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SPECIAL ISSUE ARTICLE

Teaching family law in neoliberal times

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Abstract

Across scholarship and legal practice, family law is widely recognised as a subject that is inextricable from the social and cultural forces that shape our understanding of how families work and how they are positioned within society. This paper argues that it is now time to build upon this by integrating an explicit awareness of political context into how we teach family law. This is because teachers of family law are now faced with an urgent challenge: the encroachment of neoliberal governance into all corners of family justice. Neoliberal ideas are far from new, but they are increasingly shaping dominant ideas about what family law is for, who should be entitled to use it and, even in some circumstances, questioning the very legitimacy of family law or legal processes as means for supporting families experiencing breakdown. In response to this challenge, this paper advocates the importance of guiding students to look beyond family law doctrine in order to consider how political initiatives, trends and debates have the power to shape the procedures and processes through which family disputes are resolved. It will argue that drawing this contextual awareness into family law studies is crucially important to ensure that the future development of family law as both a scholarly discipline and an area of practice is centred on the needs and lived experiences of families who need it.

Keywords: family law; neoliberalism; pedagogy; socio-legal studies

1 Introduction

The body of law that governs family life has never been devoid of context. In terms of law itself, statutory and judicial principles that underpin legal decisions about the family are frequently drawn from other disciplines, such as sociological constructs of parenthood or psychological evidence about the welfare of children (Stychin, 2006; Kaganas, 2006). At the same time, family law scholarship is keenly attuned to the complex context in which these issues are experienced. In practice, family law disputes are frequently experienced alongside other legal problems, including issues related to social welfare, immigration and housing, which all become significant once a relationship or a family breaks down (Pleasence *et al.*, 2004; Franklyn *et al.*, 2017).

For these reasons, doctrinal approaches are rare within family law scholarship. Rather, most family law research is keenly engaged with the reality that, first, family law itself is shaped by specific contextual norms and, second, that family life is inextricable from its social context, and thus the impact of law on families varies according to broader social factors and structures of power. Perhaps the clearest articulation of this is Diduck's (2003, pp. 20–25) distinction between the families we live *with* and the families we live *by*. Simultaneously, she argues, individual men, women and children negotiate a dual relationship between, on the one hand, the messy relationships, routines and practices that constitute everyday family life and, on the other hand, the broader normative representations and understandings of family life that are used as standards to evaluate these complicated lived realities. By extension, critique of the legal rules that govern families is often inseparable from sociological

critique of wider power structures within society, especially those that relate to gender and socio-economic status (Smart, 1984; Pateman, 1988; Fineman, 1996).

Family law pedagogy, therefore, is most frequently focused upon guiding students to ask political questions about when and how law should intervene in family life, and such questions are premised upon the importance of context. At times, this contextuality is subtle: Should family law respond to societal changes by expanding or complicating its repertoire to recognise the increasingly complex range of family forms? At other times, the contextuality of family law pedagogy is starkly explicit: What are the patriarchal norms that underpin the specific formulations of domestic abuse that inform family law? Family law pedagogy, therefore, is already strongly contextual in the sense that it is clearly embedded within sociological critiques of the institution of the family, as well as the constructed and normative roles expected of mothers, fathers and children within it.

In this paper, I argue that it is time to build upon these already-strong contextual traditions of family law pedagogy by integrating an explicit awareness of political context into how we teach family law. Specifically, I advocate the importance of guiding students to look beyond family law doctrine in order to consider how political initiatives, trends and debates have the power to shape the procedures and processes through which family disputes are resolved in practice. This is because teachers of family law are now faced with an urgent challenge: the encroachment of neoliberal governance into all corners of family justice. Neoliberal ideas are far from new, but they are increasingly shaping dominant ideas about what family law is for, who should be entitled to use it and, even in some circumstances, questioning the very legitimacy of family law or legal processes as means for supporting families experiencing breakdown. These ideas purport family law's subjects as citizens who are self-sufficient, autonomous and equally positioned within society, and obscures the complex and chaotic realities of many families who need to rely upon family law. The dominance of neoliberal ideas and the damage it is inflicting upon family justice mean that future family lawyers and the next generation of family law scholars must be trained to seek out, expose and amplify these marginalised voices of family law. I suggest that drawing an awareness of political context into family law studies is crucially important for two reasons: first, to further instil family law students with contextual tools that will allow them to trace and critique the ideas that underpin policy decisions and trends within family law; second, to ensure that the future development of family law as both a scholarly discipline and an area of practice is centred on the needs and lived experiences of families who need it.

