

Preface

“It is a narrow mind which cannot look at a subject from various points of view.”

George Eliot aka Mary Ann Evans, *Middlemarch*

With these words, the nineteenth-century author, George Eliot, characterized one of the great challenges of modern academics: how to instill and maintain an open, inquisitive mind for engagement in the great societal debates. I wrote this book with the intention to give students and instructors a solid foundation by which to effectively examine different perspectives within the field of family law and public policy. This field is filled with controversial subjects, many of which are covered in this text. For each policy debate, a variety of disciplines can provide insights and ideas for best practices that can serve both individual and communal needs within the framework of constitutional rules. The commitment to multiple viewpoints and open debate guided me as I developed and wrote this book.

After leaving the private practice of law, I began teaching legal studies courses at George Mason University in Fairfax, Virginia. I soon realized the need to provide students who aspired to become lawmakers, policy analysts, program specialists, or practicing attorneys with courses that examined societal regulations in the context of legal constraints on social policy agendas. Although several topics were relevant to this goal, family law and public policy stood out as embodying several key factors. First, most people are directly affected to some degree by the prevailing regulatory scheme for domestic relations. Second, family law represents a dynamic area of ongoing debate and struggle over individual autonomy versus societal welfare. Family-related policies and legal rules reflect a significant aspect of our collective emotions and evolving standards of ethical behaviors. Third, a variety of other disciplines—among them psychology, gender studies, criminology, mediation, sociology, and social work—affect or are affected by government regulation and non-governmental programs related to families, making the topic a vital one for students of these other academic studies too.

Through experience teaching this course, I gained an evolving sense of what would—and would not—work for students studying family law and public policy. Law texts quickly proved too narrowly focused on case law, to the detriment of broader public policy components. Texts on family law for paralegals emphasized practical details of law office management, such as client intake and handling standardized forms (topics irrelevant to the course), and significant material on the formulation of policy was still lacking. Finally, more generalized books on family law issues summarized key topics but only referenced legal cases while providing

brief quotes from articles by researchers in related fields. This approach lacked foundation and thoroughness, and, most importantly, it did not encourage students to undertake in-depth analysis of the topics.

To offer my students a firm foundation in the legal rules applicable to the regulation of families (defining families in the broad sense) while simultaneously opening their minds to the different policy approaches to achieving best practices within our system's legal structure, I began to collect illustrative legal cases, relevant journal articles, and interesting news stories. These materials, including both legal and social science studies focused on child welfare, marriages, intimate partnerships, societal welfare, and personal autonomy, helped my students critically investigate the many issues that arise in the regulation of family matters. That collection became the basis for this textbook.

Law and policy intertwine in all facets of a culture's regulatory realm, yet the two are often erroneously seen as disconnected. Legislators focus on policy and easily overlook the rule of law that can constrain their actions. Similarly, practitioners—policy analysts, researchers, sociologists, psychologists, social workers, and others—concentrate on designing individualized programs, sometimes neglecting jurisdictional or constitutional issues or the program's fit within the larger scheme of government regulations. On the other hand, a devotion to the legal rules may lead to overlooking the basic human needs that underlie the creation of new rules and practices.

There are multiple objectives for this book. This book attempts to guide those who plan to enter politics to be more effective legislators and to give those who become practicing attorneys greater insight into the issues facing their clients. Similarly, the book will give practitioners and researchers in social science and policy-related fields respect for the rule of law, which puts some boundaries around the fundamentals of their disciplines.

I have found that one of the most enjoyable and stimulating aspects of teaching undergraduates is the variety of student majors represented in the classroom. College students are open to and interested in the variety of concerns within a given topic, sometimes more so than graduate students or law students committed to an academic program with a narrowed agenda. From my own experience earning first a law degree and then a PhD in public policy, I know that both academic tracks omit valuable material from the other: My law school education lacked significant discussion of policy formation, and my PhD studies were without meaningful discussion of legal considerations in the formulation of social programs. This book attempts to create the bridge between legal rules and practical solutions in this important field of family policy and regulation.

I attended law school in the mid-1970s, a time when family law was in a state of flux. New rules on divorce, support, and custody, to name just a few, were emerging and spreading. With so much upheaval in the field, it seemed that society had completed all the necessary changes to make family law equitable, fair, and efficient. My years of practicing law and participating in community and political activities have shown me that I was plainly mistaken: This field is *always* in a state of change. Thomas Jefferson once said, "Every generation needs a new revolution." Family-related regulation fits this maxim. Constantly evolving, sometimes astoundingly quickly, it can seem to be an ongoing revolution in progress. This book can provide a snapshot of where this field is today. However, it also embodies a method of

inquiry and openness that encourages students to keep abreast of future changes and to critically examine new proposals.

