams, *Divorcing Your Parents* __ U.C. DAVIS L. REV. __ *2 (forthcoming 2023) (on file with author).

7. *Id.*

8. *Id.*

divorce their adult child, then you are likely embracing a substantive definition of "parent" that does not depend solely on choice. This might stem from natural law intuitions about what being a parent *is*, or an explicit, substantive normative judgment about what being a parent *should be*.[9] Perhaps being a parent entails, or should entail, a lifelong commitment.

If we can make a substantive normative judgment about what it should mean to be a parent, perhaps we can make a substitutive normative judgment about what it should mean to be a part of a "family." This is where the thought experiments begin to pay dividends for the regulation of nonmarriage. Perhaps cohabitants are a "family," and perhaps members of a family should have obligations toward one another. Those obligations might include sharing resources after cohabitants split apart. Similarly, perhaps even non-cohabitating co-parents are part of a "family," and as such should have obligations toward one another.

These moves toward substantive normative judgments are in some tension with widespread commitments to family pluralism. They require the state to say: "this is what a family is." To put it mildly, the state does not have a good track record when it makes these types of assertions.

This article explores whether these substantive normative definitions of the family can be rehabilitated to serve progressive purposes. If natural law intuitions and substantive normative judgments still animate much of family law, it may be wiser to harness them rather than ignore them. Further, much of the harm from state moralizing stems from states attempting to hold a monopoly on the definition of family. If, instead, the state focuses on determining a set of non-exclusive *sufficient* conditions for entering a "family" rather than *necessary* conditions, we can still respect a great deal of family pluralism that scholars and reformers have rightfully fought for.

Allow me to provide two concrete examples, both of which I gestured toward above. First, autonomy arguments do not have much purchase in a classic debate about non-marriage: whether cohabitants should have monetary obligations toward one another after the relationship ends. As described more below, autonomy pulls both ways; both sides in this debate

9. Carl E. Schneider, *Moral Discourse and the Transformation of American Family Law*, 83 MICH. L. REV. 1803, 1827 (1985). ("In some sense every legal decision is a 'moral' decision. …Nevertheless, legal actors and those they govern distinguish between decisions made on moral grounds and decisions made on social, economic, psychological, or 'legal' grounds. That these distinctions will sometimes break down and will always blur at the edges does not mean that the distinctions are useless.").

plausibly claim the pro-autonomy mantle.[10] Where autonomy arguments fail to give clear guidance, perhaps substantive arguments about who is part of a "family" and what being in a family means, might help reformers gain traction. Perhaps it would seem more natural to enforce obligations between members of a "family" than between strangers. If so, then popular conceptions of "family" matter. Perhaps cohabitants are "family" under common intuitions, or perhaps reformers could influence common definitions of family to include them.

Second, Merle Weiner has recently argued for the creation of a co-parent relational status.[11] Importantly, she does not ground this status in actual consent.[12] Instead, she grounds it in a commitment to equally sharing the costs of the resulting child.[13] One objection to her proposal is that it does not sufficiently respect choice.[14] But this is hardly aberrant. Revealing the breadth of family law's conscriptive regimes might weaken this kneejerk autonomy critique. It is also possible that framing co-parents as "family" might increase support for Weiner's proposal.

In each of the two cases above, scholarship that focuses solely on relatively abstract principles of autonomy and dependency-creation might be forgoing an important opportunity to influence popular conceptions of family in ways that support nonmarriage reform projects. By grasping this opportunity, we can potentially flip the standard script on substantive moral definitions of "family," and use them to promote progressive reform projects rather than to ossify narrow visions of family law.

This article proceeds in four parts. Part I argues that consent is the central value in much family law and family law scholarship. Part II reveals a larger-than-acknowledged space where the law conscripts people into familial relationships regardless of choice. Part III seeks normative principles that might justify this two-tiered system of family law. Part IV outlines the consequences of centering autonomy, and the consequences of decentering autonomy and instead centering substantive moral or policy judgments about what it should mean to be a family.[15]

10. *See infra* Part IV.B.i.
11. MERLE H. WEINER, A PARENT-PARTNER STATUS FOR AMERICAN FAMILY LAW 2 (2015).
12. *See id.* at 170 (discussing only "constructive consent").
13. *Id.* at 12, 164-69.
14. *See id.* at 170-76 (discussing why constructive consent should be sufficient).
15. For the distinction between moral and policy arguments, see *supra* note 9.

I. FAMILIES OF CHOICE

Many scholars have called for greater access to families of choice, and correspondingly fewer state restrictions on the definition of family.

> There is a growing scholarly consensus in favor of family pluralism . . . . Choices about whether to enter into a family and what one's family looks like are "deeply personal" decisions that often have profound effects on a person's life. Most scholars agree that the law should permit people to choose from an array of family formation options, and that the law should respect those choices once they have been made.[16]

> On the normative side, scholars rely on different principles (utilitarianism, autonomy, and value pluralism), but the claim is quite similar under each: to accommodate people's autonomy, or to maximize their overall well-being, the state must facilitate a variety of regulatory options—tailored for diverse types of family structures—that will enable partners to arrange the legal consequences of their relationships.[17]

This focus on choice tracks larger trends in family law and family law discourse, which has bent toward "autonomous individualism"[18] and away from substantive normative claims about the proper definition of the family.[19]

The calls to recognize families of choice are not a purely theoretical call for more autonomy. They are a response to narrow legal definitions of the family. Those excluded from those definitions—such as same-sex couples who could not marry before *Obergefell*—often want greater legal recognition for their families.[20] Although reformers often marshalled notions of equality, this part will focus on autonomy arguments: the state should respect the choices of people to form families, even when those

16. Courtney G. Joslin, *Autonomy in the Family*, 66 UCLA L. REV. 912, 914 (2019).
17. Erez Aloni, *The Puzzle of Family Law Pluralism*, 39 HARV. J. L. & GENDER 317, 319 (2016).
18. Bruce C. Hafen, *Individualism and Autonomy in Family Law: The Waning of Belonging*, 1991 BYU. L. REV. 1, 3 (1991).
19. Schneider, *supra* note 9, at 1807–08.
20. *See Obergefell v. Hodges*, 576 U.S. 644, 655 (2015).

families do not fit the state's existing narrow definition of family. This part will illustrate this focus on autonomy by examining expansions in the definitions of parent, reform proposals to recognize nonmarital families, and divorce law.

