

## CLOSE TO HOME: THE ROLE OF FAMILIES IN PERSONALIZING INTERNATIONAL LAW

This panel was convened at 10:30 a.m. on Friday, April 8, 2022 by its moderator, Barbara Stark of Hofstra University School of Law, who introduced the speakers: Nicole Ramos of Al Otro Lado; Ignacio Socias of the International Federation for Family Development; and Bahira Sherif Trask of the University of Delaware.

### REMARKS BY IGNACIO SOCIAS

The American Society of International Law has included for this year's Annual Meeting a major but often overlooked issue about Personalizing International Law—the role of families. To understand how individuals experience international law in their daily lives, we must examine the role of families in shaping, implementing, and experiencing international law.

At its best, the family performs various valuable functions for its members. Perhaps most important of all, it provides for emotional and psychological security, particularly through the warmth, love, and companionship that living together generates between spouses and in turn between them and their children.

The family also provides a valuable social and political function by institutionalizing procreation and by providing guidelines for the regulation of sexual conduct.

The family additionally provides such other socially beneficial functions as the rearing and socialization of children, along with such humanitarian activities as caring for its members when they are sick or disabled.

On the economic side, the family provides food, shelter, clothing, and physical security for its members, some of whom may be too young or too old to provide for the necessities of life themselves.

Finally, on the social side, the family may serve to promote order and stability within society as a whole.

Consequently, it is in families that human rights take their deepest root. Families around the world usually serve as the purveyors and guarantors of human rights for their members, especially children. The right to an “adequate standard of living,” for example, is assured for children by parents who provide sustenance and ensure they have a roof over their heads.

Historically, in most cultures, the family has been male-dominated. As a general rule, women had a rather low status. In Roman times, and its rules have practically been extended to not many years ago, most rights and duties were attributed to the *pater familias*, a term that originated in Roman law.

“*Pater familias*” is the Latin term for “father of the family” or the “owner of the family estate.” The *pater familias* held legal privilege over the property of the “*familia*” and varying levels of authority over his dependents including wife and children and certain other relatives through blood or adoption, clients, freedmen, and slaves. He had a duty to father and raise healthy children as future citizens, to maintain the moral propriety and well-being of his household, to honor his clan and ancestral gods and to dutifully participate and if possible, serve in Rome's political, religious, and social life.

We had to wait until the Universal Declaration of Human Rights (1948) to find a clear recognition of the right of both “men and women” (“*l’homme et la femme*,” in the original French) of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family” (Art. 16(1)). The Declaration, as it is well known, also consecrates the family as “the natural and fundamental group unit of society and is entitled to protection by society and the State” (Art. 16(3)).

But even twenty years after, the role of the male in the family was still the rule and the need for it to change was one of the causes of the 1968 revolutions in America and France. In this country, for instance, “everything was patriarchal, starting in the family, where you couldn’t speak at the dinner table unless spoken to,” says Josette Preud’homme, who took part in the protests as a twenty-year-old and says it changed her life. “You couldn’t go out with friends, and never with boys. Everything was forbidden everywhere. You had to obey orders in the factories, in the schools. We were suffocating. There was this enormous need to talk and share. Everyone was fed up.”

If many of the causes of this traumatic change were legitimate, the consequences went probably much further than the well-being of humanity needed. The revolution led to the delegitimization of the authority and, therefore, not only to the blurring of the role of parents and, more specifically, of the mother and the father, but to the lack of certainty about the responsibility for the decisions within the family.

We cannot forget that, for obvious reasons linked to human development, in a healthy family, the role of a child is to be a child, meaning that they hold less power than their parent, parents, or caregivers. In a healthy family system, a child’s physical and emotional development is nurtured by a parent or caregiver. The family finds its main private and social function in children’s development.

Family is the single most important influence in a child’s life. From their first moments of life, children depend on parents and family to protect them and provide for their needs. Parents and family form a child’s first relationships. They are a child’s first teachers and act as role models in how to act and how to experience the world around them. By nurturing and teaching children during their early years, families play an important role in making sure children are ready to learn when they enter school. Children thrive when parents can actively promote their positive growth and development. Every parent knows that it’s sometimes difficult to do this important work without help, support, and additional resources.

