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Introduction

Perspectives on private and family life

Daniela Cutas and Sarah Chan

That children should be conceived *naturally*, born to and raised by their two young, heterosexual, married to each other, genetic parents; that this relationship between parents is also the ideal relationship between romantic or sexual partners; and that romance and sexual intimacy ought to be at the core of our closest personal relationships – all these elements converge towards the ideal of the *nuclear family*.

In this book, then, the expression *nuclear family* will be used to denote families composed of a mother and a father romantically involved with each other, and their genetically related children that they have conceived *naturally*. We believe it quite uncontroversial to say that these are the core characteristics of the nuclear family standard. Calling units consisting of two parents and their adopted children, or same-sex couples and the children that they raise, *nuclear families*, corresponds to more generous interpretations of the concept or departures from the ideal, with varying degrees of acceptability.

We will not in this volume investigate how and why this formula came about. The nuclear family may have been the norm for some decades in the Western world, but it has not always been so, historically speaking (see for example Nicholson 1997), and is not so in some other contemporary cultures (see for example Stacey 2011). Whatever the age and coverage of the concept, the way *family* is defined in legislation as well as in the wider society has a prescriptive component (Archard 2010: 2): it determines whose private life is more, or less, scrutinized; who can be a parent and what sorts of organization of private and family life are encouraged, tolerated or even allowed at all; which associations will be supported, both socially and materially; and so on.

In contrast to the nuclear family ideal, real-life scenarios and choices in the realm of close personal relationships and family formation strategies display a variety of forms: electively or circumstantially single parents, unmarried couples, homosexual partnerships and parenting by homosexual couples, life-long close friendships preferred over sexually intimate alternatives, polyamory, poly-parental families, electively or circumstantially childless families¹, families

created with medical or social assistance and so forth. These *alternative* relationship and family structures challenge the privileged status of the nuclear family as the preferable mode of family life for all, and the one to be endorsed and encouraged by society. Efforts to make the concept of *family* more elastic, however, or even to gain recognition for other forms of organizing one's private and family life as equally legitimate to the nuclear family, are faced with a variety of forms of resistance. These range from at the mildest tolerant acceptance, to outright rejection, often citing concerns of the threat to family values or the destruction of 'the family' that their acceptance represents.

In this book, we explore some of the possibilities offered by various relationship and family structures and examine the arguments to recommend or disqualify them as legitimate family units in our societies. Our aim is to re-examine and critically evaluate the norms and normativities surrounding personal relationships and families in Western societies, and to challenge the widespread assumption that nuclear families are the best, or even the only acceptable units at the core of personal relationships. We address in particular modes of reproduction and parenthood and the consequences for children of being raised in families that do not conform to the nuclear family model, one reason for focusing on this particular aspect being that the issue of parenting raises heightened sensitivity and resistance to *alternative* lifestyles. We also consider alternative modes of interpersonal relationships, such as romantic or sexual intimate relationships that deviate from widely and explicitly accepted heterosexual, monogamous and marital norms.

The nuclear family: A sexual family

A constitutive part of the nuclear family ideal is the presumption of sexual interaction between the parents. Often, this translates as a presumption of heterosexual interaction. Indeed, in most legislatures *parental dimorphism* (McCandless and Sheldon 2011; McCandless in this volume) is a required ingredient of bi-parenting: thus the parents of any child have to be of opposite sex (namely, one *mother* and one *father*). Even where digressions from this rule are permitted, the parents must not be in kin relationships to each other (for example siblings, parent-child) that would not allow them to form a socially or legally acceptable *couple* (*Ibid.*). And, as the conjugal couple is valorized as the ideal (or perhaps even the only legitimate) parental combination for the formation of families, the couple at the heart of the nuclear family remains the ideal (or perhaps even the only legitimate) scenario in which sex should take place.