Overall, this part will show that autonomy arguments have a great deal of influence in debates about the choice to form legally recognized families, the choice *not* to form such families, and the choice to *leave* those families.

A. Intent-based Pathways to Parentage

Assisted reproductive technologies ("ART") allow for people to become the legal parents of children who are not genetically related to them and who are genetically related to a non-parent. The relevant law is not entirely uniform, but generally the law respects intent. The intended parents are given the status of legal parent.[21] The law also generally respects the intent of donors, who do not wish to be legal parents.[22] These laws respect the autonomy of the intended parents who are making families of choice, as well as the autonomy of donors who are choosing *not* to be a part of a family.

Various functional parent doctrines also create pathways to parentage.[23] These doctrines seek to recognize peoples' lived choices to form a family.[24] They do so by legally treating those people as parent and child.[25]

Functional parent doctrines do not simply protect any relationship that the child has formed. Instead, they reify the centrality of consent in creating families of choice. They suggest not only that consent should be sufficient to form a family, but also that consent is necessary to form a family. The Uniform Parentage Act's (UPA) de facto parentage rule reifies the centrality of consent in two different ways. First, the only people who can take advantage of these doctrines are those who seek legal recognition as a functional parent.[26] Neither the child nor the other parent can force the functional parent to accept the legal rights or obligations of parenthood. The law therefore respects the formal choices of the functional parent, regardless

21. COURTNEY G. JOSLIN ET AL., LESBIAN, GAY, BISEXUAL AND TRANSGENDER FAMILY LAW § 3:3 (2022–2023 ed. 2022).
22. *Id.* at § 3:13.
23. *Id.* at § 7:5.
24. *Id.*
25. *Id.*
26. UNIFORM PARENTAGE ACT § 609 (Unif. L. Inst. 2017).

of whether they exercise that choice to join a family or refuse to do so. Second, the UPA's rule requires that the existing legal parent consents to, and fosters, the relationship between the child and the functional parent.[27] Here again, the law respects families of choice. The legal parent must choose to allow someone else to enter the family. In the absence of this choice, no degree of bonding between a child and a parental figure can lead that adult to gain parental rights under functional parent doctrines.

Like the rules for ART, these rules respect both the choice to create a family, and the choice *not* to create a family. In the functional parent doctrines, it is only when every parental figure consents that the law will form a family. In ART, people who intend to be legal parents will be, and those that intend not to be legal family will not be.

B. Nonmarital relationships

Couples who choose not to marry are seen by the state as legal strangers, even if they cohabitated, pooled their finances, and raised children together for 20 years.[28] This means that, once those relationships end, family law often ignores their intertwined lives and refuses to provide any sort of remedy to the partner who sacrificed for the benefit of her family. The resulting reform efforts often center on the horizontal relationship between adult cohabitants and the economic rights and obligations that might attach after the relationship ends. I will maintain that focus for the purposes of this section.

There is an ongoing debate about which legal regime should apply to nonmarital cohabitants. Some scholars—including Marsha Garrison, Naomi Cahn, and June Carbone—argue that cohabitants choose to avoid marriage and that this choice should be respected by not imposing marriage-like obligations when the relationship ends.[29] Other scholars disagree.[30]

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27. *Id.*

28. Cohabitants may even have fewer rights than strangers. Courtney G. Joslin, *Family Choices*, 51 ARIZ. ST. L.J. 1285, 1287 (2019).

29. Emily J. Stolzenberg, *The New Family Freedom*, 59 B.C. L. REV. 1984, 2022 (2018) (labeling Cahn, Carbone, and Garrison "'Choice' scholars"); June Carbone & Naomi Cahn, *Nonmarriage*, 76 MD. L. REV. 55, 108 (2016); Marsha Garrison, *Is Consent Necessary? An Evaluation of the Emerging Law of Cohabitant Obligation*, 52 UCLA L. REV. 815, 838 (2005). Of course, other values matter, such as dependency-creation. *Id.* at 854 (noting that the major theories that justify family obligations are consent and dependency-causation).

30. Joslin, *supra* note 28, at 1315–16. For example, the choice not to marry might not reflect a

Importantly, both sides of this debate use consent, autonomy, and choice as the central values.[31] Under these values, imposing legal rules for "family" on adult partners who do not consent is generally illegitimate. Conversely, refusing to apply the legal rules for "family" to adult partners who do choose it would also be illegitimate.

Disagreements first emerge when scholars ask what acts are sufficient to show consent. Garrison, Cahn, and Carbone argue that the choice to enter a marriage is the act the best indicates consent.[32] Joslin, in contrast, argues that the many daily decisions that partners make to intertwine their lives and live together as a family are more indicative of their intent than their decision to formally marry.[33] Regardless, the most important point is that all sides in this debate center consent, intent, and autonomy as the proper precursor for imposing rights or obligations between adults.

Of course, autonomy is not only central to questions about who *is* a family, but also to questions about who is *not* a family. Garrison, Cahn, and Carbone see cohabitation as a choice *not* to marry, and hence, see many reform proposals as overly conscriptive.[34] The choice not to form a family is also important for Joslin.[35] Accordingly, she argues for *default rules* of sharing, where the couple can opt out.[36] In these ways, autonomy is central. If adults do not want to be part of a family, this is seen as a powerful reason for not imposing familial obligations and for not misrecognizing them as such.

