

PHIL 20550 Family, ethics and law

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Introduction

We all live in families. As such the concept of a family is very familiar; on the other hand, families are so diverse that it might seem difficult to generalise about them. (I will refer to this as the ‘heterogeneity problem’, and it will be a running theme.) And yet there are clearly some shared norms of what a healthy and unhealthy family is like, what a ‘good’ mother means, what a ‘loyal’ son would do, norms of what one reasonably owes to another person in virtue of their status as my step-sibling or my adoptive parent or my cousin.

This module will comprise a sustained philosophical, ethical and (partly) legal examination of the family in modern Western society. By ‘ethical’ we will be looking at notions such as duty and welfare; by ‘philosophical’ we will be looking at definitions, starting with the problem of defining the family; by ‘legal’ we will look at some basic principles of English and Irish family law that give expression to the ethical and philosophical understandings. The module will comprise a limited set of characteristic problems and will not aim at comprehensiveness.

One of the main over-arching questions will concern *family autonomy*, and the limits to state recognition and intervention in family life. Primary school education is compulsory but vaccination is not – why? Drivers have to be licenced but parents do not – why? Why does the state grant married couples special privileges in tax, inheritance and access to medical information? Should the state be involved in artificial reproduction and surrogacy, or can that be governed by ordinary rules of contract? Is domestic violence just another form of violence, or does it require a special approach from the police and other state bodies?

Notes:

- This is not a law module, I do not have much expertise in family law; students will not be expected to have any background in the law, nor will they be tested on the law. Instead, some principles and cases from family law will be taken apart to examine the ethical and philosophical issues. Similarly, this is not a sociology or psychology or anthropology module, and there will be a minimum of empirical data.
- Most of the legal examples will be from English law rather than Irish law, for the simple reason that a lot more has been written about English law than Irish. Occasional examples may also be drawn from other jurisdictions. Most of the empirical data will be taken from the Irish and English context, although students are welcome to bring in examples from other Western contexts. (We will remain in the Western context since it is most familiar.)
- Students will be required to write *philosophical* essays, not law or history or sociology essays. Primarily that means critical engagement with the philosophical arguments in one of the texts under discussion. There will be an essay workshop at the Wednesday lecture of week 4. See also the instructions about essay-writing later in this Module Outline.
- Students are strongly advised to take this module only if they have completed at least two philosophy modules. Some of the texts and the discussions will be difficult. Most of the texts are already available on Brightspace at the beginning of the module, so if in any doubt, students should read ahead and see if this module is for them.

Syllabus

1	18 Jan	<p>Introduction</p> <ul style="list-style-type: none"> • Content, structure and assessment of the module • Introduction to law and family law, the role of law • Introduction to ethics; what is the difference between ethics and law. • The different actors in this module: the family, parents, children, other relatives, schools, healthcare, social services, the state
	20 Jan	<p>Introduction to some of the central concepts in this module:</p> <ul style="list-style-type: none"> • Liberalism and the individual • The role of the market; the role of the state • Autonomy and paternalism • Oppressive norms (especially patriarchal norms) and their internalisation • Identity • The role of love and affection, and their relation to duty • What is a family?
2	25+27 Jan	<p>Bionormativity and family law</p> <p>What is the point of family law, exactly? What harm is it meant to prevent, what behaviour is it meant to regulate. The Herring provides a good introduction, while also supporting a substantive thesis: that the law should be modified to pay more attention to caring relationships.</p> <p>Bionormativity refers to a set of desirable (traditional) structures concerning the family, and playing down alternative structures, e.g. unmarried parents, single parents, adoptive families, gay and lesbian couples etc.. In her provocatively titled article, Card argues against bionormativity.</p> <ul style="list-style-type: none"> • Herring, J. (2019) ‘Ch. 6. Family Law and the Relational Self’ in: <i>Law and the Relational Self</i>, CUP. • Card C. (1996) ‘Against Marriage and Motherhood’ in: <i>Hypatia</i> vol. 11.3 <p>Note: each week I am providing the full bibliographic reference to the texts, so that you can simply copy and paste it into the bibliography at the end of your essay.</p> <p>Stanford. Most weeks I’m going to recommend some entries from the <i>Stanford Encyclopaedia of Philosophy</i> (henceforth ‘Stanford’), at: http://plato.stanford.edu/. This is a fantastic resource for all areas of philosophy, and will give you a sense of the relevant philosophical approaches and terminology. For this week, I recommend:</p> <ul style="list-style-type: none"> • <u>Stanford</u>: ‘Marriage and Domestic Partnership’, ‘Feminist Perspectives on Reproduction and the Family’
3	1+3 Feb <i>Tutorials begin</i>	<p>Bringing up children with certain values</p> <p>Parents obviously have to meet their children’s present needs by providing food and shelter, as well love and information about the world. They also have to meet the child’s future needs by helping them e.g. to learn to read and write. Beyond this minimum, there is some controversy about how much parents should impart their <i>values</i> on their children: their moral, political and religious values. Should parents be as neutral as possible so that the children can choose their own values as they age? This would be</p>