The paper will proceed in two parts. First, it will outline the context of neoliberalism and its relevance for understanding the current state of family justice. Second, it will relate this to the context of higher education by outlining the challenges that this context creates for family law pedagogy, and working through a tangible example of how family law may be taught in a way that encourages students to draw connections between family law issues and the broader political context in which they arise. Here, it suggests that family law teachers should train students to be attentive to the perspectives that underpin the sources they engage with during their studies, and argues that this relatively simple method can have transformative potential in terms of how students think about and practise family law. The paper will conclude with a reflection on how conscious efforts to integrate an awareness of political context into family law teaching offers useful resources to the next generation of family law scholars and practitioners. It argues that these resources can help students to ask important questions about the structures of power that frame family law policies, and to recognise the vital role that family law and indeed many of the other areas of law they may study play in upholding ideals like justice and equality as commendable goals.

2 Neoliberalism and family justice

At its core, neoliberalism is a theory of governance which assumes that economic, political and social life can be governed by reference to market principles. Although it has manifested differently across jurisdictions, it has significantly influenced government policies across the world since the 1970s, with states reducing their commitments to social provision and instead focusing on promoting private

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property rights and free trade (Harvey, 2005). In short, neoliberalism has the effect of reconfiguring all aspects of social life in economic terms, with the result that policies are valued in terms of their cost-effectiveness or capacity to promote economic growth. This 'economisation' of social policy obfuscates the value of any non-economic policy goals, such as social inclusion, equality of participation within society or access to justice (Larner, 2000; Fraser, 2013; Brown, 2015). Consequently, any remnants of existing policies that were introduced in pursuit of such aims are – at best – conceptualised as inefficient and wasteful due to their economic cost and – at worst – harmful to society because they supposedly impair incentives for individuals to embark on journeys of self-determination.

This approach to governance is pervasive because it is posited as a sensible and pragmatic response to economic challenges, such as the need to address national deficits. This was a major driver of the austerity policies introduced by the Cameron–Clegg coalition government in England and Wales, but neoliberal governance was already evident in privatisation policies introduced under the Thatcher and New Labour governments of the 1980s and 1990s (Page, 2015). The neoliberal philosophy is not merely pragmatic – it is also rooted in a particular vision about the nature of inequality and the appropriate role that the state should play in terms of implementing policies that recognise or address inequality within society.

In terms of family law and family justice, the effects of neoliberal ideas can most obviously be seen at the procedural level, in terms of *how* families go about resolving their disputes. There are two key assumptions of neoliberalism that are relevant to understanding the way in which neoliberal policies have shaped public understandings of what family law is for and how the law should (or should not) intervene in family life. The first is the assumption of a level playing field in society and the implicit (and explicit) expectations of self-sufficiency and responsibility in family justice policies. The second is the corresponding assumption that the appropriate role for the state is that of minimal involvement and diminishing commitments to the provision of subsidies like state welfare. Both of these assumptions are evident, for instance, in moralistic policy initiatives that encourage or incentivise people to take personal responsibility for their family disputes, thus conceptualising them as personal problems in which wider society has no interest and the state is unaccountable for outcomes (Boyd, 2013; Treloar and Boyd, 2013; Fineman, 2017). In England and Wales, these assumptions are most obvious in policy documents that have called for greater take-up of mediation as a cheaper and more effective means for people to resolve their own family disputes without relying on state-funded legal advice, often without due regard to the potential complexity or circumstances of their situations (National Audit Office, 2007; House of Commons Public Accounts Committee, 2007; Barlow *et al.*, 2017, p. 12).

Neoliberal assumptions are prominent within policies that regulate the kind of support that is available to people who experience family breakdown. In theory, the family justice system in England and Wales consists of a panoply of different options and processes that individuals might use to try to reach fair arrangements, such as litigation, solicitor-led negotiations, mediation and other models of alternative dispute resolution. For those who can afford to pay privately, individuals can choose the most appropriate process for their circumstances to reach resolutions to their family law problems. However, for the majority who cannot afford to instruct lawyers, this choice has ultimately been constrained by reforms that have, first, limited the availability of state funding for legal aid and, second, aimed to divert families away from lawyers and the court, and towards mediation.