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sufficiently meaningful choice when marrying would reduce their disability benefits.

31. *Id.* at 1287 ("[S]cholars on both sides invoke autonomy and choice.").

32. *Id.* at 1289-90 (discussing their arguments).

33. *Id.* at 1291-92; Joslin, *supra* note 16, at 916, 954. Garrison might respond by noting that the daily decisions of cohabitants speaks to non-commitment, not commitment. Garrison, *supra* note 30, at 840–41 ("Cohabitants and married couples also behave differently. Cohabitants are much less likely than married couples to have children and to support their partners. They more often split expenses instead of pooling funds. They are less likely to demonstrate sexual fidelity.").

34. *See supra* note 29.

35. Joslin, *supra* note 28, at 1291-92.

36. *Id.* at 1292.

C. No-Fault Divorce[37]

If consent is the central value in *creating* a family, and the central value in *not* creating a family, should it also be the central value in *leaving* a family that the state already considers you to be a part of? Here, the law of divorce suggests that the answer is yes.

Marriage creates families through mutual consent. After the no-fault divorce revolution, the lack of mutual consent destroys the family (or at least its horizontal component).[38] Either spouse can unilaterally obtain a divorce for any reason, even if no spouse broke their marriage vows or otherwise was at fault.[39] Today, choice and autonomy are central values motivating this regime.[40]

Of course, the choice to exit a marriage is not free of legal consequences. Marital property must be divided, and financially intertwined lives must be disentangled. In all states, courts are also authorized to award some form of spousal support. Increasingly, however, state legislators and courts limit spousal support to short time periods.[41] This reflects a desire for divorce to be a "clean break" for the spouses, where there are relatively few lingering rights or obligations between them.[42]

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The laws surrounding ART, functional parentage, and divorce, as well as reform efforts surrounding nonmarital relationships, all use autonomy and choice as a central value. Although there are caveats, the main thrust appears to be threefold. First, choice to create a family should be respected. Second, choice not to create a family should be respected. Lastly, choice to leave a horizontal family relationship between adults should be respected.

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37. A system of divorce, adopted throughout the United States in the 1960s and 1970s, in which the parties are not required to prove fault or grounds beyond the showing of the irretrievable breakdown of the marriage or irreconcilable differences. *See Black's Law Dictionary* 495 (7th ed. 1999).

38. MARGARET C. JASPER, LEGAL ALMANAC: MARRIAGE AND DIVORCE § 3:2 (3rd ed. 2012).

39. *Id.*

40. Choice and autonomy always played a part in supporting no-fault divorce. But other values took center stage in early debates, such as gender equality and preventing the systematic subordination of wives by their husbands. Libson, *supra* note 5, at 609.

41. Emily J. Stolzenberg, *Properties of Intimacy*, 80 MD. L. REV. 627, 650–51 (2021).

42. *Id.*. Stolzenberg, *supra* note 29, at 2032.

II. FAMILIES OF CONSCRIPTION

Every family law professor knows that family law contains elements of choice and elements of conscription. Pointing out that these two logics both exist—or to put it another way, that status and contract both play a role in family law—would hardly be novel.[43] The main argument of this part is that the conscriptive portion of family law is much broader than that to which we commonly attend.

Conscription plays its most obvious role in vertical, parent-child relationships. A child cannot exercise choice, and so from their perspective, all familial relationships are unchosen. The law assigns them parents.[44] Sometimes those parents are conscripted into that legal role too. For children conceived through sexual intercourse, the state can conscript genetic fathers into legal parentage, regardless of whether they or the legal mother consent.[45] In the wake of Dobbs, genetic and gestational mothers can also be conscripted into legal parentage.[46] Even though they will have an option to put the child up for adoption, they will be the child's first legal parent.

Now consider the child's other family relationships. The child has siblings, aunts, uncles, cousins, grandparents, etc. These relationships are all defined by status, not choice, and flow definitionally from the parent-child link.

When that child reaches adulthood, they will encounter some elements of choice in family formation. They will gain the right to marry. But notice that their consent is irrelevant to the identity of their parents, siblings, or other relatives. These legal relationships are imposed as statuses. If they

43. Kaiponanea T. Matsumura, *Breaking Down Status*, 98 WASH. U.L. REV. 671, 680 (2021) (noting that in the standard status vs. contract debate, contract refers broadly to "legal obligations oriented around individuals and based on their free agreement," while status refers to imposed mandatory identities with social meaning that often involve hierarchies and come with a large set of bundled legal consequences); Janet Halley, *Behind the Law of Marriage (i): From Status/Contract to the Marriage System*, 6 UNBOUND: HARV. J. LEGAL LEFT 1, 2 (2010) ("Is marriage status or contract? The two legal forms stand in contemporary legal thought as ideal-typical opposites, the two poles of a gradient or spectrum along which marriage moves.").

44. WEINER, *supra* note 11, at 154.

45. Stolzenberg, *supra* note 29, at 2007.

46. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2318 (2022) (Justice Breyer, Justice Sotomayor, and Justice Kagan, dissenting).

choose to marry, they will obtain, again by status, other legal relatives like a mother-in-law.

The relationships formed through conscription generally do not allow exit. A genetic father conscripted into legal parentage cannot avoid his obligation by later deciding he wants out. Similarly, a niece cannot "divorce" her aunt, and an adult child cannot terminate her parents' parental rights. As the next section will show, some of these rules are clearly justified by strong state interests, others are not.

III. WHY THIS TWO-TIERED SYSTEM?

A. Potential Principles and Remaining Puzzles

Why does the law place consent at the center of some familial relationships, but use conscription for others? Conscriptive regimes appear in two classes of cases. First, where the state seeks to privatize child dependency. Second, where there are relatively few legal consequences to the relationship. These observations lead to a set of principles that might explain when consent matters and when it does not. But these principles cannot justify the current regime.

