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Editor's introduction

Meet the queer families: A roadmap towards legal recognition

'What is family?' is an impossible question. Singular definitions in the legal realm are predominant in the West. Such definitions are no longer tenable. The concept of family has been put under strain by both empirical and normative evolutions concerning the ways in which we do family. Empirically, many families are drifting away from the traditional model of family.[1] When it comes to what we define 'traditional family', on closer examination, modern arrangements resemble 'mosaic families' – that were historically prevalent in continental Europe due to high mortality rates – much more than they do resemble nuclear families.[2] They crumble, recouple, and reassemble by uniting various pre-existing nuclear families.

More generally, family arrangements have reached unusual levels of complexity. Queer families are slowly gaining social and, to a limited extent, legal visibility. By queer families I refer to all familiar bonds that eschew the paradigm of the archetypical marital family: one that is conjugal, nuclear, dyadic, exclusive, and based on a for-life commitment. This is consistent with a definition of 'queer' as being '… whatever is at odds with the normal, the legitimate, the dominant. There is nothing in particular to which it necessarily refers' (Halperin 1995: 62).

1 See e.g. in the United States, Pew Research Center, 'As Millennials Near 40, They're Approaching Family Life Differently Than Previous Generations' (May 2020)' https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2020/05/PDST_05.27.20_millennial.families_fullreport.pdf; I offer a primer on these evolutions at the level of family patterns in the Euro-American context in Palazzo 2021: 7-10.

2 Viktor Orbán's Ideal Family Wasn't The Norm Then, Nor Is It Now, in Hungarian Spectrum, 5 April 2021, https://hungarianspectrum.org/2021/04/05/viktor-orbans-ideal-family-wasnt-the-norm-then-nor-is-it-now/

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'What is family?' is also a wrong question. It seems to suggest that family is an entity of its own with an essence, that family *is* something. By contrast, applying the key tenets of queer theories, the logical conclusion is that we (merely) perform practices that deserve the tag 'familiar' (see, e.g., Chambers 2012; Plummer 2005). We *do* family instead and attach meaning to these practices. Queer theories would in fact help us denaturalize the notion, which has long seen as a seemingly natural object. In my view, it would lead us to the conclusion that family should be rather linked 'to a set of family functions, such as parenting or the formation of an economic unit between adults' (Palazzo 2021: 4; see Swennen & Croce 2021).

'What is family?', however, is also a necessary question. It is the inevitable starting point for inquiries outlining how family arrangements are becoming increasingly varied and experiencing suffusion. Their increasing complexity has less to do with ontology than it has to do with epistemology and our ability to grasp it. Queer theories have had the welcome effect of exposing the multitude of 'possibilities, gaps, overlaps, dissonances and resonances, lapses, excesses of meanings when the constituent elements of anyone gender or anyone's sexuality aren't made (or *can't* be made) to signify monolithically'(Sedgwick 1993: 8). Likewise, they are unveiling how the contours of categories are also increasingly blurred. This is, for instance, visible when it comes to the distinction between friendship and family (Pahl & Spencer 2004).

'What is family?' is hence a necessary question for navigating an ocean of practices that can be frightful to many. One must acknowledge that queer theories might generate a *horror vacui*, i.e. fear deriving from lacking reference points in a fast-paced world that leaves us constantly breathless. I shall provide examples regarding the need for retaining the question as a starting and reference point of this intellectual sailing. First of all, if suffusion is inherent to these affiliations, how do we distinguish familiar from non-familiar practices? Is the answer different if children come into the picture as opposed to only having adult-adult relationships? Can we stretch categories to the point of reshaping notions of death and overcoming the finiteness of our mortal bodies? Consider the issue of posthumous grandparenthood. Through this practice, grandparents seek to retrieve the sperm of the deceased son to have a grandchild from the surviving wife or third party. While being prohibited everywhere, not only is the practice allowed in Israel, but it is also leading to growing litigation when grandparents and

the surviving spouse have different 'views' about the decision of whether to pursue it (Hashiloni-Dolev & Triger 2020).