The concept of the nuclear family as the 'sexual family' has been explicated at length by Fineman (1995). Her critique targets the privilege-conferring preference, entrenched in law and policy as well as social, cultural, political

and popular discourse, for the ‘appropriate intimacy’ of the sexual family (Fineman 1995: 1), in the form of a husband and wife who are ‘sexually affiliated’ to each other. Intimacy and family connections, Fineman points out, are much more varied than the sexual family, and may include dependent parents, adult children living with their parents, plural sexual groupings and nonsexual intimate connections. There is no reason, she argues, why the sexual family should be privileged economically and legally: the sexual family is an overly simplified paradigm that fails to deliver as an appropriate basis of family theory (Fineman 1995: 160).

In line with this critique, varied experiences in the area of personal relationships suggest that *one size does not fit all* (Stacey 2011) and that the nuclear family ideal, in fact, does not fit most. Divorce rates have increased in the last decades (on average, 1 in 2.3 marriages in Europe end in divorce; Eurostat 2011), as have the numbers of adults not marrying or not cohabiting with romantic partners. Over 35 per cent of households in a number of countries (for example Norway, Sweden, Finland, Germany) are made of one person. In several European countries (such as Bulgaria, France, Iceland), the number of out-of-wedlock children has topped 50 per cent (Eurostat 2011). These children and adults are outside of the socially and legally protected unit of the nuclear family, at least some of them (the children) as a result of processes and conditions over which they have no control.

This raises difficulties particularly regarding the care of these children, as to how their interests can or should be safeguarded, and the role of the state in ensuring this care. Considering the interests of children over whose parenting several adults compete, decisions have to be made that can realistically be implemented: who should be awarded parenting privileges when several adults have a claim to be awarded them? Who has a right to have access to a child parented by someone else? How far do parental claims to privacy extend? Who should make these decisions? Who should be considered to be a parent, who should be allowed to be a parent, and what influence does the nuclear family ideal have on our thinking in this regard?

Mater semper certa est

The Latin formula embodies a particular, biological, understanding of establishing parentage: we know who the mother is, because she gives birth to the child, but we never really know who the father is. Until relatively recently, it was always the case that the genetic mother (who provided the egg) and the birth mother were one and the same; thus saying that it is always clear who the mother is (i.e. the birth mother) corresponds to equating ‘genetic mother’ with ‘mother’ and, analogously, saying that it is never clear who the father is, equates ‘genetic father’ with ‘father’. Yet social and technological changes

make identifying who *should* be regarded as a child's parents even less certain: as it seems, *mater incerta est, pater incertus est*.

Perhaps most commonly, the people deemed to be a child's parents (with associated rights and responsibilities) have been, *by default*, those who conceived her or, in the case of married couples, the birth mother and her husband (in spite of the genetic uncertainty). Here again the pervasiveness of the nuclear family ideal can be seen: when the predominant condition of this structure obtains, in the form of the married couple, legal and social presumptions follow suit in deeming any children born to the wife to be a product of that union. Such presumptions have also operated in reverse to dictate that the nuclear family is the proper, the best or the only context in which children *ought* to be produced. A historical expression of this is found in the social stigma once attached to children born out of wedlock. More recently, law and policy in the area of assisted reproduction have, either through explicit provisions or through their application in practice, reinforced the primacy of the nuclear family as the ideal or most legitimate reproductive environment. In so doing, they have tended to cleave to the nuclear ideal in determining what sorts of environments are appropriate for the creation and raising of children and therefore which sorts of 'families' are eligible for reproductive assistance. Yet this model fails to account for many of the contexts in which children are actually born and the ways in which families are formed.

Social practices as well as the use of reproductive technologies have compounded the difficulties associated with any straightforward decision-making criteria for parenting. Who a child's parents are, or should be, has never been a straightforward determination. Children were conceived by and born to unmarried women, or conceived by married women with men to whom they were not married. People could adopt children. The children's main attachment figures may have been people other than their legal parents (grandparents, for example). Today, birth mothers need not be either the genetic mothers, or the intending mothers. These separations of reproductive and caretaking contributions, together with their more and more widespread occurrence (and increasing social acknowledgment), force the re-evaluation of assumptions as to who should have priority in parenting claims. Further, they contribute to the increasing separation between reproduction and parenting, as well as, implicitly, to increasing competition over parenting.