In terms of legal aid policy, there have been several subsequent reforms that are characterised by the incentive to reduce expenditure on legal aid. However, these reforms are also underpinned by a particular idea of how families should behave and respond when they break down, and have the effect of stigmatising both lawyers who provide assistance through legal aid, as well as those families who find themselves in need of support to reach resolutions to their family law problems. For instance, government administrations have consistently cited concerns about the cost of the legal aid scheme in England and Wales due to the consistently growing demand for state-funded legal advice and representation across several areas of law (Department for Constitutional Affairs, 2005; Department for Constitutional Affairs and the Legal Services Commission, 2006). This is especially true in family law, where the law has necessarily become more complicated to keep up with the reality of modern

family life. Greater acceptability of different family forms and relationships, as well as increasing numbers of families co-parenting across different households, all came with a greater demand for family dispute resolution and orders under the Children Act 1989.

To limit expenditure on the scheme, several successive governments introduced reforms such as strict means testing to limit the number of people who were eligible for legal aid.[1] At the same time, the increased demand for legal aid raised suspicions about 'supplier-induced inflation' and a suggestion that firms reliant on income from legal aid were not incentivised to provide services efficiently, especially compared to those motivated by private profits (Moorhead, 2004). These concerns indicated a shift in the relationship between lawyers and the state, in which government policy became geared towards promoting efficiency, greater scrutiny of firms offering legal aid funded services and limiting remuneration for lawyers undertaking legal aid work (Sommerlad, 2008). In short, the insufficient support for the legal aid sector meant that this work quickly became unprofitable and arduous. While some firms were able to offset the impact of this by taking on private clients alongside their legal aid clients, many organisations have moved away from legal aid work entirely (Maclean and Eekelaar, 2019).

As a result of these policies, the chasm between the experiences of those families who could afford to self-fund their way through the family justice system and those families who were reliant on public funding became steadily wider. Those with the resources to instruct lawyers privately were still able to access any of the resolution options that might be appropriate for their circumstances, whilst the majority were forced to navigate a fragmented, overwhelmed and pressured network of pro bono legal support. The consequence is that many families had problems that escalated into more complex issues and ended up having to represent themselves in family court proceedings (Trinder *et al.*, 2014). Moreover, when this happened, these families were frequently blamed for their over-litigiousness and irresponsibility (Ministry of Justice, 2010; 2011).

Although the philosophy of neoliberalism advocates a retreat from state control or intervention, such policies nevertheless employ governance techniques that encourage or incentivise particular behaviours amongst its citizens. For instance, although other forms of dispute resolution exist, mediation has consistently been promoted as a 'one size fits all', cheaper, quicker alternative to going to court that minimises conflict between parents and reduces the need for the state to intervene in family life (Barlow *et al.*, 2017). Pro-mediation policies, such as the imposition of a requirement to attend a 'Mediation and Information Assessment Meeting' before making a court application, gave a clear steer for how families should resolve their family law problems: by negotiating future arrangements in private, away from expensive sources of state-funded support such as legal aid lawyers and the court system. Concerted attempts to promote mediation, however, have never been successful. One reason for this is that, to be effective, mediation requires both parties to meaningfully participate. This can be impossible if parties are not yet emotionally ready to discuss the relevant issues or to reach compromises (Hitchings *et al.*, 2013). Another explanation is that mediation-focused policies have consistently failed to recognise the important relationship between out-of-court dispute resolution and legal advice. Although it is often thought that the very act of involving lawyers in family disputes is something that can exacerbate conflict, decades of evidence suggests that the practice of family lawyers is strongly underpinned by a conciliatory approach and a commitment to reducing conflict wherever possible (Eekelaar *et al.*, 2000; Ingleby, 1992). In particular, solicitors have historically been key facilitators in referring clients to mediation, providing an important framework of legal advice to inform negotiations and, wherever possible, supporting clients to negotiate private settlements without the need to go to court. If anything, the historically restrictive climate of legal aid provision has significantly impaired the effectiveness with which lawyers were able to support people to make the most of out-of-court dispute resolutions.