Conscriptive regimes in the context of parentage can be justified on the basis of child welfare, and more specifically the state's interest in getting someone else to shoulder the burden of caring for children. The state imposes parental status on people in order to privatize the child's dependency.[47]

Privatizing dependency, even if a complete justification for conscriptive parenthood, cannot justify one key feature of the current regime. This principle only has justificatory force *when the child is dependent or vulnerable*. At some point, the child grows up and becomes relatively independent rather than relatively dependent. We might have different definitions of when this occurs. But at some point—perhaps when the child turns eighteen, or when she is no longer eligible for child support, or when she graduates from college—she will no longer be vulnerable enough to justify invasive conscriptive regimes. Here, we must ask why the parent-

47. Stolzenberg, *supra* note 29, at 2007.

child status remains intact even after the purposes for creating it have evaporated.[48]

Now consider siblings, grandparents, and other extended family relationships. The state conscripts all parties into these relationships. The consent of the siblings or cousins are irrelevant. The law simply assigns people these relationships. Why?

The conscriptive nature of these relationships is perhaps explained by their relative lack of imposed legal consequences. To be sure, being a sibling or grandparent comes with some legal rights. Some laws give siblings and grandparents standing to seek custody or visitation.[49] But these laws do not impose any obligations. Grandparents never *have to* seek visitation. Testators can cut siblings or grandparents out of their will and can decline to take devises from other relatives.[50] Overall, there are few if any substantial legal obligations attached to these relationships, and plenty of ways to opt out of the legal consequences that do exist.

The above principle can be described succinctly as "it's no big deal." It serves as the foundation of a plausible, but ultimately unsatisfying argument for the current regime. I take it as a given that most people do not want to "divorce" their aunt; even if they did, they would not want to invest any time or money in doing so. It's just not worth it. When paired with a majoritarian default rule (most people would want their sibling or aunt to have the sparse set of legal rights they do) and when paired with concerns about administrative costs (it would be costly to create a regime that allowed more choice in the entry or exit from these relationships), one could develop a plausible justification for our current regime.

It is worth interrogating the administrative cost portion of this rationale. The current system already allows siblings to opt out of many of the legal consequences of that relationship. They can write a will. They can decline to accept something nominally given to them under a sibling's will. They can sign a medical power of attorney to ensure that their siblings cannot

48. Weiner's proposed a legal co-parenting status is specifically limited to the minority of the child. WEINER, *supra* note 11, at 2, 133. Kaiponanea Matsumura has argued for disaggregating family law statutes to better tailor them. This frame would then lead us to ask why we do not disaggregate the parent-child status along a temporal dimension. Matsumura, *supra* note 43, at 687.

49. *See, e.g.*, TEX. FAM. CODE § 153.551 (sibling visitation); TEX. FAM. CODE § 153.433 (grandparent visitation); TEX. FAM. CODE § 102.004 (siblings and grandparents seeking custody).

50. Adam J. Hirsch, *Disclaimers and Federalism*, 67 VAND. L. REV. 1871, 1872 (2014).

make medical decisions for them.[51] If administrative costs were really a concern, we should prefer a system that allowed siblings to opt out of the relationship all at once, rather than having to cobble together various documents.

It is also worth interrogating the "it's no big deal" rationale. For some people, it might be a very big deal. Both the common law and current family law scholarship often ignore the sibling relationship.[52] Jill Hasday has argued that this is a mistake. The sibling relationship can be uniquely important.[53] But there is a darker side of sibling relationships: sibling sexual abuse (SSA). Because of a lack of reporting, the precise prevalence of SSA is unclear, but experts suggest that it is more prevalent than other types of sexual abuse.[54] SSA is also more likely to be brushed under the rug in part because parents routinely deny that what happened should be classified as "abuse."[55] Victims of SSA might find it useful to be able to formally exit the sibling relationship, at least once they become an adult. Doing so might have psychological benefits for the victim and serve as a wake-up call to her parents.

If privatizing dependency and "it's no big deal" cannot justify our conscriptive family law regimes, what can? The next two sections explore that question.

B. Echoes of Natural Law

The section above leaves us with a puzzle. The state's interest in privatizing dependency cannot explain why conscriptive parent-child relationships extend beyond the dependency of the child. The state's interest in efficient administration counsels either for not allowing siblings to opt out of legal consequences at all, or to do so in one fell swoop by exiting the legal relationship. Regardless, those administrative concerns might have to bend in the face of strong autonomy interests like no longer wishing to be

51. Thaddeus Mason Pope, *Unbefriended and Unrepresented: Better Medical Decision Making for Incapacitated Patients Without Healthcare Surrogates,* 33 GA. ST. U. L. REV. 923, 937–38 (2017).

52. Jill Elaine Hasday, *Siblings in Law*, 65 VAND. L. REV. 897, 899, 902 (2012).

53. *Id.* at 900.

54. Mandy Morrill, *Sibling Sexual Abuse: An Exploratory Study of Long-Term Consequences for Self-Esteem and Counseling Considerations*, 29 J. FAM. VIOLENCE 205, 205-06 (2014).

55. *See id*. at 209–10; *see also* Peter Yates, *Sibling Sexual Abuse: Why Don't We Talk About It?*, 26 J. CLINICAL NURSING 2482, 2487 (2017).

related to your abuser. So what alternative explanation is there for the current regime?

