Up Against Family Law Exceptionalism
A Continuing Workshop

Co-sponsored by the HLS Program on Law and Social Thought, the HLS European Law Research Center, and the University of Toronto Faculty of Law

Announcing:

Part Two: FLE and the Economic Family
February 8–9, 2008
at the University of Toronto Faculty of Law

In this distribution you will find:

1. An announcement of the FLE and the Economic Family Workshop in Toronto

2. “Our Questions,” a general statement of the FLE project

3. A report on FLE in Colonization, Decolonization and Modernization, held in Dighton in September 2007

4. A brief statement of our plans for Genealogies of “The Family” and “Family Law,” time and place TBA

5. A Registration Form for the Toronto Workshop
Up Against Family Law Exceptionalism  
A Continuing Workshop

Co-sponsored by the HLS Program on Law and Social Thought,  
the HLS European Law Research Center,  
and the University of Toronto Faculty of Law

The Harvard Law School Program on Law and Social Thought, the HLS European Law Research Center and the University of Toronto Faculty of Law are delighted to announce the continuation of a multi-year project in comparative family law entitled “Up Against Family Law Exceptionalism.” This series commenced at a conference held at HLS in February 2007; the inaugural Questions we focused on at that event are attached as an appendix to this announcement. In 2007–08, we will conduct three workshops focusing on special topics within our broader inquiry: Part One: FLE in Colonization/Decolonization/Modernization; Part Two: FLE and the Economic Family; and Part Three, Genealogies of “The Family” and “Family Law.”

Each workshop will focus on ongoing work by several participants. Works in progress will be precirculated and participants will be asked to engage in regional, historical, methodological and legal comparison of the papers.

We are delighted to announce:

Part Two: FLE and the Economic Family

The family as a distinct regulatory unit and social form has immense distributive importance which is often backgrounded by the affective, moral and ideological assumptions and debates that make it seem an exception from the politics of distribution. We think that sustained attention to the ways in which marriage, the family, and parentage are
structured into economic regimes that appear to have a purely public character – welfare systems, tax regimes, employment law and policy, development policy – in short, “Family Law 2” – can be studied as family law and that doing so will yield a far richer picture of the sources of family law and the economic uses to which family institutions are put.

The family might be approached as a workplace, as a source of economic security, for example, and family law rules about the roles and responsibilities of family members assessed for the way in which they allocate bargaining power, resources, time, leisure and myriad other social and political goods. Viewed through this lens, “Family Law 1” begins to shed some of its ‘exceptional’ character, and emerges as part of the law of work, part of poverty law, and intimately connected to wide debates about the social state.

Of what significance is it that the family, work and the social state are all undergoing transformation, indeed are sites of active reconstruction? How are roles, risks and rewards reconfigured across the associated social forms, institutions and legal regimes? Does the ideology of the family the ‘natural’ repository of care and social responsibility, for example, enable transformation elsewhere?

Please join us for what promises to be a fascinating exploration.

Brenda Cossman, University of Toronto Faculty of Law
Janet Halley, Harvard Law School
Kerry Rittich, University of Toronto Faculty of Law
Is the family (along with the law that helps define and regulate it) a unique and autonomous domain? Family and family law are often treated as exceptional, and for a wide variety of reasons: they are unique because (unlike the market) they house intimate, private, emotional and vulnerable relationships; they are unique because they preserve (against modernity and/or the global or foreign) the traditional, the national, the indigenous; they are unique because (as against the secular) they derive from sacred command. Sometimes family law is maintained as exceptional merely descriptively: the law curriculum, for instance, implicitly claims that family law is an autonomous domain of legal regulation with a distinctive set of rules, norms and practices that sets it apart from other regulatory domains. But family law exceptionalism is also packed with many normative projects: family law itself is saturated with claims that family law (or marriage, or “the family”) should be different because of the unique, special, crucial, affective, altruistic, social-ordering and/or sacred nature of the relationships that it houses. Together, the descriptive and normative claims of family law exceptionalism produce a vast range of disciplinary effects, running from the curriculum, the code, and caselaw to our understandings of sexuality, our habits of domestic architecture, our modes of distributing social security.

This conference will provide us with an opportunity, first, simply to get a descriptive grip on family law’s exceptional status. How is it deployed and to what effects? What regulatory possibilities, intellectual inquiries and disciplinary effects does family law exceptionalism produce and facilitate? What ones does it obscure or even block? What questions do, and what questions do not get asked? In what ways does family law exceptionalism discipline the ways in which we think about the family? The family as economic, the family as modern, the family as secular: do we know as much about how to understand these modes of family and family law as we do about the family as altruistic, traditional and/or sacred? How might we understand family law differently if we understood
it as a crucial site of neo-liberal governance? Or as a form of commodified self governance? How might we teach it differently if we embedded it in legal domains – social security systems, globalization, contracts – from which it is typically divided?