In 2013, these long-standing political trends culminated in a new set of large-scale sweeping reforms that were introduced under the Legal Aid, Sentencing and Punishment of Offenders

[1]See, for example, Legal Aid Act 1988 and Access to Justice Act 1999.

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(LASPO) Act 2012. Under LASPO, private family law problems were entirely removed from scope of legal aid and the only state funding that remained for these problems was to fund participation in mediation. These reforms marked the most significant disruption to the family justice system yet – effectively closing off legal advice to most families engaging with family law and facilitating a mass increase in the number of families who end up representing themselves as Litigants in Person (LIPs) in the court process (Ministry of Justice, 2021). Since LASPO, LIPs have been the rule rather than the exception. However, LASPO did not just result in more self-representation. Rather, the blanket withdrawal of legal aid means that LIPs now include those on the lowest incomes and the fewest resources, because their family disputes are now categorically excluded from scope. Data suggest that, since LASPO, significant proportions of family cases arriving at court involve people who have accessed no prior advice, with literacy issues, without access to a phone or the Internet or do not speak English as a first language (House of Commons Justice Committee, 2015; Lee and Tkakucova, 2018; Cusworth *et al.*, 2021). LIPs can therefore be understood as a growing population of families who are caught in the gaps left by retrenching state-funded support – those who have been denied legal support that might have enabled them to make effective use of out-of-court dispute resolution and are then subsequently denied support when their problems inevitably escalate to the point of requiring court proceedings.

In the lead-up to this reform, the government explicitly set out their expectations for the future of family justice. These expectations were that family law issues should not require legal input, the involvement of lawyers or the use of the court process:

> 'These proposals support wider plans to move towards a simpler justice system; one…which limits the scope for inappropriate litigation and the involvement of lawyers in issues which do not need legal input; and which supports people in resolving their issues out of court.' (Ministry of Justice, 2010, p. 3)

In many ways, LASPO was merely an extension of previous neoliberal reforms. After all, prior limitations on eligibility, remuneration for providers and encouragements to try mediation and avoid court were all inherently linked to making savings and delivering value for money. However, the vast scale of the LASPO reforms distinguishes them from earlier policy initiatives. The default position is now one of non-eligibility, where individuals may not expect state-funded legal support in relation to their family disputes and reliance on the family court is generally stigmatised. The implementation of LASPO therefore marked a new era for family justice: one in which family justice initiatives are valued in terms of their cost-saving potential, rather than their commitments to ensuring equality of access to family law. This reconfiguration of social life into economic terms has the distinct effect of obscuring the diverse range of needs and circumstances that families may have when they experience issues related to breakdown and casts those issues as personal problems that lack legal dimensions.

The combination of neoliberal policies discussed so far have had several repercussions for families who may struggle to access appropriate outcomes through self-representation and may have problems that escalate into far more serious or complicated matters as a result. The family justice system itself is also buckling under the strain, as legal aid providers go out of business, and the court system strives to support so many more litigants within the confines of a 'full-representation' model that assumes each party has a lawyer throughout proceedings (Trinder *et al.*, 2014). One of the most significant influences of neoliberalism in family justice, however, is that it has reconfigured public understandings of what family law is for, the extent to which law should intervene in family life and who exactly the subjects of family law are. The steer for families to use mediation and avoid the family court clearly rests upon a particular fictional construction of a separating family, in which all family members are positioned equally, have access to sufficient resources in order to be fully informed about their rights and entitlements before commencing negotiations and have no complicating factors such as domestic abuse, imbalances of power, high levels of conflict or complex circumstances that would impair their ability to resolve their legal issues without assistance. This self-sufficient and responsible family is

starkly contrasted with the family who relies upon the legal processes of family law. The family who ends up in court is overly litigious and irresponsible, and these character flaws are demonised as rooted in a wasteful disregard for public resources and the wider prosperity of their fellow citizens (Kaganas, 2017; Mant, 2017).