Such evolutions pose unprecedented challenges for lawyers. Assuming that lawmakers feel the urge to regulate these affiliations, how can a lawyer grapple with anti-dogmatic needs and subjectivities potentially allergic to categorizations? How can she meaningfully grapple with that 'horizon of possibilities' that cannot be described in advance (Halperin 1995: 62)? To complicate matters further, while queer sociology as a discipline is now relatively established (see, e.g., Seidman 1996; Stein & Plummer 1996) queer legal theory is less developed (Leckey 2014). Queer subjectivities have an ambivalent relationship with law. When browsing scholarship and interacting within queer groups on social networks, a lawyer is left wondering whether she is simply out of place. There is widespread skepticism towards law's ability to regulate non-normative identities – and rightly so in many cases.

Some queer theorists would argue that those who do not align with dominant social and legal norms should eschew encounters with law. On this view, law is either unable to yield transformative effects and/or legal recognition is inherently dangerous. The danger would lay in its suffocating the vitality of the identity at stake (Marella 2017). By entering the realm of law, non-normative identities face the risk of normalization, civilization, and assimilation into the dominant paradigm (Barker 2006: 249). An example in this regard is the rich literature on (or, more correctly, against) same-sex marriage (see e.g. Feinberg 2013; Ettelbrick 2008; Bernstein Sycamore 2008). Reference is made to the rich strand of scholarship warning against same-sex marriage becoming the target of LGBTQ activism (Polikoff 2009; on the limits of seeking 'equality' as a gateway to reinforcing dominant paradigms see Franke 2011: 1183; Dell'Aversano 2019: 13). These scholars suggest recalibrating the target to include the liberation of diverse, plural lifestyles (see, e.g., D'Emilio 2006: 10). To sum up, queer thinkers have laid out an articulated and nuanced critique to law's ability to recognize contemporary complex ('queer') identities.

Yet, 'angrily he rattles the bars of the iron cage. But he has no plans or projects for tuming the cage into something more like a human home': these are the words that Micheal Walzer directs to Foucault (1988: 209). Such words nicely capture the frustration at the theory's penchant for

deconstructing without constructing. In the realm of law, the issue revolves around understanding whether there can be a queer approach to legal recognition. Many argue yes (as to Italy's emerging debate see Lorenzetti 2019: 396; Mastromartino 2017). It is true that the key contribution of queer theories is to unveil the power structures beyond law's seemingly neutral categories as well as its disciplinary effects. Yet, deconstruction cannot exhaust the whole spectrum of possibilities. Some scholars believe that law can have a role in facilitating the expression of queer identities. For instance, aware of the shortcomings of marriage, queer scholarship has laid ground to the recognition of modern families through various nonmarital regimes. Some scholars placed emphasis on domestic partnerships (Redding 2011), others on special registration systems (Croce & Swennen 2021; Aloni 2013), others yet on mixed systems of registration plus ascription of family status in courts (Polikoff 2009). In my view, this link between nonmarital regimes and queer families holds promise for the regulation of queer identities and must be consolidated further.

These scholarly developments are welcome. When browsing a popular Italian Facebook group on polyamory and relationship anarchy one can see that some members feel neglected by law.[3] Tullia Della Moglie, an Italian poly activist, nicely expresses her unease with the current situation:

> 'Love is not only a more or less romantic or erotic feeling, love can also be bills coming in, daily routines, smelling feet at night, laundries, children to take care of, a Netflix subscription… It is not mandatory to plan to cohabit with each partner, but I don't like the idea that doing so it's impossible either. I don't like the idea that any "additional" relationship is doomed to be an Airbnb stay once a month'. (author's translation from Italian)

She then argues in favor of some form of legal recognition for this to become reality. An appetite for law especially arises whenever queer families encounter situations of vulnerability. These situations materialize anytime lack of legal recognition bars access to the services and privileges set forth in the law. Think of tenancy rights upon the death of a partner or the enjoyment of the protection against marital status discrimination in hiring, accessing services, etc. Lack of access to these resources bars the

3 The facebook group name is "Poliamore e anarchia relazionale_Gruppo di discussione sulle non monogamie".

enjoyment of equal status and respect in society compared to those people who check the boxes of the archetypical marital family.