When genetic parents, surrogate mothers, commissioning parents, financial, and social parents, all compete for recognition as the legal parents of the same children, whose claims should prevail and on what grounds? There are two main perspectives that have been taken in the process of decision-making in such cases: (a) that of the competitors and their claims to particular children, and (b) that of the children themselves. Some of the research presented in this volume (Scheib and Hastings; Graham; Asch) indicates that, as far as children's interests are concerned, the most important aspects of parenting seem to consist

in the quality of the relationships within the family, rather than in the form that the family takes (whether there are one or two parents in the home; whether or not they are in a romantic relationship with each other; their sex or sexual orientation). From the perspective of children's interests, then, it may be that the ideal of the nuclear family is misguided or at least not best placed to serve these interests (see Munthe and Hartvigsson, and Lotz, in this volume). From the perspective of those adults who cannot or choose not to conform to the nuclear family model, it is likewise important to be able to find their own ways of leading their private lives within a supportive social environment.

Those who have contributed to a child's existence or wellbeing may feel they each have relevant claims to being recognized as legal parents or, at the very least, to being allowed to have a relationship with the children. The current *status quo* in many states is such that once they have been accepted as a child's legal parents, or custodial parents, people are allowed to prevent others from having access to the child. This is sometimes defended by claims to familial privacy, or by the need to protect the child's wellbeing. The first claim depends on careful distinctions in the area of the balance between parental discretion and the responsibilities that they have as parents. The strength and justification of both claims depend on what concepts of parental rights and responsibilities we adopt, as well as on outcomes for children of the different possible choices. What they should not depend blindly upon, however, is an assumption that the nuclear family is either most (or solely) deserving of protective privacy, or the best structure to ensure the wellbeing of children.

Policing private life

While the influence of the sexual, nuclear family ideal may be most prominent in the sphere of reproduction and parenting, not least because it is here most strongly and publicly promoted under the banner of children's interests and rights, it also has powerful and pervasive effects on the lives of people outside their role as parents, or who are not parents. As Fineman describes it, '[t]he characterization of some family groupings as deviant legitimates state intervention and the regulation of relationships well beyond what would be socially tolerated if directed at more traditional family forms' (Fineman 2009: 46).

This 'regulation of relationships' may occur indirectly, through legal and social privileges accorded to relationships that meet the ideal, and through analogous privileges extended to relationships that satisfy some aspects of the ideal, usually in proportion to how closely they conform to it. One example of this is the recognition accorded in many jurisdictions to what is often called *de facto* or common-law marriage – the requirements of which, to be validly established, include virtually all the tropes of the nuclear family couple save for actual *de jure* matrimony.

In certain cases, however, direct state intervention dictates what forms of relationship are allowed and what types of activities are permitted within personal relationships. Laws that not only do not permit polygamy but criminalize it proscribe certain relationship forms, as they prescribe others. Historical laws prohibiting homosexual activity (particularly between males) have been repealed in some jurisdictions but remain active in many. Even within England, where homosexual behaviour *per se* is no longer a crime, the attitude of the courts to particular practices seems to depend on the sexual orientation of the parties to the act: the ‘Spanner case’, *R v Brown*, involved acts of homosexual sadomasochism that were considered by the House of Lords to constitute assault occasioning actual bodily harm, thus rendering these activities criminal. While the judicial reasoning in *Brown* did not explicitly condemn homosexuality, its characterization of homosexual sadomasochism as violent, transgressive and dangerous to public health, morality and civilization, together with the contrasting attitude taken by English courts to cases of heterosexual sadomasochism, have been interpreted by some analysts (White 2006; Houlihan 2011) as discriminating between homosexual and heterosexual practices and enforcing ‘a moralistic jurisprudential model of socio-sexuality which is heteronormative and procreative’ (Houlihan 2011: 32).

Towards the post-nuclear family?