In practice, of course, both depictions are unrealistic representations of families at the point of breakdown. Yet the role that these families play in perpetuating neoliberal ideas about the appropriate role of family law is integral. This poses a significant challenge for family law pedagogy. If the users of family law are so neatly categorised into the binary of responsible vs. deficient citizens, then there is little space within which to discuss and reflect upon the specific needs, characteristics and experiences of families, let alone consideration of how family law or the family justice system might respond to support those users who find themselves caught in the gaps of provision. Returning to Diduck's (2003, pp. 20–42) distinction between the families we live *with* and the families we live *by*, it is possible to appreciate the multi-faceted encroachment of neoliberal assumptions in family law. In doing so, we can see that these assumptions pose challenges to scrutinising both the subjective practices and lived realities of families, as well as broader normative and collective understandings of how families are represented in law. How, then, might family law pedagogy adapt in order to ensure that the future generation of family lawyers and scholars are attentive to both the political underpinnings of family law as well as the everyday needs and circumstances of those who rely on the family justice system?

3 Family law pedagogy in neoliberal times

Before it is possible to answer the question of how family law pedagogy might adapt to better prepare family law students for the future needs of family justice, it is first important to acknowledge that the higher education system itself is far from immune to the effects of neoliberal governance. Rather, students and their universities have all felt the impact of an increasingly market-driven ideology that acts to organise and determine the value of different kinds of education. Under this ideology, universities operate according to business principles, with the primary academic functions of research, teaching and citizenship are gradually transformed into revenue-generating activities. Most significantly, the qualifications, skills and knowledge to be gained through higher education are recast as commodities and students themselves are reconfigured as consumers, which leads to an emphasis on competition, measurement and assessment, and an unyielding focus on economic value (Saunders, 2007).

The hyper-commercialisation of higher education is a crucial component of neoliberal governance because it positions education as a site in which neoliberal ideas are reproduced and reiterated. In other words, education performs the dual task of both training future workers and producing lifelong consumers. In these terms, the value of studying family law is reduced, first, to the usefulness of family law knowledge within the market-place of employment and, second, to the grade achieved in that class, which can be used to compete against other potential employees who have similar knowledge and experience. The effect of this is that pedagogy is an increasingly powerful force through which neoliberal orders and understandings of the world are instilled in citizens, and it is ever more challenging for educators to introduce and inspire critical ideas among students when they are rendered defunct within the market of employability (Giroux, 2004, pp. 494–495). However, this critical and contextual component of family law education is essential for ensuring that students leave their studies with an awareness of the different needs of those who rely upon family law, as well as how it works in practice. It would be a failure of family law pedagogy if it did not train students to develop the understanding and skills required to meet those needs or navigate those processes effectively, especially as they go on to become family law professionals tasked with serving these families on a daily basis.

It is for this reason that family law teachers must respond by providing students with the opportunity to reflect upon the political context that frames their study of family law. Specifically, family law pedagogy should integrate opportunities for students to, first, understand the policies that have facilitated the current state of crisis within the family justice system and, second, enable them to identify and critique the stereotypes of families that underpin arguments about what the future of family law

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can and should look like. This does not need to involve complex lectures on political theory. Rather, a simple but valuable way to integrate political awareness into family law is to train students to consider the positionality of the primary sources, academic writing and professional accounts that they are expected to engage with during their family law studies.

Using the post-LASPO context as an example, the current crisis regarding increased numbers of LIPs using the family court is one that can be viewed from several different perspectives. On the one hand, it is useful to help students to think critically about the archetypal family that inform government policies – to identify the limitations of assuming that most families can use mediation without scaffolded legal support and to discuss the detail and complexity that is omitted from these ideas. However, on the other hand, it is also helpful to ask students to reflect upon the ideas about families that underpin other accounts. For instance, the professional and academic literature that we typically ask students to engage with is itself densely populated with the voices of lawyers and the judiciary, who have each been swift and convincing in amplifying their concerns about the withdrawal of legal aid and the influx of LIPs.