This themed section has a double-barreled ambition. It first wishes to introduce queer families to the general public, especially in Italy, where this law journal has its headquarters. With some exceptions, the topic of the relationship between law and queer families is largely understudied (Marella 2017; Fioramonti 2017; Grande & Pes 2018; Lorenzetti 2019; Rizzuti 2020). The second aim of the themed section, therefore, is to offer reflections on the relationship between queer families and law.

The collection will look at the topic of queer families and the law from various angles. The attempt being made is to embrace instead of concealing the complexity of the questions surrounding the topic. The adopted approach is interdisciplinary and comparative. As to the former modifier, in this area, one should strive to establish a sustained dialogue among legal research and disciplines within social sciences and humanities – notably social philosophy, psychology, literature, and gender studies. This collection is based on the premise that not only can law draw empirical and conceptual nourishment from such disciplines, but that it also *needs* them to interpret the reality it is supposed to regulate. A second methodological choice is to look at the problem through a comparative lens. The thematic section glances over different geographical contexts. These include Italy, the space of the European Union and European Convention of Human Rights, and Canada. In so doing, it restricts its reach and findings to these territories. Ultimately, the section adopts three working languages – Italian, English, and French. It does so on the assumption that our relationship with reality is mediated by language ('The limits of my language mean the limits of my world', Wittgenstein 1921: 5.62) and that multiplying languages can expand the scope of the perception of the reality we seek to speak.

All articles within this themed section engage with the topic of the law/queer families relationship. This topic should be nested within the larger framework of queer theories and their connection with law. To sum up, a recurring question is: 'Is law a good idea?'. In turn, locating the question whether law is a good idea in the context of family is a useful resource to seek an answer, however plural, inconclusive, and tentative.

The issue begins with the article 'How queer!? Canadian approaches to recognizing queer families in the law' by Lois Harder. In her article, Harder introduces us to a jurisdiction that is at the forefront in granting

legal recognition to queer parents, Canada. She offers a tale of success but also caution. Harder starts off by describing what from a queer perspective one could define a 'success story': in Canada, all provinces and territories allow the registration of an 'other parent' on birth registration certificates; more crucially, three provinces – Ontario, British Columbia, and Saskatchewan –, permit the legal recognition of three or more intentional parents. The issue is all the more relevant after on April 23, 2021, the Supreme Court of British Columbia recognized the third non-biological parent in a polyamorous relationship in addition to the two biological parents (*British Columbia Birth Registration No. 2018-XX-XX5815*, 2021 BCSC 767).

Yet, she also warns us of the limits of these reforms. Harder is especially concerned that, while it is undoubtable that multi-parenting challenges the dyadic, heterosexual model, it also 'trade[s] on conjugality and biological relationship to a considerable extent'. In her observation that there are many more families eschewing even these queer family forms (what she dubs 'queerer forms of non-normative family life'), she implicitly expresses unease with law being able to mirror the uncategorizable universe of queer families.

The second article, by Benjamin Moron-Puech, takes a more positive stance towards legal recognition. Moron-Puech offers a thorough overview of the absent or insufficient legal recognition of what he dubs 'familles MISSEG' ('MISSEG families'). By the term, he refers to all families that are minoritized on account of sex characteristics, gender identity or expression or sexual orientation. He adopts a new queer definition of family to encompass all familiar bonds that suffer from the non-recognition of law. These include inter alia families with trans* or intersex persons, and polyamorous relationships. Moron-Puech offers us an overview of the European landscape by looking at how both the European Court of Human Rights and Court of Justice of the European Union fail to fully recognize such affiliations. His work is ambitious in its assessing both the horizontal relationship of adults and the vertical parent-child relationship. In his analysis, Moron-Puech observes how the vertical relationships seem to attract more legal protection compared to adult-adult relationships. This is especially due to the gravitational pull of the best interest of the child.