The current regime is rooted in natural law. Natural law theories of the family posit that there is a pre-political truth that states recognize rather than create when they assign legal familial relationships.[56] One might imagine someone saying: "people just are the parent of their biological children!" Here, they might be channeling natural law, and more specifically, a natural law rooted in genetics. Relatedly, one might imagine channeling religious law surrounding marriage to claim that your uncle-by-marriage just is your uncle, because that is what marriage means. For purposes of this article, I will refer to theories that identify a pre-political definition of the family as "natural law" theories of the family.[57]

These theories do a good job of explaining our current regime regarding siblings, grandparents, and other extended relatives. Natural law theories would generally be conscriptive. They would occlude the question of whether to allow exit. Under these theories, the question of exit simply makes no sense. You just are your brother's sister. Trying to deny that is just denying reality. Even if you can blunt or eliminate the legal consequences of that status, shedding it entirely would be incomprehensible to natural law theories of the family.[58]

Natural law theories also do a good job of explaining a great deal, although of course not all, of our conscriptive parentage regime. Genetic fathers can be conscripted into legal parentage simply because they are the genetic father.[59] Genetic and gestational mothers simply are the mother.[60] Today, the law reflects both this natural law concept and notions of consent. Gamete donors are not parents and cannot be conscripted into parentage, at

56. Katharine T. Bartlett, *Rethinking Parenthood as An Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879, 887 (1984) (discussing natural law theories of the family); Mary R. Anderlik & Mark A. Rothstein, *DNA-Based Identity Testing and the Future of the Family: A Research Agenda*, 28 AM. J.L. & MED. 215, 222 (2002) (same).

57. There is more to natural law theories than just this, but this is the central feature for purposes of this article, and the one most-commonly highlighted when natural law is applied to the family. *See* sources cited *supra* note 55. For a more complete, and more nuanced, discussion of natural law theory, see Brian Bix, *On the Dividing Line Between Natural Law Theory and Legal Positivism*, 75 NOTRE DAME L. REV. 1613, 1614-17 (2000).

58. To be clear, I'm not asserting that natural law explains every aspect of our current system.

59. Stolzenberg, *supra* note 29, at 2007.

60. Courtney Megan Cahill, *The New Maternity*, 133 HARV. L. REV. 2221, 2226 (2020).

least when they follow particular methods of donation.[61] But natural law notions still have teeth. Genetic fathers can be conscripted into legal parentage regardless of whether they consented to the relevant act of sexual intercourse, or even without any such act, as in rare cases of sperm theft.[62] Why? Perhaps because absent any competing claim, they just are the fathers.

Even if natural law can *explain* aspects of the current regime, most scholars today would say that it cannot *justify* anything.[63] Natural law is simply no longer a valid source of authority in today's family law debates.

C. Alternatives to Natural Law

We could define siblings through function and history, rather than genetics.[64] Here, the argument would be that you are your brother's sister because you grew up with that relationship. After each sibling becomes an adult, the label simply refers to that shared past. Under this historical-functional definition of siblings, seeking to exit that relationship would be nonsensical. It would be trying to deny the past. If you grew up as siblings, then you are siblings, period. This definition does a good job of explaining adoption law and may cohere with how people see today's blended families, where step-siblings and half-siblings are common, and commonly thought of just as siblings without a qualifier.[65]

Regardless of its explanatory power, this switch from genetics to function does not do a great job of justifying our current regime. It uses a current legal status to signal a past functional (or functional and legal) status. If the goal is simply to acknowledge the truth of the past, the law would not need to maintain a current legal status. The law could allow

61. *See, e.g.*, *In re* P.S., 505 S.W.3d 106, 110 (Tex. App. 2016) (noting that being a "donor" requires one to deliver the gametes to a "licensed physician").

62. Stolzenberg, *supra* note 29, at 2011-12.

63. *See* John Witte, Jr., *The Nature of Family, the Family of Nature: The Surprising Liberal Defense of the Traditional Family in the Enlightenment*, 64 EMORY L.J. 591, 674 (2015) ("Even if we now reject 'natural law' today as old-fashioned, statist, essentialist, artificial, or out of touch with evolutionary or political realities, the basic facts of human nature and human sexuality have not changed.").

64. *See* Joslin, *supra* note 16, at 971 ("Once a familial relationship is formed, it should be treated for what it is: a family.").

65. Ruth Zafran, *Reconceiving Legal Siblinghood*, 71 HASTINGS L.J. 749, 761 (2020) (discussing survey research on half- and step- siblings).

people to "divorce" their sister or aunt, and keep a historical record of that person's past relationships. To impose a current legal status on someone just to mark some past relationship seems unnecessary, and hence more likely to be the result of natural law intuitions.

With several additional features, we can construct a plausible (albeit imperfect) defense of the current constrictive system. Doing so requires that we make substantive normative claims about which types of relationships are valuable and why they are valuable. It also requires that we choose to enforce these judgments through law.

Perhaps we continue to conscript people into the sibling relationship as adults for three related reasons. First, to signal their shared past. Second, to express the state's aspirational desire that people maintain a shared future. For example, the state may want to promote sibling bonds because sibling relationships are often the longest-term relationships we have, and hence might offer unique benefits. Maintaining the formal legal relationship may be useful for feuding siblings because it helps leave open the possibility of future reconciliation. Third, the state might worry that allowing any exceptions—any exit rights—would make people less committed to the (assertedly valuable) relationship. Overall, perhaps the welfare gains would be worth the autonomy loses.

The trouble with this account is simply that it seems foreign to our actual experience. We do not do a cost-benefit analysis to decide whether to stay related to our siblings, and the state has never done a cost-benefit analysis of whether it should force people into sibling relationships.

Perhaps instead of relying on function and a hypothetical cost-benefit analysis, the best way to justify our current regime is to make a substantive normative argument about what "family" means and about the necessary features of that status.[66] Perhaps family should be forever.[67]

Now let's shift focus from sibling relationships to parent-child relationships.

66. Margaret F. Brinig, Status, *Contract and Covenant: A Review of "Family Law and the Pursuit of Intimacy" by Milton C. Regan, Jr.*, 79 CORNELL L. REV. 1573, 1597 (1994) ("Some parts of family life, which I would attribute to covenant, are invariable because they are necessary for the family to meet its historical and present-day societal obligations. They make the family what it is: a set of relationships where intimacy and interdependence flourish.").