As the table of contents shows, the family law issues discussed in this book cover a broad range of topics, each essential to an understanding of the field as a whole, but individually allowing a variety of disciplinary approaches—from health and family services to political science to sociology and more—through attention to the social, ethical, and psychological aspects of family welfare. In addition, all text chapters focus on governance in some way, with each containing either a legal case or a sample law, or both.

The first four chapters examine adult partnerships: Chapter 1 explores “what is family?”; Chapter 2 looks at the institution of marriage; Chapter 3 focuses on the rules of marital dissolution; and Chapter 4 delineates the economic concerns when adult relationships end.

The next four chapters concern the welfare of children: Chapter 5 covers the various approaches to child support; Chapter 6 focuses on the array of choices for custody and visitation; Chapter 7 describes how our society tries to protect children from neglect or intentional mistreatment; and Chapter 8 presents cases and materials on adoptions and surrogate parenting.

Chapter 9, on personal autonomy, covers the full range of liberty issues: birth control, fertility, and private sexual practices. Chapter 10 looks at the issue of intimate partner violence via legal cases and articles related to sociological and psychological approaches to this problem. Chapter 11 provides information on constitutional limits to regulation and provides illustrations of the respective domains of federal and state power.

The last two chapters discuss applications of policy concerns: Chapter 12 focuses on current debates in the field of family law and public policy; while Chapter 13 focuses on the mechanisms that generate public policies and create laws, and connects these processes with many examples from elsewhere in the text and in additional current events. Last, there is an Appendix that provides a partial list of influential organizations that are currently active in the field of family law and/or family policy.

Political science professors who adopt this book can use all the materials for a thorough course on the regulation of family and intimate adult relationships. The text is also amenable, however, to serving as part of a collection of materials for a broader course on overall governance and policy formation. Social science professors should find that this book is a valuable supplement when their students need to know the broader contexts, particularly the legal rules, that frame the policies that affect children, families, and adult partners.

This book is structured to constantly engage the reader with the material. Every chapter begins with two vignettes adapted (anonymously) from real legal cases or experiences of actual people outside the courtroom. In addition to indicating the scope of the chapter, these vignettes help signal the extent to which these issues enter into the lives of real people and the dilemmas these issues can cause.

The chapters then go on to provide comprehensive overviews of the topics, providing context for the excerpted readings to follow. These readings include opinions from appellate court cases, which highlight the problems people encounter while trying to live within the applicable legal rules and social norms. Some chapters also include sample laws embodying policy preferences; excerpts from

peer-reviewed journal articles from the fields of psychology, sociology, economics, or science; and news stories exemplifying some of the practical, and sometimes surprising, difficulties that people encounter.

Many of the readings, particularly the case law decisions, are punctuated with margin notes defining new terms and concepts. These embedded notes will allow students who are unfamiliar with the basis of the opinion or with the topic to proceed more efficiently in their reading of these sometimes complex materials.

A section entitled Knowledge and Analysis follows each substantive reading, providing additional context and information and posing questions to prompt further thoughtful reflection. Using newly acquired insights and evidence from the text's readings, students will be able to make comparisons and contrasts, examine alternative approaches, consider unintended consequences, and gain a deepened awareness of serious problems.

Each chapter ends with additional questions providing some creative ways to engage with the subject more fully while enhancing research and other skills. Some questions focus on collecting anecdotal evidence, a process that develops good survey and questionnaire-building skills, while others focus on the collection of empirical data. A final section of more open-ended Review Questions invites students to see the chapter's issues in a larger context, comparing information gained from reading other chapters or responding to "what if" questions. Ending the chapter by considering these challenging questions encourages students to formulate reasoned responses to the controversial aspects of family law and public policy.

The material and thought-provoking questions in each chapter are conducive to creating meaningful essay assignments, structuring in-depth classroom debates, or assigning out-of-class research projects. The array of options allows each instructor to expand on the topics in the way that is most suitable for his or her academic interests or the degree program of the students.

The need for an open mind is particularly important in the area of family law and public policy where competing advocates promote either reform or tradition. In the meaning and structure of *family*, in our understanding of and claims to personal autonomy, in the regulation of rights and responsibilities, in the way we protect the vulnerable—all of these most personal and sensitive categories of our lives are part of the ongoing march of social change.

In his civil rights work, Dr. Martin Luther King Jr. advocated for a "big tent" approach, working diligently to include all, including those who disagreed with him. Similarly, in writing this book I have striven to avoid taking sides on the issues. Although a nonjudgmental approach in a textbook runs the risk of seeming to accept rules and policies offensive to some, this was a risk I felt obligated to take to keep the text open to people of different political beliefs and contrasting assessments of ethical priorities.

I hope my book contributes two long-lasting tools for students studying in any of the academic fields touching on family law and public policy: an increased base of knowledge and respect for divergent points of views in a field that so deeply affects everyone in our society.

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