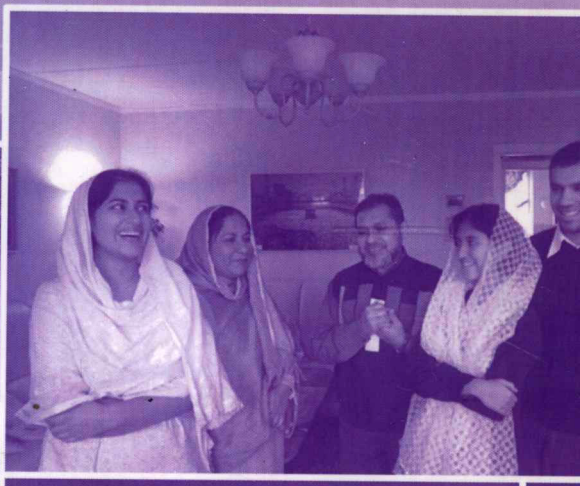
Kinship Matters



Edited by

Fatemeh Ebtehaj
Bridget Lindley
Martin Richards

for the Cambridge Sociolegal Group

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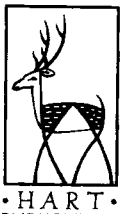

OXFORD AND PORTLAND OREGON
2006

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1-503-287-3093 or toll-free: (1)-800-944-6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: www.isbs.com

Hart Publishing, 16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 51753 Fax: +44(0)1865 510710
E-mail: mail@hartpub.co.uk
Website: http://www.hartpub.co.uk

British Library Cataloguing in Publication Data
Data Available
ISBN-13: 978-1-84113-697-4 (paperback)
ISBN-10 1-84113-697-2 (paperback)

Typeset by Hope Services, Abingdon
Printed and bound in Great Britain by
Biddles Ltd, King's Lynn, Norfolk

In memory of Alison Richards

1961–2005

Preface

This book is the fifth in a series by the Cambridge Sociolegal Group and is a product of a three day workshop held in Cambridge in September 2005.

It is dedicated to our colleague, Alison Richards, who was involved in early discussions about the theme of the book and was to be a chapter author. Her work concerned care for children who were not able to live with their parents. Tragically, she died of cancer in September 2005.

We are grateful for grants in support of two workshops from the British Academy and the John Hall Fund of the Faculty of Law, University of Cambridge. We would like to thank Michael Lamb who co-edited some of the chapters in this book, the discussants whose comments enriched the final chapters, Frances Murton who carefully subedited all the manuscript and Jill Brown for her support throughout the project.

The Editors
Cambridge, June 2006

Notes on Contributors

Andrew Bainham is Reader in Family Law and Policy at the University of Cambridge and a Fellow of Christ's College. He has been Editor of the International Survey of Family Law since 1994, an annual publication which reviews developments in Family Law across the world. He is author of a leading textbook on the law affecting children, *Children: The Modern Law* (3rd edition, Jordans, 2005). He recently co-authored with Clem Henricson, *The Child and Family Policy Divide: Tensions, Convergence and Rights* (Joseph Rowntree Foundation, 2005) which examines the relationship between policies affecting families and those directed specifically at children.

Leonore Davidoff is a Research Professor in the Department of Sociology at the University of Essex. Her research interests have included domesticity, family and kinship in the English middle class in the nineteenth and early twentieth centuries. She was the founder editor of the journal, Gender and History. Her publications include (with Catherine Hall), *Family Fortunes: Men and Women of the English Middle Class 1780–1850* (Routledge, 2002 [2nd edition]); *Worlds Between: Historical Perspectives on Gender and Class* (Polity Press, 1995) and (with M. Doolittle, J. Fink, K. Holden) *The Family Story: Blood, Contract and Intimacy 1860–1960*(Longman's, 1999).

Fatemeh Ebtehaj is an associate member of the Centre for Family Research, University of Cambridge. Her research focuses on Iranian migrants and exiles, with a particular interest in issues related to gender, self and identity, narrative and discourse analysis. Her current research highlights the impact of migration on ageing and on the care of the elderly.