Research on polyamory is the focus of the third and fourth contribution. This research is fascinating as it powerfully loosens the shackles of monogamy. Monogamy is so central to Western societies as to being heralded as the reason of a supposed economic and social superiority of the

West, compared to 'Oriental' societies (Henrich, Boyd & Richerson 2012). Until relatively recently the monogamous paradigm was only challenged by polygamy, and particularly by the polygynous practices of Muslim and some Mormon communities that had settled in the West. These practices were largely seen as incompatible with egalitarian Western values, and thus dismissed on this account. They especially garnered criticism from scholars pointing to the patriarchal structures of power characterizing them (see e.g. Moller Okin 1999; Bala 2009; Strassberg 2010). Similar objections are now overcome by the practice of polyamory. Unlike polygamy, polyamory is based on the egalitarian, 'contractual' values of continuous negotiation and consent as well as logics of personal satisfaction. This is why research on this point is seen as better suited to interrogate the monogamous paradigm engrafted in law (but see Palazzo & Redding *forthcoming* on both sides' potential to challenge the paradigm).

Two authors engage with cutting-edge topics related to law and polyamory. Francesca Miccoli looks at the topic of the institutionalization of plural marriage. Starting from arguments from the right that there will be a slide down the so-called slippery slope, Miccoli draws a comparison with the legal recognition of same-sex marriage. In so doing, she explicates the opportunities as well as obstacles for polyamorous unions to follow in the footsteps of same-sex couples. Miccoli doubts, as many queer theorists did, that marriage can accommodate these intimate affiliations. She is, by contrast, more open to the possibility of pursuing more flexible nonmarital regimes.

Aurelio Castro offers a much-needed psychosocial analysis of the legal recognition of polyamory. He foregrounds the centrality of psychosocial analysis to informing arguments aimed at legally recognizing same-sex couples. Research on non-monogamous lifestyles seeks to shed light on the 'quality' of the relationship as well as their suitability for parenting. In this regard, Castro rightly recalls how, despite heterosexual couples not being required to demonstrate their suitability for parenting, both same-sex and polyamorous families are called to demonstrate as much. He thus seeks to fill this gap in literature. Castro shows how these families present many challenges (as any other family unit). At the same time, however, polyamorous families also seem to offer many advantages and become a source of wellbeing for the parties involved. He ultimately shares a cautiously optimistic view of law, by framing legal recognition as a delicate 'process-compromise' (citing to Grande & Pes 2018).

What this strand of scholarship does not challenge, however, is the romantic coupledom paradigm, what Robert Leckey dubs 'compulsory romantic love' (Leckey 2014: 10). Alice Parrinello's piece does as much. With her literary analysis of three narratives drawn from contemporary LGBTQ Italian literature, she castes a glance on non-conjugal families of relatives supporting each other in their adult life. These unions are also known as extended families. Empirical research suggests that the predominance of the extended family in the pre-industrialization era is largely a myth. By contrast, its influence nowadays is increasing. In Canada, for instance, so-called multi-generational households are the fastest growing household since 2001; in the US, Bengston also noted the increasing incidence of these households attributing it to the collapsing of the nuclear family and to higher longevity rates (Bengston 2001). Here, more than everywhere else,[4] is visible the underlying tension between tradition and modernity in family arrangements. Stacey (1996) has indeed dubbed the popularity of the extended family as a movement 'backward toward the postmodern family'.

There is something deeply radical ('postmodern') in a *decision* to (re) constitute this kind of familiar bond in one's adult life. Parrinello compellingly illustrates this point. Not only does she deconstruct the romantic paradigm, but also the trope according to which queer persons must move to the city to find happiness. Parrinello links this pro-urban rhetoric to homonormative discourses still integral to the construction of the acceptable queer citizen. In so doing, she debunks the ineluctability of moving to the city/founding a family of choice as opposed to living in the countryside/being allegedly constrained by a biological family.

It is my hope that this section can become the wellspring of more reflections about queer families' uncomfortable, yet likely necessary, encounters with law.

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4 Another area in which this tension is visible is also assisted reproductive technology (ART). When it comes to ART, modernity manifests itself in the technology required to help parents conceive their child, while tradition manifests itself in the unfaded attachment to biological parenthood and blood relations. See Hashiloni-Dolev & Triger 2020: 9.

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