When a child experiences abuse or neglect, they are no longer allowed to be a child and the family loses its cohesion and its *raison d’être*, its fundamental purpose. They are forced to put their physical and emotional developmental needs on hold to survive. When they do reach adulthood, they may unconsciously regress into a child role because these needs were not fulfilled appropriately.

For these reasons, the need for the Convention of the Rights of the Child was evidenced quite soon, though it did not come into existence until 1989. It gives all children the right to a family. The right to a family allows children to be connected to their history, and it offers a protective perimeter against violation of their rights. The Convention establishes the primacy of the best interests of the child.

Although there is no standard definition of it, the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child.

Traditionally, the protection of women and children before the predominant position of the male head of the family was based on the commitment linked to marriage. But marriage has been progressively deprived of the commitment between spouses, so much so that the stability of families is now left to the ever-changing decision of the partners. Being dissociated from the marriage pair, the

essence of the family group becomes the parent-child relationship, which is kept into the marriage commitment with difficulty.

In the United States, for example, and according to the Pew Research Center, the family structure in the United States has changed significantly:

- In 1960, 73 percent of kids lived with two parents who were in their first marriage, and by 2014 that percentage dropped to 46 percent.
- By 2014, 15 percent of parents were remarried.
- By 2014, 7 percent were unmarried and cohabitating parents.
- By 2014, 26 percent of children lived with single parents and 16 percent of children live in a blended family household (step-child, step-parent, or half-sibling).
- As of 2017, there were 1.1 million married same-sex couples in the United States with about 200,000 children being raised within these households.

As a consequence, the role of the state becomes even more important. This is contradictory to the evidence that family care is always cheaper and, above all, much more effective than any other kind of intervention. Interventions should be limited to when it is absolutely necessary.

But there are different models for this role of the state. Let us have a look, for instance, at what happens in Europe, where four models for the role of the state show different ways in which families can find their place.

The countries represented in our project *FamiliesAndSocieties* covered the four geographic areas and the welfare state and care regime models: the universal Scandinavian welfare regime and liberal regime (Northern Europe: Sweden, Finland, UK, and Switzerland), the conservative welfare regime (Central-Eastern Europe: Austria, Belgium, France, Germany, and the Netherlands), Mediterranean “familialistic” regime (Southern Europe: Italy and Spain) and transition post-socialist welfare regime (Central-Eastern Europe: Estonia, Hungary, Poland, and Romania).

In my opinion, the main challenge families have in personalizing international law roots in this difference of concept regarding the role of the state in the regulation of social roles. Several international legal instruments require the state to recognize the rights of the family as an entity, as well as the rights of the individual family members. But what happens when parents undermine the human rights of their children or others? What are the state’s obligations in these cases? Under what circumstances should international law prioritize other rights over those of the family? Such dilemmas profoundly affect families, their members, and how international law is experienced by diverse individuals, communities, and societies.

Considering some examples can help to understand the relevance of this challenge:

- The consideration of the fertility decision-making process (“having children”) as a right or as a social (“patriotic”) obligation;
- The different duration and specifications for maternal and parental leaves;
- The freedom to choose the educational system for children by their parents, including homeschooling;
- Vaccines required for school and child care;
- Differences in regulations for surrogate motherhood;
- Practical recognition of the right to family reunification of migrants; and
- Proposals of considering the family as a unit in political processes.

I propose to explore ways in order to unify the rights and obligations of the families, based on these principles:

- The right of parents to establish the commitment to devote time, money and effort to have children and educate them (UDHR Art. 16(1)), and to receive protection by society and the State for it (UDHR Art. 16(3)).
- The best interest of the child whenever a minor is involved, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies (CRC Art. 3(1)).
- Apply the principle of subsidiarity whenever it is possible, so that families are only replaced when there is negligence or malpractice by the parents (UN GA Res. 76/139 (2021)).