Given the variety of family and relationship forms already in existence today, perpetuating and enforcing the nuclear family ideal and the sex-based relationship norms that underlie it may be seen as at best unnecessary and at worst directly harmful. In the context of parenting and the question of which parenting combinations are permitted, supported or legally recognized, it places restrictions on reproductive choice that are not necessarily justified in terms of the usual stated reason for limiting reproductive choices, namely the interests of the child. More broadly, outside the reproductive context, the persistent fiction of the nuclear family both de-legitimizes alternative relationship modes, and generates social pressures and expectations that are sometimes unrealistic, may go unfulfilled and in doing so, create dissatisfaction and unhappiness amongst those who cannot or do not wish to conform to their strictures.

As we have noted, existing variants in family structure already challenge the nuclear/sexual family norm. Some of these have achieved a degree of recognition as legitimate family forms that attract legal and political support: for example, shared parenting in the absence of a continuing sexual relationship between estranged co-parents is acknowledged legally and socially as a valid, though not preferable, structure for child-rearing (though this varies between countries; for example, it seems to be much more accepted in Scandinavian countries than anywhere else in Europe). Others continue to be under-recognized.

Poly-parenting often occurs as a result of the dissociation of the original nuclear family, which may then reform into multiple units with varying degrees of similarity to the nuclear ideal, resulting in there being more than two adults who desire parental rights and bear parental responsibilities. Nevertheless, the law has steadfastly refused to recognize more than two legal parents for any one child (see also Lotz in this volume), and poly-parenting *de novo* (where more than two people may deliberately set out to embark on a project of parenthood together, in whatever various capacities) is scarcely acknowledged socially, let alone legally.

There is thus a need for greater recognition of the diversity of relationship forms and their validity, and for a critical reconsideration of what have been termed ‘relationship normativities... expectations within the heterosexual relationship order – or what might be called, heterorelationality – of co-residence, romantic love, monogamy and the primacy of the conjugal couple’ (Budgeon and Roseneil 2004). The endpoint of such a critique, it has been suggested, may be to deprive the sexual family: to ‘render all sexual relationships equal with each other and all relationships equal with the sexual’ (Fineman 1995: 230). Such a shift would represent a radical reconfiguration of the family and a drastic departure from the nuclear family ideal. Constructing and supporting alternatives to the nuclear family will require changes to both regulation and socio-cultural understandings of the family – changes that, some may argue, are long overdue.

The chapters: An overview

The chapters in this volume have been selected to provide a broad and cross-disciplinary perspective – philosophical, ethical, legal and sociological – on the challenges that threaten, or promise, to ‘explode’ the ideal of the nuclear family today. Through these, we hope to demonstrate how contemporary realities and practices are already contributing to reshaping current understandings of the family; to examine the philosophical and ethical underpinnings of the norms surrounding families and relationships, and how these intersect with reproductive technologies that perturb such norms; and to explore ways in which reconfigured notions of the ‘post-nuclear’ family might find expression in future policy debate and the development of jurisprudence in this area.

In Chapter 2, Julie McCandless examines the development of the concept of legal parenthood within English law, arguing that recent legislative and policy changes (in particular the 2008 amendments to the Human Fertilisation and Embryology Act 1990), while prompted by reproductive technologies that ‘dismantle the seemingly axiomatic two-parent connections of sexual reproduction’, nevertheless reinscribe essential elements of the nuclear family paradigm even as they enable non-conformity. McCandless suggests that

broader legal understandings of parenthood and family are necessary to account adequately for the range of parent-child relationships that are already possible and that may occur in the future.

Continuing on the theme of legal parenthood, in Chapter 3, Mianna Lotz presents a critique of one particular aspect that is almost universally entrenched in law: the stipulation that a child may have no more than two legally-recognized parents. She argues that such a limitation is unjustified by reference to the interests either of children or potential parents, and that in the context of social and technological changes that create increasingly complex family and reproductive structures, an expansion and diversification of the legal as well as social concept of parenthood will be required.