Janet Finch is Vice-Chancellor of Keele University and a sociologist who specialises in studies of family relationships, particularly relationships across generations. She has published widely on these issues including their social policy implications. Her publications include *Family Obligations and Social Change* (Polity Press, 1989), *Negotiating Family Responsibilities* (Routledge, 1993), *Wills, Inheritance and Families* (Oxford University Press, 1996) and *Passing On* (Routledge, 2000). The last three have been co-authored with Jennifer Mason.

Tabitha Freeman is a Research Associate at the Centre for Family Research, University of Cambridge, and a Research Fellow of St. Edmund's College, Cambridge. Her main field of research is gender, reproduction and the family. She obtained a PhD in Sociology from the University of Essex for interdisciplinary

research on cultural and theoretical concepts of fatherhood. Her current research interests include psychosocial and cultural aspects of new genetic and reproductive technologies. She has recently started work on a study of adolescents conceived by donor insemination, funded by the Nuffield Foundation.

Loraine Gelsthorpe is Reader in Criminology and Criminal Justice at the Institute of Criminology, University of Cambridge, and a Fellow of Pembroke College, Cambridge. Her research largely revolves around discretion and discrimination in the conception and delivery of criminal justice, and youth justice. Current work includes an edited book about probation and community penalties, women offenders and resettlement, and constructions of morality in pre-sentence and psychiatric reports. Recent books include: *Community Penalties: Change and Challenges* (with A E Bottoms and S Rex; Willan, 2001), *Exercising Discretion: decision-making in the criminal justice system and beyond* (with N. Padfield; Willan, 2003) and *Sexuality Repositioned: Diversity and the Law* (with B. Brooks-Gordon, M. Johnson and A. Bainham; Hart, 2004). Dr Gelsthorpe is the current Chair of the Cambridge Socio-legal Group.

Emily Grundy is Professor of Demographic Gerontology at the London School of Hygiene and Tropical Medicine. Emily's main research interests are families, households, kin and social networks in later life, especially in relationship to health, and trends and differentials in health at older ages. Currently she is researching links between partnership parenting histories and later life health and is involved in collaborative European projects on family support for older people. Her teaching includes running a short course on *Ageing, Health and Well-being in Later Life.* Emily has published over 100 journal articles, book chapters and monographs.

Kaveri Harriss is a research student at the London School of Hygiene and Tropical Medicine. She is working towards a PhD on the relationships between long-term illness, disability and poverty in British Pakistani communities, using an ethnographic approach supported by secondary analysis of national survey data. Her research focuses on intra-household relationships and allocation, gender, transnationalism, mental health and ageing.

Joan Hunt is Senior Research Fellow in the Centre for Family Law and Policy, part of the Department of Social Policy and Social Work at the University of Oxford. Her research interests are the law relating to children and families, the operation of the family justice system and the interface between legal institutions, families and social welfare agencies. She is currently conducting research for the DFES into outcomes for children removed from their birth parents and cared for long term by members of their extended families or social networks. She is the author of a scoping paper on family and friends care commissioned by the Department of Health (2003) to inform policy development and a

briefing paper for social work practitioners and managers commissioned by Research in Practice (forthcoming).

Nazalie Iqbal is a temporary lecturer at the University of Durham. She is currently finishing her PhD thesis, which focuses on kinship and transnationalism among British Pakistanis. Her next research is a major ESRC funded project which explores infertility and the take-up of new reproductive technologies among British Pakistani Muslems.

Bridget Lindley has been a solicitor since 1986 and a family mediator since 1998. She was a senior Research Associate at the Centre for Family Research, University of Cambridge from 1997–2002 and is currently vice chair of the Socio-legal Group. Bridget has also been the Legal Adviser at Family Rights Group (FRG) on and off since 1988 and is currently deputy chief executive of FRG. She has a particular interest in public law children's cases with a long-standing involvement in campaigning for effective information, advice and support for vulnerable families whose children are in need of statutory services.

Mika Oldham is a lecturer in Law at Cambridge University and a Fellow of Jesus College. She teaches and writes on family law, property law, criminal law and succession. She is involved in various inter-country reform projects and also teaches common law courses in a number of civil law jurisdictions.