		<p>called ‘anti-perfectionism’ – the parents do not want their children to aim at the perfect ideal implied by such values. Instead, do children have a right to an ‘open’ future?</p> <ul style="list-style-type: none"> • Franklin-Hall A. (2019) ‘What Parents May Teach Their Children: A Defense of Perfectionism in Childrearing’ in: <i>Social Theory and Practice</i> Vol. 45, No. 3 • Mills C (2003) ‘The child’s right to an open future’ in: <i>Journal of Social Philosophy</i> vol. 34 no. 4. • <u>Stanford</u>: ‘Parenthood and procreation’, ‘Philosophy of childhood’, ‘Personal Relationship Goods’
4	Mon 8 Feb	<p>Family duties</p> <p>One family member is often described as having a “special obligation” to other family members, that overrides other moral obligations they might have to strangers. How exactly can these special obligations be justified, especially when it perpetuates social injustice (last week’s topic)? The obvious example is the parent’s duty to their child; but the opposite example is also interesting: the adult child’s duty to their parent, especially once the latter is frail and elderly. More generally, what does it mean to have – indeed, to feel – a duty to a family member?</p> <p>Reading:</p> <ul style="list-style-type: none"> • Stuijbergen & Van Delden (2011) ‘Filial obligations to elderly parents: a duty to care?’ in: <i>Medicine, Healthcare and Philosophy</i> vol. 14. • <u>Stanford</u>: ‘Special obligations’
	Wed 10 Feb	<i>Essay-writing workshop.</i>
5	15+17 Feb	<p>Families, inheritance and justice</p> <p>There is a strong intuition in favour of family members spending money on one another, especially parents on their children, and especially parents bequeathing their property to their children. How can this intuition be reconciled with the gross inequalities in society (not to mention in the world), inequalities that are often reproduced from generation to generation?</p> <ul style="list-style-type: none"> • Pederson and Boyum (2019) ‘Inheritance and the family’ in: <i>Journal of Applied Philosophy</i> vol. 37.2 • MacLeod C. (2010) ‘Parental responsibilities in an unjust world’ in: Archard and Benatar (eds.) <i>Procreation and Parenthood</i>, OUP • <u>Stanford</u>: ‘Equality of Educational Opportunity’
6	22+24 Feb	<p>Spousal and child abuse</p> <p>It might be tempting to understand domestic violence along the lines of other forms of violence (e.g. a pub brawl), where the criminal law will intervene to punish the assaulter, and where such punishment will hopefully prevent future assaults. But this is a very crude model, since it omits the <i>context</i> of the domestic violence, and the forms of non-violent abuse, exploitation, neglect and coercion that can exist within families. Given the basic principle of family autonomy, the onus is on the state to define domestic violence / abuse precisely, to define the threshold for intervention, and to prepare appropriate forms of intervention as well as longer-term remedies.</p> <p>Reading:</p>

		<ul style="list-style-type: none"> • Isaacs T. (2001) ‘Domestic violence and hate crimes: acknowledging two levels of responsibility’ in: <i>Criminal Justice Ethics</i> vol. 20.2. • McColgan A. (1993) ‘In defence of battered women who kill’ in: <i>Oxford Journal of Legal Studies</i> vol. 13 no. 4. • Lafollette H (1980) ‘Licensing parents’ in: <i>Philosophy and Public Affairs</i> Vol. 9, no. 2.
7	1+3 March	<p>The meaning of biology</p> <p>In this week’s article, Velleman makes the provocative claim that children without knowledge of their biological parent(s) suffer a certain kind of handicap. With adoption, the situation is forced on the child, usually through nobody’s fault. But Velleman argues that to deliberately create a child by gamete donation is “immoral,” because it means that the child will suffer from not being able to fully discover her identity, where such identity requires a sense of where one belongs biologically. Haslanger rejects the argument, saying that children can draw from many sources for a healthy identity.</p> <p>Reading:</p> <ul style="list-style-type: none"> • Velleman D (2005) ‘Family history’ in: <i>Philosophical Papers</i>, 34:3 • Witt C. (2014) ‘A critique of the bionormative concept of the family’ in: Baylis and McLeod (eds.) <i>Family-Making; Contemporary Ethical Challenges</i>. OUP. • Haslanger S (2012) ‘Family, Ancestry and Self; what is the moral significance of biological ties?’ in: <i>Resisting Reality</i>, OUP.
<p>MARCH BREAK. No lectures, no tutorials in weeks commencing Monday 8 and Monday 15 March.</p>		
8	22+24 Mar	<p>Surrogacy and adoption</p> <p>Weeks 8, 9 and 10 all start with the problem of infertility. When a couple is infertile, they might be able to acquire a child through surrogacy, adoption and assisted reproduction. All three of them raise ethical issues. Given the huge number of children needing adoption, how can we justify seeking a child that is genetically related? Second, commercial surrogacy is legal in some American states, but not in Ireland or the UK: in either kind of surrogacy, what rights should the gestational surrogate have?</p> <p>The Overall article returns to Lafollette’s question of parental licensing: if we effectively require prospective adopters to pass a test, then should we not do the same for couples who wish to commission a surrogacy?</p> <ul style="list-style-type: none"> • Rulli T. (2016) ‘Preferring a Genetically-Related Child’ in: <i>Journal of Moral Philosophy</i> vol. 13. • Murphy and Parks (2020) ‘Gestation as mothering’ in: <i>Bioethics</i> vol. 34 • Overall C. (2015) ‘Reproductive surrogacy and parental licensing’ in: <i>Bioethics</i> vol. 29.5. • <u>Stanford</u>: (in addition to other entries cited above) ‘Exploitation’
9	29+31 Mar <i>Last tutorials</i>	<p>Assisted reproduction</p> <p>There are two ethical issues covered this week. First: if two gametes result in six fertilised embryos, how should the first candidate for implantation be chosen? One answer would be: if we can test for severe genetic diseases, we should reject those</p>