Chapter 4 broadens the focus from parenthood to ‘familyhood’, in terms of ‘what social configurations should be recognized as a potentially fitting context for children to enter into’. Christian Munthe and Thomas Hartvigsson propose the term ‘reproductive caring units’ (RCUs) to describe such contexts, and go on to evaluate the arguments regarding children’s best interests that are often raised as a criticism of certain forms of RCU – particularly those that diverge from the nuclear family ideal. On this analysis, they conclude that the interests of children do not provide a justification for disallowing RCUs that differ from the nuclear ideal, nor for discriminating wholesale against these RCUs in favour of others that conform to it.

Chapters 5 and 6 explore issues involved in donor conception from differing perspectives. Joanna Scheib and Paul Hastings, in Chapter 5, draw together a considerable breadth of sociological research examining the development and welfare of donor-insemination (DI) children raised in lesbian-couple families, and compare this with studies of DI in heterosexual families. These findings indicate that children of DI-lesbian couple families experience at least as positive, or perhaps better, outcomes than children in conventionally-conceived heterosexual families (the ‘nuclear family’ ideal), and that heterosexual DI also results in positive family outcomes. They identify, however, openness about donor origins as a major point of difference between lesbian DI families (in which the absence of a father promotes and facilitates openness at an early stage) and heterosexual DI families (in which the child’s donor origins can more easily be, and indeed often are, kept secret) and highlight lack of openness as a potential ‘risk factor’; evidence drawn from lesbian families about the benefits of early disclosure might thus support an argument for openness and provision of information about donors across all forms of DI family.

In Chapter 6, David Gurnham explores the experiences of *parents* in donor conception families, analysing the narratives that parents construct around their own roles and that of the donor in order to establish the priority of their own parental relationship over the genetic connection represented by the donor. He examines the way in which the fragmentation of reproductive roles entailed by donor conception can lead to ‘linguistic ambivalence’ in how

parents describe both themselves and donors in relation to their children, in deploying concepts such as ‘father’ and ‘fatherhood’ and the ambiguous notion of the ‘real’ parent. The language selected by DI parents to narrate their ‘reality’ of parenthood may thus, Gurnham argues, reflect parents’ own anxieties about their status relative to that of the donor. He draws an analogy between Rousseau’s ‘dangerous supplement’ that masquerades as what is ‘true’, ‘real’ or ‘natural’, and the potential for gamete donors to intrude into the narratives of parents and usurp the role of ‘real’ or ‘natural’ parent, thereby illustrating the reconfiguration of the ‘ethical and linguistic contours of society’ that the revisioning of the nuclear family might necessitate.

In Chapter 7, Susanna Graham builds on research by herself and others in order to outline some perhaps less expected aspects of elective single motherhood. Whereas we may be tempted to think that elective single motherhood illustrates a choice against the model of the nuclear family, the women represented in Graham’s research portrayed their choice as a back-up solution when building the nuclear family did not seem to work. Moreover, for these women, embarking upon this choice does not necessarily mean that they have given up their aspirations to build a family as close to the nuclear family ideal as possible: on the contrary, they describe it as giving them more time to find the right partner. Thus rather than assuming the mantle of ‘single-motherhood’ entirely by choice, the women in Graham’s study are choosing between two aspects of the nuclear family that are not, for them, simultaneously attainable: that is, they choose to become mothers, but within a broader context of being single by chance or by necessity, whilst some of them still hope eventually to ‘complete’ the family with a male partner, and thus re-attain nuclear conformity.

Mary Shanley and Sujatha Jesudason, in Chapter 8, consider the practices and policies surrounding reproductive surrogacy. They contend that traditional social and legal frameworks for understanding and regulating surrogacy are inadequate both to capture the complexity of relationships created by surrogacy arrangements and to protect the interests of potential surrogate mothers and children. Instead, they argue, a new paradigm of collaborative caregiving may emerge to characterize the relationships created through surrogacy. This will require an active disruption of the expectations engendered by the nuclear family model in order to pave the way for the recognition of new relationships that fall outside its scope.