Judith Masson is Professor of Socio-legal Studies at Bristol University, specialising in child law and socio-legal research in adoption, child care and child protection practice. She is co-author of a number of books on child and family law including *The Children Act Manual* (1992), *Out of Hearing* (1999) and *Principles of Family Law* (7th Ed, 2003), and is currently writing a book on Emergency Child Protection. Judith teaches courses on Family Law, Child Law and International Child Law to law students, social workers and doctors. She has undertaken consultancies and research for various government departments, for the Legal Services Commission and for NGOs including Voice for the Child in Care, Family Rights Group and British Agencies for Adoption and Fostering. She is a member of the Judicial Studies Board and the Family Justice Council.

Michael Murphy is Professor of Demography at the London School of Economics. He is a Fellow of the British Academy and Research Secretary of the Population Investigation Committee. His main areas of research include: family, kinship and household demography; ageing; social and genetic mechanisms for the inheritance of behaviour. Recent publications include *Forecasting British Families into the 21st Century* with D Wang in (McRae (ed), 1999) and, with L Knudsen, *The Intergenerational Transmission of Fertility in Contemporary Denmark: the Effects of Number of Siblings (full and half), Birth order, and Whether Male or Female* in *Population Studies* (2002).

Jane Nolan is a Research Associate in the Faculty of Social and Political Sciences at the University of Cambridge and is Director of Studies at Magdalene College. Her research focuses on gender, employment and family and she has published on the themes of work orientation, job insecurity and work intensification. Her publications include 'The Intensification of Everyday Life' in B Burchell, D Ladipo. and F Wilkinson (eds), *Job Insecurity and Work Intensification* (Routledge 2002) and 'Job insecurity, psychological well-being, work orientation and family life' (with Brendan Burchell and Ines Wichert) in E Heery (ed), *The Insecure Workforce* (Routledge, 2001)

Jan Pryor is an Associate Professor at Victoria University of Wellington, New Zealand, and is Director of the McKenzie Centre for the Study of Families. In 2001 she co-authored, with Dr Bryan Rodgers, the book *Children in Changing Families: Life After Parental Separation'* (Oxford, Blackwells, 2001). Her research focuses on family transitions and their impact on children. As well as research, she contributes to educational programmes for professionals working in the New Zealand Family Court, and is involved in the establishment of a new longitudinal study of New Zealand children.

Martin Richards is Emeritus Professor of Family Research at the Centre for Family Research, University of Cambridge. His research is focused on psychosocial aspects of new genetic and reproductive technologies. He has been a member of the Human Genetic Commission and the Law and Ethics Committee of the Human Fertilization and Embryology Authority. He has been a contributor and co-editor of earlier Socio-Legal Group volumes, *What is a Parent?* (1999), *Body Lore and Laws* (2002) and *Children and their Families* (2003). He co-edited **The Troubled Helix** (Cambridge, 1996) with Théresa Marteau. He also has historical interests in this field. 'Perfecting People: Selective Breeding at the Oneida Community 1869–1879 and the Eugenic movement' (2004) 23 *New Genetics and Society* 49.

Jacqueline Scott is Professor of Empirical Sociology at the University of Cambridge and Fellow of Queens' College. She directs the ESRC Research Priority Network on Gender Inequalities in Production and Reproduction. She was responsible for the initial design and launch of the British Household Panel Study—a longitudinal, prospective study that follows 5000 households in Britain. She is editor (with Martin Richards and Judith Treas, 2004) of *The Blackwell Companion to the Sociology of Families*. She has published widely on family and household change and changing family values, including articles in Sociology, the Sociological Review, the European Journal of Sociology and the British Journal of Sociology.