67. *Id.* at 1597–98.

Why not allow parents to divorce their adult children? One answer is that this is nonsensical, the parent just is a parent, and the child just is their child. This is a natural law argument.

We could make some of the same arguments above to move past natural law, with the same results. We could argue that a parent is a parent not by virtue of genetics, but by virtue of past caretaking. A functional parent just is a parent. We perhaps extend the legal parent-child relationship beyond the minority of the child because we think that it would generally be valuable for the social parent-child relationship to continue, and we hope that extending the legal relationship will make that more likely. Further, perhaps allowing adults to exit the parent-child relationship will cause some harms and do some good, and the harms outweigh the benefits. This is the welfarist argument. But again, we do not seem to do a cost-benefit analysis here. We simply do not ask the question of exit. A complete bar on exit, and the incomprehensibility of the question itself, is more in line with natural law theories.

Again, another alternative is to simply make a moral judgment about what being a "parent" means, and not allow people to customize or opt out of that definition. If we said that being a parent just means that you were taking on a lifetime commitment, this might sound in natural law. But we could get to the same place with a substantive normative argument that being a parent *should be* a lifetime commitment to a child. We could then use the law to enforce this substantive normative commitment. We might then refuse to allow parents to divorce their adult children.

I suspect that this last argument—that parenthood should be a lifetime commitment—resonates with many readers. If this is right, then this shows that we still have some capacity to make normative judgments that do not collapse into autonomy, equality, dependency-creation, natural law, or welfarist cost-benefit analysis.[68] And if this is true for parentage, perhaps it could also be true for other familial relationships like cohabitants.

68. Schneider, *supra* note 9, at 1830 (describing equality and autonomy as some of the few moral principles still salient in family law discourse); WEINER, *supra* note 11, at 163 (naming consent and dependency creation as the two traditional principles of family law obligations).

IV. AUTONOMY VS. "FAMILY"

Where does this lead? We must make a choice, and there are two main options available. First, we could choose consent as the central value. Not only does this suggest that we should provide people with robust exit rights from familial relationships once they are adults, but this would be a prima facie argument for allowing parents to divorce their adult children. Second, we could make a substantive normative judgment and define what it is to live as a "family" and then define its legal consequences. Of course, we can also make various nuanced systems by balancing these commitments against one another, but I will focus on the broader question of which value to center: autonomy or whatever substantive normative judgment we make about the definitional features of a family.

A. Centering Autonomy

Centering choice would suggest a world where any adult can sever ties with any other adult. This is the general liberal default rule: private law obligations require consent. In this world, parents could divorce their adult children, and a brother could divorce one, some, or all of his siblings. There might be particularly strong reasons to allow exit when the relationship was formed by conscription, not choice: "the most offensive sort of status [is] the kind to which one is born and cannot escape."[69] This would apply to sibling relationships and children in parent-child relationships. Similar concerns might apply to some parents in a parent-child relationship.[70]

In other work, I pursue this logic. I argue that adults' autonomy interests are sufficiently weighty that we should embrace robust exit rights for the many familial relationships that are currently governed by conscriptive natural law regimes.[71] Perhaps most obviously, an adult who was abused by her parent as a child should be able to "divorce" her abusive parent and form other parent-child relationships that are not constrained by the narrow definitions of family stemming from natural law.[72]

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69. Katharine B. Silbaugh, *Marriage Contracts and the Family Economy*, 93 NW. U. L. REV. 65, 115 (1998).

70. Here, it might depend on how much to weigh the choice to have unprotected sex, or the choice not to give a child up for adoption.

71. Williams, *supra* note 6, at 20-27.

72. *Id.* at 1.

Of course, other considerations might blunt the full realization of an autonomy-based exit regime.[73] I will not explore these caveats here. Because I have explored the autonomy arguments in other work, the rest of this article will focus on substantive normative judgments about the definition and meaning of "family." There are important lessons to learn if we explore decentering autonomy and consent and take conscriptive regimes more seriously.

B. Centering "Family" (with some support from autonomy)

We could move away from choice as the central value. One of the purposes of the previous part was to show that family law is still significantly shaped by natural law ideas, and/or substantive normative commitments other than autonomy. Perhaps people who grew up in the same household with the same genetic parents just are siblings. For those who choose parenthood, perhaps this choice just means making a lifetime commitment. For those who do not choose parenthood, but have it thrust upon them, perhaps it still just means having a lifetime legal connection. If we are comfortable making these substantive normative judgments and enforcing them through law, then perhaps secular moral discourse has not been completely forgotten in family law.[74] Perhaps we should be more open to making similar arguments about what it means to be a "family" in the context of nonmarital relationships like cohabitation and co-parenting.

Substantive normative judgments about what a family is, and what membership in a family entails, do not have to be tools for oppression and exclusion. They can also serve progressive purposes. This might be a particularly useful approach when a focus on consent does not yield clear guidance.

i. Cohabitation

Grounding cohabitant obligations in consent faces challenges. There is a large gap between what each person consented to and what obligations the law imposes. Of course, there is always a gap of some distance. Consenting

73. *See id*. at 39-46.

74. Schneider, *supra* note 9, at 1807; Libson, *supra* note 5, at 628 (noting how moral discourse has not disappeared, but shifted from traditional religious morality to notions of fairness and equality).

to marriage does not say much about whether people understand the nuances of marital property in the state where they will happen to reside when they get divorced. But perhaps it is sufficient that, as an empirical matter, enough people understand marriage to contain some set of robust sharing rules.[75] Still, these shared cultural understandings may not exist for cohabitation—both because cohabitation is such a diverse phenomenon[76] and there is not a long tradition of regulating cohabitants.[77] Without these shared understandings, it is hard to say that people understood what they were getting into, or that reasonable people should have expected certain legal consequences to stem from their choices. Further, we might ask about the meaningfulness of cohabitating partners' consent to form a family. Would it matter that they moved in with their partner to save money, or because one was evicted and had no place to go?[78] Would it matter that the couple drifted into their current relationship status, rather than actively considering and choosing it?[79] These things should matter to a regime that values autonomy, even if such a regime might ultimately adopt broad rules with over- and under-inclusion problems.