On this subject, there are a wealth of authoritative sources that students may come across within their directed readings and independent research. First, the presence of LIPs is often linked to increased work for others within the court process, due to the problems that LIPs have in completing and submitting paperwork, the additional time that is required to explain things to LIPs and the frequency with which hearings must be adjourned (Moorhead and Sefton, 2005; Trinder *et al.*, 2014; McKeever *et al.*, 2018). Second, when facing a LIP, research indicates that lawyers and judges encounter difficulties in performing their traditional roles within the court process. For example, lawyers are frequently required to take on the extra work of preparing trial bundles and extending help to LIPs whilst also maintaining their ethical obligations and confidence of their own clients (Trinder *et al.*, 2014; McKeever *et al.*, 2018). Judges also report challenges when facing LIPs because they are required to change their approach, ranging from basic signposting, giving procedural leeway to LIPs, to acting on behalf of LIPs during key tasks like cross-examination, and even sometimes managing hearings in an entirely inquisitorial way (Moorhead and Sefton, 2005; Trinder *et al.*, 2014; Corbett and Summerfield, 2017). When students engage with this literature, therefore, it is not surprising that they often come away with the conclusion that the presence of LIPs within court hearings places significant demands on other parties and that an increase in LIPs is unsustainable for family law.

A useful exercise for family law students studying this area might, therefore, be to ask them to consider the perspectives that inform this body of evidence, the kinds of interests at play and how policymakers, judges, lawyers and academics use the different kinds of platforms that are available to them. Foundational questions can be used to structure and guide this reflection, such as: Who is the author? What was the motivation behind authoring the work? What information or evidence did they draw together or rely upon in putting forward their argument? Most importantly, this activity should ultimately inspire questions like: Does this source make any assumptions or implications about what families are like or how they should behave, and how does this correspond to empirical reality?

The purpose here is not to suggest that lawyers and judges are not committed to furthering access to justice for families relying on the court process – if anything, the evidence points to the fact that professionals are willing to go above and beyond to extend support to LIPs. However, by training students to think critically about the accounts that are prevalent within current debates, and to pay specific attention to which voices and perspectives may be missing, they gain the opportunity to practise thinking about family law as part of a broader political context. For example, some of these cited studies go beyond identifying challenges for the family court and legal professionals, and also include insights from litigants themselves. Paying specific attention to these lay perspectives is a key way for students to understand the limitations of the ways in which litigating families that are frequently represented in professional accounts of the court process. While lawyers and judges are often focused on the additional demands created by LIPs who do not understand this process, studies that draw directly on interviews with LIPs suggest that, first, LIPs often have negative views of lawyers who take on this extra work within proceedings. In practice, LIPs are keenly aware of the power imbalance that

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exists between them and the lawyers they face, and this can often lead LIPs to feel that lawyers can take advantage of them during the court process. For many LIPs, lawyers attempting to negotiate can instead be perceived as attempts to use their legal knowledge and experience in order to intimidate them and pressure them into disadvantageous agreements (Moorhead and Sefton, 2005, pp. 172–173; Trinder *et al.*, 2014, pp. 45–50). Second, when judges and lawyers act on behalf of LIPs to keep proceedings running smoothly, this often causes a sense of exclusion. When judges change their approach in LIP cases by relying more heavily on lawyers to set the focus of hearings, this can give LIPs the impression that lawyers are receiving favourable treatment from judges or permitting them to control proceedings (Moorhead and Sefton, 2005, pp. 189–190; Trinder *et al.*, 2014, pp. 80–82). While it may be tempting to attribute these problems to LIPs failing to appreciate the ways in which professionals are trying to help them within the process, these perspectives are crucial to assessing the accessibility of the system.

In addition to helping students critically reflect on the extent to which their assigned readings reflect the voices of family law users, another obvious opportunity for students to engage with real-life families and their concerns can be found within the increasing prevalence of student-led university advice clinics. Clinics are increasingly being utilised within higher education as a means of providing students with practical experience that will give them a competitive edge within the market-place of employment (Maclean and Eekelaar, 2019). Of course, the demand among students for such experience dovetails neatly with the enormous demand for free assistance within family law. Consequently, there are obvious, broader concerns about how increased reliance on these clinics may further reinforce neoliberal ideas about the level and type of support that families need at the point of breakdown (Robins, 2012). Nevertheless, students are often excited and motivated to engage in these clinics and these may prove to be an important site within which to encourage them to appreciate this all-important intersection between neoliberalism, family law processes and the families who find themselves caught within this complex political context.