Alison Shaw is Senior Research Fellow at the University of Oxford, in Oxford's Centre for Ethics and Communication in Health (Ethox). She was previously a

lecturer in Social Anthropology at Brunel University, where she taught on aspects of medical anthropology and ethnicity in the UK. Her research focuses on health and ethnicity, Pakistani marriage trends, consanguinity, genetic risk and social aspects of genetics. Her publications include *Kinship and Continuity: Pakistani Families in Britain* (Routledge, 2000), 'Immigrant Families in the UK' in J Scott and M Richards (eds.), *Blackwell Companion to the Sociology of Families* (Blackwell, 2003), 'Attitudes to Genetic Diagnosis and to the Use of Medical Technologies in Pregnancy: Some British Pakistani Perspectives' in Unnithan-Kumar (ed), *Reproductive Agency, Medicine and the State* (Berghahn, 2004) and *Changing Sex and Bending Gender* (with S. Ardener, Berghahn, 2005).

Bob Simpson is a Reader in Anthropology at the University of Durham. His main interests centre upon kinship, new reproductive and genetic technologies and comparative bioethics. He has carried out a wide range of research both in the UK and in Sri Lanka and has published widely on topics relating to family, divorce, kinship and the new technologies. He held a Wellcome Trust Fellowship in Bioethics between 2002–03.

Layla Skinns completed her Ph.D. on interagency aspects of local authority crime prevention following the Crime and Disorder Act 1998, at the Institute of Criminology, University of Cambridge in 2005. She is a currently a Research Fellow at the Institute for Criminal Policy Research, King's College, London. She will be the Adrian Research Fellow at Darwin College, University of Cambridge, from the Autumn of 2006.

Contents

1

Introduction: Regulating Relationships?

FATEMEH EBTEHAJ[1]

THIS BOOK IS about evolving notions and practices of kinship in contemporary Britain and the interrelationship of kinship, law and social policy. By assembling contributions from scholars in a range of disciplines, we examine social, legal, cultural and psychological questions related to kinship: Who is kin and what does it mean to be kin in contemporary British society? What are the obligations, responsibilities and benefits that may accrue from kin? How are these implemented in the arrangements for care, decision-making and financial responsibility by and for kin? And how do law and public policy recognise kin relationships?

Recent demographic, economic, and cultural changes have led many to voice concerns about the 'weakening' of kin relationships and family ties. Rising rates of divorce and of sequential and alternative modes of partnership, including cohabitation and same-sex relationships, have raised questions about the care and well-being of children, while increasing longevity and mobility, together with lower birth rates and changes in our economic circumstances, have led to a reconsideration of duties and responsibilities towards the care of elderly people. In addition, globalisation trends and international flows of migrants and refugees have confronted us with alternative constructions of kinship and with the challenges of maintaining kinship ties transnationally. Finally, new developments in genetics research and the growing use of assisted reproductive technologies may raise questions about our notions of kinship and of kin rights and responsibilities. As law and policy have shaped, and are shaped by, these changes in social relations, they codify and regulate kin relationships, supporting some constructions of kinship and excluding others.

The chapters in this book explore these changes and continuities from various disciplinary perspectives and draw on theoretical and empirical data to describe our understandings and practices of kinship over time and across social

[1] With thanks to Martin Richards, Bridget Lindley, Frances Murton, Gudrun Klein, and Hamid Hakimzadeh for their helpful comments and editorial support.

groups in contemporary Britain. As will be evident throughout the book, meanings of kinship are multiple, contingent, and contested. Folk, institutional and disciplinary understandings constitute kinship in different ways[2], and these understandings shift with time and place[3]. As individuals negotiate their responsibilities, duties and obligations towards kin situationally, they strategically define and redefine kinship to assess relationships, to stake claims on them, to ground their identities, and to establish moral accountability (Finch, 1989; Finch and Mason, 1993; Brannen, Moss and Mooney, 2004).

Here I review some recent developments in approaches to kinship and families in the social sciences before going on to outline the contents of the book.

'NATURALISING' KINSHIP

Kinship has long been central to anthropology, yet a reader today will inevitably encounter, in any discussion of kinship, a reference to Schneider's seminal study of 'American kinship' (1980) and to his subsequent 'Critique of the study of kinship' (1984). The first study shifted the analysis of kinship from structure to cultural meanings, and the subsequent critique exposed Western tendencies to naturalise kinship and to construct it in terms of biology and reproduction. Schneider argued that anthropologists had transposed their own folk notions of kinship to other social groups. He specifically disputed what he disparagingly called 'the Doctrine of the Genealogical Unity of Mankind' (1984, p198) which he attributed to anthropologists' ethnocentric assumptions rather than to empirical evidence. Schneider showed that the Yapese, for instance, did not operate on the basis of genealogy, but rather valued interaction and exchange.