The conference also aims to provide opportunities for political reflection on the stakes that are distributed by various modes of family law exceptionalism. When we’re up against family law exceptionalism, are we also against it? If so, why, and to what ends? What risks do we run – for ourselves and for myriad others – when and if we resituate the family and its law in existing political forces?

The conference program can be found at: http://www.law.harvard.edu/faculty/jhalley/plst/

Brenda Cossman and Janet Halley
for the Program on Law and Social Thought
Part One: FLE in Colonization/Decolonization/Modernization

September 14–15, 2007
at Dighton, MA;

Our term FLE describes a myriad legal, political, social polemical, religious and/or secular ways of treating “the family” as a special domain. In law, it produces again and again the separation of “Family Law” from the law of the market, the state, the public sphere, contract, etc. etc., as an intact, special, indeed exceptional legal zone. We think of “Family Law 1” as the product of this separation: the segregation of the law of marriage, divorce, legitimacy of offspring, rules governing the cohabiting family unit, death and inheritance as the primary law of this special social unit, “the family.”

We hypothesize that the emergence of FLE and of Family Law 1 is a historical process that can be studied comparatively, on a global scale. It is clear that processes of colonization/decolonization and modernization, including the formation of modern national entities, often pivoted on the establishment of family law as an exceptional domain. We think that the particular ways in which different parts of Europe, the British Empire, the Ottoman Empire, Latin America, Africa, Asia experienced this process differ in ways that will tell us a lot about FLE itself and about the process of decolonization/modernization. This Workshop will explore the extent to which FLE is part of the langue of modernity or the extent to which it is mere parole, deeply contingent on the trajectory of particular national projects.

Our focus in the first Workshop will be on the making of “Family Law 1.” When and how did its rules emerge as populating a distinct legal and/or social domain? What was the role of German/Roman law in contributing to the legal process here – and in making it appear not to be a process at all, but the return to a natural origin? Do civil law traditions differ strongly from common law ones in the way in which, and course of influence under which, they produced FLE? How did the shift towards
modern employment and trade regimes, concomitant with the processes of colonization and decolonization, contribute to the production of the social form of the bourgeois family, and which “lagged” – legal or social FLE – in, say, Egypt, Ghana and India?

We will also be inquiring into the ways in which legal and social practices about the household and/or the family have been transmitted: when did treatises, education, international-law-making, choice-of-law, colonial administration do the work of moving ideas about “the family” from one setting to another? What resistances were at play? When did FLE serve conservative, repressive, productive, and/or progressive ends? Is it possible or desirable to be “for or against” it?

The conference program can be found at:
http://www.law.harvard.edu/faculty/jhalley/plst/
Part Three: Genealogies of “The Family” and “Family Law”

When is “the family”? When is “family law”? This seminar will explore the possibility that the family, a seemingly natural institution, is an historical artifact, emergent in the course of legal development, with perhaps significant variations in different places and different times. That is to say, we hypothesize that the legal taxonomies of the pre-colonial and colonial periods parked the law that we now deem “Family Law 1” in far different places than it now inhabits: the law of inheritance, the law of personal statuses like master and servant, the law of marriage, ecclesiastical or religious and not – were dispersed in premodern legal systems. We hypothesize that the process of modernization saw a social shift from the household to the bourgeois marital family, accompanied (or not) by the generation of the idea that the family has its own law. The legal interactions of colonialism and decolonization – codification, legal education, secularization and/or “religious-ization” – carried this shift forward in different regions of the world in diverse but possibly related ways. Family-law exceptionalism was often the fulcrum upon which these changes turned.

This Workshop will be held in the Summer of 2008, date and location TBA.
THE HLS PROGRAM ON LAW AND SOCIAL THOUGHT, THE HLS EUROPEAN LAW RESEARCH CENTER, AND THE UNIVERSITY OF TORONTO FACULTY OF LAW ANNOUNCE

Up against Family Law Exceptionalism

*Part Two: FLE and the Economic Family*

February 8–9, 2008
at the University of Toronto Faculty of Law

Name: ____________________________________________

Title and Affiliation (e.g. LL.M. student, Harvard Law School):

_________________________________________________

Address: _________________________________________

Phone/Fax: ________________________________________

E-mail: ____________________________________________

Fee (to defray food and administrative costs) (checks payable to Harvard Law School; you can send it in or bring it to the Workshop):

□ $25 Students

□ $50 Professors/Attorneys

Please return your reply form by January 15 to:

Allyn Whitmore
Faculty of Law
University of Toronto
78 Queen’s Park
Toronto, Ontario
M5S 2C5
a.whitmore@utoronto.ca

Fax: 416 978 2648