The future of family law, who should be able to use it and the legitimacy of the idea that law should intervene in family disputes is a debate in which several different populations have an interest. Integrating an awareness of how family law is understood and experienced by its users, as opposed to professionals working within the system or policy-makers working within government, can help students to appreciate the true complexity of this debate. For instance, it can help them to re-evaluate and critique the supposedly pragmatic ideas that underpin legal aid policies, as well as identify instances in which authors may conflate a crisis of access to justice with a crisis of legal professionalism, in which lawyers have been excluded from work and are facing challenges to the assumption that they are needed within family law (Leader, 2017, p. 43). At the same time, students can become more critically reflective not only when they distinguish between the accounts of professionals and those of litigants, but also in terms of tracing the various motivations of litigants themselves. Of course, LIPs are far from a homogenous group with aligned support needs. Rather, the users of the family justice system come with a diverse range of understandings, agendas and aspirations that operate to shape the experiences and perceptions that they have of its processes. With these skills, therefore, students may come to think more critically about the system that is failing to serve the users of family law and the neoliberal pressures that frame the political context in which this system operates. In response, they can begin to actively seek out sources – or components and combinations of these sources – that help them to go beyond simplistic ideas of who families are and why they rely on the legal system, and deepen and complicate their understanding of who these users are and how family law might serve them.

Although relatively simple, this exercise is an effective way to help students to view family law as part of a broader political context, because the critique of information is inseparable from the critique of power (Lash, 2002). Importantly, this also underscores the importance of process and procedure as a means of understanding how family law operates in practice, and how this may differ to the impression of family law that can be garnered from case-law and statute books. In other words, it guides students to recognise that power is not just exerted through economic means, like the withdrawal of legal

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aid, but also intellectually – dominant knowledge and ideas can also have a marginalising effect – because it can limit our vocabulary and capacities to understand the needs and circumstances of the users of family law (Giroux, 2004, p. 497). Of course, there will always be some LIPs who pursue court proceedings because they are determined to have their day in court, but LIPs are not typically a population of litigious troublemakers. Rather, they are most often families caught in the gaps formed by the way these policies have disrupted the delicate ecosystem of family law. Therefore, their experiences and perceptions are centrally important to our understanding of family justice because we can only begin to properly scrutinise the effectiveness of the family justice system if we start to view it through the eyes of those who occupy its margins. By training students to seek out sources that amplify their needs, we can support the future generation of family lawyers and scholars to think about the future development of family law in a way that does not rely upon simplistic ideas of responsible vs. deficient families. In turn, this may also strengthen their attentiveness to the political underpinnings of other areas of law, especially those that are geared towards upholding the rights and well-being of citizens.

4 Conclusion

The increasing influence of neoliberal governance is having a significant impact on both the family justice context and the landscape of higher education. The effects of this can most obviously be seen in the way that notions of access to justice or education have been recast in terms of their economic value. The role of family law, and who should be entitled to use it, are now scrutinised through frames of individual responsibility and cost-effectiveness, instead of broader commitments to social justice and equality of participation. At the same time, the value of a family law education is determined by the competitiveness of a qualification within the employment market, instead of how suitably it prepares students for a career of serving families when they need to engage with the legal system. These effects pose important intellectual challenges for how teachers may effectively train and educate future generations of family lawyers and scholars.

In this paper, I have argued that, despite the constraints of these contexts, family law pedagogy still has the potential to be political. While higher education is not free from commercial influence, it is still uniquely placed to prepare students for a world in which information and power have taken on new and significant dimensions (Gutmann, 2003; Giroux, 2004). Here, I have outlined the potential benefits of teaching family law in a way that is conscious of this wider political context and keenly attuned to the procedural reality of family law. Although there are likely to be several creative ways to integrate reflective activities into a family law curriculum, this paper has provided one example of how students may be encouraged to reflect on the ways in which families are depicted and represented within government policies as well as the academic and professional literature that they engage with during their studies. Through this example, I suggest that it is possible to train students to be more attentive to the diverse needs of families, as well as potential misalignments between the everyday practices of families and the broader political representations of the family. Doing so offers useful resources to the next generation of family law scholars and practitioners, because it will help to ensure that the future generation of family lawyers and scholars is well attuned to who the subjects of family law are and why family law is important for them. In turn, this creates opportunities for students to ask important questions about the structures of power that frame family law policies and to recognise the vital role that family law plays in the pursuit of justice and equality, which cannot be reduced to commodities with solely economic value.

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Conflicts of Interest. None

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