> We can see that the relationship is more one of doing rather than of being. It is based largely on the interaction, the *doing*, of the exchange and less on the state of *being*, of having some substance, quality, or attribute. (1984, p75)

As a result, Schneider reminded his colleagues that anthropology's central task was to attend to indigenous meanings and practices and to treat kinship 'as an empirical question, not as a universal fact' (1984, p200).

The deconstruction of the 'natural' basis of kinship, together with the rise of feminism, contributed to an increasing awareness of the interdependence of kinship and gender (Collier and Yanagisako, 1987; Yanagisako and Delaney, 1995).

[2] At the September 2005 conference that brought the authors of this book together, Grundy commented that kinship 'flags' anthropology while sociology refers to 'families'. Moreover, while family law deals with familial relations such as marriage or parenthood, neither 'kinship' nor 'family' have legal definitions (Herring, 2004).

[3] See, for instance, Rapp (1987) for a brief overview, Goody (1983) and Davidoff, Doolittle, Fink and Holden (1999) for more thorough discussions of some historical and cultural shifts in definitions of 'family'. Also see Davidoff, this volume.

Here too, social constructions and understandings were laid bare and the workings of power exposed. And in another challenge to kinship studies, Borneman (2001) charted the history of anthropological categories of analysis from sexuality to marriage to kinship to gender to power, and argued that while each generation subsumed the prior object of analysis into the new one, the initial object was never called into question. Borneman observed that a 'global ideology' of 'marriage and the family' led to the 'social and legal protection of a particular form of sociation: heterosexual marriage and family' (p 30). Instead of privileging 'forms of communal reproduction', Borneman advocated attending to 'caring and being cared for as processes of non-coercive, voluntary affiliation' (p 31).

In response to these critiques, many anthropologists have tried to be more sensitive to indigenous categories of meaning and to question polarities such as 'nature/culture', 'social/biological', and 'public/private'. Some carefully refrain from any claims to generalisation and stress that 'notions of kinship are understood to be rooted in time, space and position within society' (Maynes, Waltner and Solan, 1996 p5); others prefer to speak of 'relatedness' instead of, or in parallel to, kinship (Carsten, 2000, 2004).

These new developments notwithstanding, Franklin and Ragone (1998, p3) observe that 'assumptions about the biological basis of reproduction have proven difficult to displace'. Their contribution aims to re-examine reproduction in the light of new developments in reproductive technologies and genetics research. Ironically, however, Franklin and Ragone find that the new reproductive technologies both challenge and reinforce biological or 'natural' understandings of kinship, appealing, for instance, to 'the naturalness of the desire to procreate' (p 9)[4].

THE REIFICATION OF FAMILY

Moving to sociology, we find similar attempts to move away from the reification of 'the family'. Social constructionist approaches deconstruct folk and institutional notions of family by focusing on language and discursive strategies. 'What is family?' ask Gubrium and Holstein (1990, p6), and 'what does the absence of the simple modifier 'the' make?' The authors note that the 'thing' implied when we speak of 'the' family has fuzzy boundaries and that its meanings and referents vary across individuals and contexts. They note in particular that 'family is a way of thinking about social relations' that is 'organisationally embedded' (p 116) and explore instances when two sets of institutional discourses and procedures collide. In a case of involuntary mental hospitalisation,

[4] For similar findings, see Franklin and McKinnon (2001), Strathern (1992, 2005), and Freeman and Richards, this volume.

for instance, the judge may evaluate the capability of a family member to take responsibility to 'contain and control' (p 128) the individual in question, while a therapist's concerns rest on the family member's ability to take care of the individual and to convey feelings of belonging and security[5].

The familial discourse has been analysed in other contexts. Finch (1989), for instance, describes the shifting boundaries between private and public responsibilities for the care of kin. She notes that the State draws on a naturalising discourse of family ties and obligations to relegate the care of kin to family members, creating 'a particular moral order' where family duties are confused with 'natural feelings' (p7). The State's view of family condones a very particular set of relationships within which women tend to be framed as the primary providers of 'the unpaid-labour which secures the reproduction of the population and the care of the sick and elderly' (p11)[6].