The willingness to recognize and acknowledge the complexity of relationships that extend beyond traditional nuclear family boundaries is an important feature of Adrienne Asch’s concept of ‘parental fitness’, in Chapter 9. Asch revisits the idea of licensing parenthood, particularly in relation to the provision of assisted reproductive technologies (ARTs), and argues that parental responsibility, rather than procreative liberty, is a better criterion upon which to base access to assisted reproduction. The creation of children via the use of ARTs has implications

for the special responsibilities imposed upon parents in this situation, including obligations of openness about children's origins.

Chapters 10 and 11 deal with polygamy and polyamory from the perspectives of political philosophy and criminal law, respectively. Simon May, in Chapter 10, considers the ethics of polygamy in the context of liberal feminist critiques. He distinguishes two possible moral objections to polygamy as such, first in terms of the harmful or iniquitous impact of polygamous marriages, and second in terms of the sexist social meaning of polygamy as a social practice. He argues that although the first objection is not made out, the asymmetry of the polygamous marital ideal plausibly presupposes stereotyped gender roles in a way that symmetrical marital ideals do not, and that this represents a potential point of moral difference of some significance in ethical analyses of polygamy.

These issues are illustrated in practice by Maura Strassberg's critique of Mormon polygyny practices (Chapter 11). Strassberg writes about polygamy (with a focus on polygyny) and polyamory and, relying on previous work in these areas by herself and others, indicates the fundamental distinctions between the two. According to Strassberg, the inherently coercive nature of Mormon polygyny practices and the problematic, patriarchal social structures they create and support, justify the ban put upon them. Polyamory, she argues, does not share those characteristics: although there is still the potential for coercive and unequal power dynamics to arise within polyfidelitous groups, particularly where polyfidelity is used as a communal organizing principle, these properties are not inherent to polyfidelity as it is commonly practised.

Chapter 12 represents a departure from the academic approaches of previous chapters, but is, we believe, an important perspective to recognize and include. Dossie Easton is an ardent advocate of recognizing alternative relationship structures and has herself played an important role in the development of polyamorous identity and culture, notably through outputs such as her co-authored book *The Ethical Slut* (Easton and Hardy 2009). In this chapter, she makes a plea for un-demonizing sex and embracing it as an enriching part of our lives. She does this by way of illustrating the constraints that social norms about sex, and in particular the sexual foundation of the nuclear family and its associated normativities, place upon us. Her first-hand account of the experiences of someone who has, both professionally and personally, been actively and for many years 'exploding' the nuclear family, gives us a glimpse of one possible 'post-nuclear' future from an insider's perspective – a reminder that in parallel with the critical theorizing and scholarly discourse that will be required to mediate this transition, socially, politically and legally, these issues are already being negotiated in multiple ways through the lived experiences of many people.

The last two chapters address a form of reproductive technology that is not yet in human use: reproductive cloning. Kerry Macintosh, in Chapter 13,

considers ethical objections to human cloning as a mode of reproduction and concludes that principled objections are invalid; she contends, moreover, that through forcing a re-examination of assumptions about reproduction and the family, cloning may promote a wider acceptance of diverse family forms. While in many cases human cloning might well be used to ‘approximate the nuclear family’, in others it will be used to generate other forms of family. In either case, she argues, the availability of asexual reproduction in the form of cloning will provide a challenge to the biologically-grounded nuclear family ideal.

In Chapter 14, Melinda Roberts uses the case of human reproductive cloning to address the philosophical problems posed by basing the acceptability of reproductive choice on accounts of harm to future children. The difficulty of establishing harm in the case of selecting between children has often been a sticking-point for ethical arguments that seek to justify limiting the exercise of certain reproductive choices, for example those that would result in the creation of a disabled child. On Roberts’ analysis, the harm of being brought into existence as a genetic multiple can in some cases justify an argument against human cloning.

Note

- 1 *Contra* Archard (2010) we use the notion of *family* to also cover modes of organization of private life that do not include children.

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