Instead of choice, we could make a substantive normative judgment about what it means to be a family. Then, it would not be the *choice* to form a family that matters most, but the fact that a *family* was formed. We might then seek an overlapping consensus on the rights and obligations that accompany membership in a family. Perhaps there is an overlapping consensus on sharing rules, where some people derive them from some form

75. *See* Carbone & Cahn, *supra* note 29, at 93–94 (claiming that "married couples know what is customary when they legalize their relationship . . . . Marriage is an institution that reinforces shared expectations about what it means to marry, even if the spouses do not know each of the 1,000-plus state-provided benefits accorded to marriage or all of the laws on dissolution and death.").

76. Naomi Cahn & June Carbone, *Blackstonian Marriage, Gender, and Cohabitation*, 51 ARIZ. ST. L.J. 1247, 1252–53 (2019) (noting that "unmarried relationships are far more varied than marital ones").

77. *See* Carbone & Cahn, *supra* note 29, at 93–94 ("[M]arried couples know what is customary when they legalize their relationship while unmarried couples are often making it up as they go along.").

78. Garrison, *supra* note 29, at 843 ("In a small survey of New York City cohabitants, the primary reasons respondents gave for cohabitation were finances, convenience, and housing needs.").

79. *Id.* at 844; Katharine K. Baker, *What Is Nonmarriage?*, 73 SMU L. REV. 201, 215 (2020) ("[The] decision to cohabit was not particularly deliberate, 'it just happened.'"); Carbone & Cahn, *supra* note 29, at 95 (noting that "unmarried couples often drift into cohabitation"); *see also* Stolzenberg, *supra* note 29, at 2049 ("Although some couples do avoid marriage for ideological reasons, it is hard to argue that respecting cohabitants' 'choices' increases their autonomy when, given sufficient economic resources and security, they might have selected a different intimate arrangement.").

of natural law, or religious law, or substantive—but secular—moral commitments.

Embracing substantive normative judgments about "family" is in some tension with widespread commitments to family pluralism. It requires the state to say: "this is what a family is." To put it mildly, the state does not have a good track record when it makes these types of assertions.

Despite these instances of state overreach, the last two parts showed that substantive normative judgments still govern family law, and in ways that many people would think is unproblematic. Consider again whether parents should be able to "divorce" their adult children. Most readers probably scoff at this. Refusing to allow parents to "divorce" their adult children seems to be the least controversial of a set of no-exit rules. It might not be controversial because of a widespread cultural understanding of what being a parent means. At its core, this judgment would be an assertion that being a parent requires certain commitments, and people should not have a choice about reducing those commitments.[80]

If we can make a substantive normative judgment about what it should mean to be a parent, perhaps we can make a substitutive normative judgment about what it means to be a part of a family.

Of course, choice can still carry weight, but it might no longer eclipse other commitments. At a high level of generality, consent may still be a *sufficient* ground for forming a family, even if, after it is decentered, it is no longer a *necessary* ground. In a less binary fashion, we might also say that meaningful consent is sufficient to form a family, while only a lesser-degree of consent is necessary to form a family. Similarly, we might conclude that parenthood should be a lifetime commitment, but we also might be more comfortable using law to enforce this moral vision the more we can say that the parent chose to be a parent. We might also allow certain forms of opting out. We do not generally do this for parents,[81] but could do so for cohabitants.[82] We could also explore making opting out more or less difficult.

80. Adoption is an obvious exception, but one that nonetheless reifies the notion that family should be forever.

81. Again, adoption is an exception.

82. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS §§ 6.01, 6.03 (AM. L. INST. 2002).

Most importantly, once we decenter consent, we can ask whether there is an overlapping consensus on the definition of "family" and the rights and obligations that accompany membership in it. Maybe there is.

In a recent survey, 94% of people reported that their spouse is treated by other family members as part of the family.[83] This is remarkably similar to the corresponding percentage of people who say this about their "very serious" cohabitant-partner, where 89% reported that they are treated like family.[84] Perhaps then, marriage and cohabitation are roughly equal avenues to create a "family."

There is also some data that at least gestures toward the idea that membership in a "family" entails sharing obligations. One study asked a random sample of adults to examine a series of heterosexual relationship vignettes and determine whether the man should pay the woman alimony after the relationship ended.[85] The core finding was that marriage was not a prerequisite for alimony. Sixty-eight percent (68%) of people thought that alimony was appropriate in at least one of the nonmarital vignettes.[86] These awards were significantly affected by the presence of young children. If the cohabitants had no children, then about one third of respondents thought a judge should award alimony.[87] This increased to more than half of respondents when the couple had a four- and six-year-old.[88]

One possible interpretation of these results is consistent with an argument by Courtney Joslin that the choice to form a family is more relevant than the choice to marry.[89] Between 57% and 64% of married couples got alimony.[90] Fifty-two percent (52%) of cohabitants with young

83. Juliana Menasce Horowitz et al., *How Married and Cohabiting Adults See Their Relationships*, PEW RESEARCH CENTER (Nov. 6, 2019), https://www.pewresearch.org/social-trends/2019/11/06/how-married-and-cohabiting-adults-see-their-relationships/ [https://perma.cc/ZDZ2-FXLL].

84. *Id.*

85. Ira Mark Ellman & Sanford L. Braver, *Lay Intuitions About Family Obligations: The Case of Alimony*, 13 THEORETICAL INQUIRIES 209, 214-19 (2012).