WHO IS KIN AND WHAT DISTINGUISHES KIN RELATIONSHIPS?

Are kin relationships 'special'? In response to this question, Finch (1989, p113) begins with a review of theories that refute the distinctiveness of kin relationships and view kinship merely 'as a variation on other types of social relationship, not as special or different in a qualitative sense'. This stance is exemplified by views that stress the material conditions under which people live or that centre on a notion of self-interest. Finch then reviews some theories that do view kin relationships as special. These may draw on biology (sharing genes, 'blood is thicker than water'), on the economics of family altruism (family as 'haven'), on emotional ties arising from bonds formed early in life (psychoanalytic theories), and finally on theories that focus on the social organisation of societies. Finch herself considers kin relationships to be special on the basis of social rather than 'natural' understandings. She defines kin as people 'related through blood or marriage', but also includes 'others whom people treat as relatives' such as adoptees and cohabitees, and she distinguishes between kin relationships that are regulated by law, such as marriage and parenting, and those that are not.

While kinship in Britain is characterised by its flexibility, research shows that 'the inner circle of intimate kin almost always includes "biological" parents and children, however warm or difficult the actual relationships between the parties' (Finch and Mason, 2000, pp 10–11). Our location in our family of origin is 'automatic', 'irrevocable', and 'lifelong' (Finch, 1989, p 240), thereby marking our relationships within that family as distinctive and different from all others.

[5] See Harriss & Shaw, this volume, for a discussion of British Pakistanis' and immigration officers' conflicting definitions of kin.

[6] See also Nolan and Scott, this volume.

What characterises these relationships consists of our sense of obligation, a 'matter of morality' that 'does not operate on the basis of fixed rules' but rather operates 'on the basis of normative guidelines or principles' (Finch, 1989, p241) which include the principle of reciprocity, some need for individual independence, and the notion that interpersonal support is negotiated and fluctuates over time and situations[7]. Furthermore, kinship ties are central in the acquisition and circulation of material and symbolic resources, and in their transmission to future generations[8]. Such resources include names, identity and cultural affiliation, property, and social status (Maynes, Waltner, Soland and Strasser, 1996, p17).

In an insightful study, Finch and Mason (2000) examine inheritance as a site for the construction of kinship. English law, in contrast to many other countries, grants full testamentary freedom[9]. Via an analysis of wills, the authors examine some of the ways in which individuals 'define the contours of their own kin relationships (and) confirm who "counts" and what value is placed on each relationship' (p11). As Finch and Mason observe, legacies have not only material, but also symbolic value; they embody and communicate notions of closeness and intimacy, of time and continuity. They can produce family solidarity or lead to family feuds. In the case of migrants and exiles, the symbolic and material aspects of inheritance are further affected by differences between the laws of the host and home countries, heightening some migrants' psychological experience of displacement and dislocation[10].

AN ETHIC OF CARE

As Brannen, Moss and Mooney (2004, p150) observe,

> Family responsibilities typically involve the negotiation of the ethic of care in relation to the needs of those needing care, the availability of others to offer care and so on.

An ethic of care is often identified with feminist moral theories, especially following Gilligan's (1982) seminal analysis of women's moral development. The economy of care is undoubtedly gendered but we must bear in mind that it is also 'classed'[11] and 'raced' (Tronto, 1994, p112). Despite the material social and human value of the work of kin care, carers enjoy little social status and respect

[7] See Pryor, this volume, for further discussion of the notion obligations, and Grundy and Murphy for variations in contact between adult children and their parents.

[8] See Davidoff, this volume, for a discussion of cousin marriages in 19th century England as a means to acquire and control financial resources.

[9] See chapter by Oldham, this volume.

[10] See chapters on migrants by Ebtehaj and by Harriss and Shaw, this volume.

[11] For empirical studies on the power and the interaction of class and gender, see Maynes, Waltner, Soland and Strasser (1996).