		<p>embryos; another answer would be: if we can test for advantageous traits such as height or intelligence, then we should choose for them. But given that ‘natural’ parenting does not involve such choice, is there an ethical problem with imposing conditions in this way?</p> <p>The second question: should the state support assisted reproduction financially, and if so, on what basis and under what conditions?</p> <p>Reading:</p> <ul style="list-style-type: none"> • Davis J (2008) ‘Selecting potential children and unconditional parental love’ in: <i>Bioethics</i> vol. 22 no. 5. • McTernan E (2014) ‘Should fertility be state funded?’ in: <i>Journal of Applied Philosophy</i> vol. 32.3 • <u>Stanford</u>: ‘The Donation and Sale of Human Eggs and Sperm’
10	Mon 5 April	<i>Easter Monday. University closed</i>
	Wed 7 April	<p>The work-family balance (changed 27 Jan)</p> <p><i>NB. Originally this week was to be entitled “The grounds of parenthood”, but I think the work-life balance is a more important topic.</i></p> <p>Most UCD students would like to have a meaningful job and career. Most UCD students would like to start a family. Both work and family require lots of energy and commitment. How should one balance the duties and requirements of each? One answer involves a division of labour based on gender, with the wife staying at home to look after the house and the kids. Another answer involves the purchase of caregivers (typically women) to look after the children.</p> <p>Reading:</p> <ul style="list-style-type: none"> • Primary: Williams J. (2001) ‘Chapter 1. Is domesticity dead?’ in: <i>Unbending Gender; why family and work conflict and what to do about it</i>. OUP.
11	12+14 April	<p>Betrayal and shame in the context of the family.</p> <p>Obviously betrayal and shame have wider application. However, such is the important of <i>identification</i> in family relationships, that the particular meanings of betrayal, shame and forgiveness are affected. Perhaps the paradigm of betrayal is marital infidelity, for example. The shame of being forever associated with one’s family can run particularly deep, because of the simple fact that biologically I cannot disown my parent, sibling or child. The family context also colours the task of forgiveness.</p> <p>Reading:</p> <ul style="list-style-type: none"> • Oshana M. (2006) ‘Moral Taint’ in: <i>Metaphilosophy</i> vol. 37 nos. 3-4. • Stanford: ‘loyalty’, ‘forgiveness’
12	19+21 April	<p>Dilemmas of care</p> <p>There is a widespread assumption that children are primarily the responsibility of their parents, and beyond that of their wider family members. In parallel, the vulnerable elderly are seen as the responsibility of their adult children. While paid caregivers can provide temporary or long-standing help, this is always secondary and subordinate. Brake highlights the doubly precarious status of domestic caregivers: they are not protected either as employees (under employment law) or as family members (under family law), and therefore are acutely vulnerable to exploitation on the one hand, and to</p>

		<p>sudden rupture of the close emotional relationship they may develop with their care beneficiary on the other.</p> <p>Gheus challenges a widespread assumption that family-based child-raising is always best. Not only is institutional childcare morally permissible without it being a necessary compromise, but indeed the child should be seen as directly benefiting from it, <i>even when</i> her parents have lots of time and skill.</p> <p>Reading:</p> <ul style="list-style-type: none">• Brake E (2018) 'Paid and unpaid care' in: Brake and Ferguson (eds) (2018) <i>Philosophical Foundations of Children's and Family Law</i>, OUP.• Gheus A (2018) 'Children's vulnerability and legitimate authority over children' in: <i>Journal of Applied Philosophy</i>, vol. 35(1).
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