86. *Id.* at 223.

87. *Id.*

88. *Id.* at 225. Even in the vignette where people were least likely to award alimony—relatively short relationships, nonmarital relationships, relationships without children, and relationships with a relatively small income disparity—eighteen percent of respondents thought judges should award alimony. *Id.* at 228.

89. Joslin, *supra* note 28, at 1290–92.

90. Ellman & Braver, *supra* note 85, at 225.

children got alimony.[91] This pattern partially supports Joslin's argument. Respondents appeared to agree that the choice to form a family—whether through marriage or through cohabitating with children—is sufficient to trigger sharing rules. Once respondents awarded alimony, respondents determined an appropriate dollar amount. Here, respondents again ignored marriage and imposed the same sharing rule on both married couples and cohabitating couples with children.[92]

We might then imagine respondents applying sharing rules for "families" (married couples, and cohabitants with young children). Many people might want the definition of "family" to be significantly broader, and to at least include long-term cohabitants without children. I agree that they, too, are "family," but perhaps there is more disagreement about this. Regardless, the point here is just that there might be an overlapping consensus that *at least some* nonmarital cohabitants are "family" and that being "family" entails sharing.

Even if we find that there is no generally agreed-upon intuitive meaning of "family," engaging with these intuitions is likely useful. Suppose that, today, there is no overlapping consensus on sharing rules for some specifiable subset of cohabitants, like cohabitants without children. This would mean that, although the ALI's Principles and many foreign nations endorse sharing rules for these people,[93] there is a good deal of disagreement about it here and now. Many of the lay opinions on this issue will be rooted in natural law, religious law, and substantive moral judgments about what constitutes a family. Reformers who want default sharing rules for cohabitants would artificially constrain their audience if they ignored these intuitive definitions of family, and only made arguments in the register of autonomy and dependency-creation. Engaging in these normative discourses seems like a more productive pathway to earn popular support for nonmarriage reforms than ignoring them.

91. *Id.*

92. The amount was determined almost solely by the relative incomes of the parties. *Id.* at 229.

93. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS §§ 6.03, cmt. b. (AM. L. INST. 2002).

ii. Co-Parents

Merle Weiner's recent call for a co-parent status declines to adopt autonomy as a central value.[94] She argues for a new conscriptive legal status that would attach to people who, through sexual intercourse, create a child.[95] She calls this a parent-partner status.[96] She sees the law as capable of creating social understandings of family. For her, imposing obligations on co-parents is useful mostly because it would help create norms of thinking about your co-parent as "family" regardless of your current romantic relationship status.[97] Above, in the context of the alimony study, I argued that perhaps we already have some of these social understandings and could alter legal obligations to match them. Obviously, both stories might have merit simultaneously: the law might build upon, but also augment, existing social understandings of "family." The most concrete obligation stemming from a parent-partner status would be sharing the costs of raising the child, including the costs associated with the decreased earning capacity attendant to doing a disproportionate share of the childcare.[98]

This article offers two novel supporting arguments for Weiner's proposal.

First, it supports her negative claim that autonomy need not be the central value. Weiner understands that notions of autonomy present a challenge for her proposal.[99] Engaging in a one-night stand provides only the thin thread of consent to co-parenting obligations. This article has sought to weaken the consent-based challenge by revealing the scope of our current conscriptive regime. If we generally approve of conscripting people into lifelong sibling relationships, and lifelong parent-child relationships, then perhaps it is a smaller step to adopt a co-parenting status. This is especially so given that such a status would terminate upon the majority of the child,[100]

94. WEINER, *supra* note 11, at 161. Consent plays a role, but only if we stretch its meaning significantly to include "constructive consent" which would occur when people voluntary engaged in sexual intercourse after the state publicizes its new conscriptive regime. *Id.* at 170, 173.

95. *Id.* at 154, 156. It would also apply to those who jointly adopt a child, although for those adults, consent is easier to locate. *Id.* at 170.

96. *Id.* at 2.

97. *Id.* at 7 and 158.

98. *Id.* at 411.

99. *See id.* at 161, 183.

100. *Id.* at 2.

and so would not have the puzzling feature of the parent-child relationship, which extends beyond the dependency period of the child.

Second, this article might help reframe and augment Weiner's positive account. She focuses on dependency-creation as the core normative justification for the financial obligations that her proposal creates.[101] Co-parent obligations are justified by the fact that doing a disproportionate amount of child-care causes the care-taker's vulnerability.[102] One way to augment her argument would be to argue, first, that members of a "family" should have certain basic obligations toward one another—obligations not to abuse, obligations to help, etc. Then, second, argue that co-parents are family as a matter of natural law or should be family under a substantive normative commitment to a particular vision of family. Currently, Weiner suggests using a change in the law to drive these changes in understandings of family. But reformers could also more directly engage in the definition of "family." This provides an additional rhetorical strategy, which can supplement arguments that sound in equality and dependency-creation.

CONCLUSION

Although family law has systematically moved toward autonomy as a central value, this article has revealed that a vast conscriptive regime remains, where autonomy arguments are ignored in favor of natural law intuitions. This two-tiered system of family law—one rooted in autonomy and the other rooted in either natural law intuitions about what a family is, or substantive normative judgments about what family should be—presents us with a choice. Should we embrace autonomy as family law's central value, or should we embrace substantive normative judgments about "family" and enforce them through law? Although elsewhere I have argued forcefully for autonomy, this article explores the possibility of embracing substantive normative judgments about "family" instead. Perhaps surprisingly, doing so can promote progressive reforms by defining co-parents and cohabitants as "family" and defining "family" to include various sharing obligations.

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101. *See id.* at 166, 411.

102. She prefers "vulnerability" to "dependency-creation" for reasons that are not central to this article. *See id.* at 166–67.