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## Book Review

### Familial citizenship and familial violence

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In her acknowledgements to *Legalized Families in the Era of Bordered Globalization*, Daphna Hacker thanks her former law Dean for planting the idea that became this innovative, beautifully written book. A few years ago, my own Dean similarly challenged me to look beyond the family law within my nation’s borders and explore the interrelations between families, law and globalisation (Hacker, 2017, p. ix). I recall being rather terrified by the prospect, perhaps imagining that I would have to write a book about conflicts of law. It is my own loss that I remained caught within my own ‘methodological nationalism’ (Hacker, 2017, pp. 14, 67) and failed to take up the challenge to think about families and law beyond borders. It is completely the gain of the socio-legal and family-law communities that Hacker did. She offers us a whole new way to think about family law and its relevance in the modern world, drawing on examples and literature from many different jurisdictions.

Despite its innovative nature, this book offers familiar aspects and approaches. Like most feminist scholars who teach family law, Hacker addresses topics that lie beyond the traditional categories of family law. For example, she examines how normative ideas about ‘family’ affect different areas of law such as immigration, deeply relevant to the chapter on ‘Familial citizenship’ I discuss. She also highlights the role that gender plays, for example, in affecting how women might experience a particular law or issue in comparison to men, often in conjunction with other factors such as poverty or race or sexual orientation or, importantly for this book, citizenship or immigration status. I particularly appreciate Hacker’s focus on economic issues and the redistribution of monetary and non-monetary resources – something too often missing from family-law scholarship.

Far from offering a naive perspective on what globalisation might mean for families or family law, Hacker notes both potentially negative and potentially positive implications. For instance, global human rights discourse and cross-border movement enhance the possibility for women living within patriarchal countries to be liberated from abusive intimate relations. This possibility is deeply relevant to the chapter on ‘Familial violence’ – my other focus in this review. As well, Hacker highlights that, while globalisation brings people together as families, it can also separate them. Notably, some family members migrate from their country of origin to find more lucrative work in a more well-off country. Moreover, borders remain relevant in relation to that separation of family members from one another, including separation of children from their parents. Numerous examples of this phenomenon can be cited in recent years, including under the Trump presidency as the US attempts to restrict immigration.

Parents may leave children behind in their home country or send children on alone. If parents travel with their children, they may be separated from their children at the border (Rucker, 2018).

That separation of those with familial ties is a key theme in Chapter 5 on ‘familial citizenship’, which illustrates both the impact of globalisation and migration and the restrictions still policed through state borders. Hacker names citizenship in affluent countries as the most valuable resource of our era (2017, p. 149) and discusses how such states deal with the ability of a person to achieve citizenship. She identifies the ‘most significant divide of our times’ as

‘not between those who have citizenship and the stateless but, rather, between citizens of well-off democratic countries, which grant their citizens basic human and civil rights, including adequate standards of living, and citizens of countries that fail to do so due to poverty, corruption, tyranny, violent conflicts, or some combination of these ills.’ (Hacker, 2017, p. 149)

To the many concepts that have recently been devised to describe how citizenship is acquired, Hacker adds *familial citizenship*: the right of family members to be legal citizens of the same state country, based on their family relations (2017, p. 150). Most countries grant citizenship to children born within their borders only if at least one of their parents is already a citizen (*jus sanguinis*), making citizenship mainly an inherited entitlement. Those few countries that follow *jus soli*, or birthright citizenship, have recently been rethinking this entitlement (Hacker, 2017, p. 183), as illustrated by President Trump’s undertaking to try to revoke birthright citizenship in the lead-up to the 2018 mid-term elections.<sup>1</sup>

Hacker primarily addresses the ways in which modes of gaining familial citizenship other than by birth or inheritance are regulated. The first method is by becoming the spouse of someone who is already a citizen (*spousal citizenship*) – a mode that has been shrinking in favour of economic migrants who appeal to ‘hypercapitalist and ethno-nationalist interests’ (Hacker, 2017, p. 155). The preoccupation of many nations to limit entry of immigrants who are deemed ‘undesirable’, often based on Eurocentric and racist constructions of those who are culturally and ethnically ‘othered’ (Hacker, 2017, p. 152), restricts this right. Several strategies are used to operationalise such restrictions, including the ‘second-class-citizenship’ strategy, whereby certain citizens do not have the right to family reunification (pp. 159–161). To name only one other, ‘the illegitimate spouse strategy’ results in certain spousal relationships not being recognised in some jurisdictions, such as same-sex unmarried cohabitants, or those who are deemed to be in a ‘sham’ or ‘fraudulent marriage’ (Hacker, 2017, p. 162).

The second path to familial citizenship is *parental citizenship*, or via the parent–child relationship. International norms affirm that children shall not be separated from their parents against their will, accompanied by national norms that now prioritise joint and shared parenting (Hacker, 2017, pp. 172–173), yet these powerful norms do not always prevail. Hacker cites Israel’s ‘antifamilial labor migration policy’ (2017, p. 177), under which migrant parents who have children back in their country of origin generally cannot live with their children while they work in Israel. Even if a migrant worker gives birth in Israel, various restrictions (Hacker, 2017, pp. 178–180) impede her ability to stay in Israel with her newborn. Lest we think other countries are better at honouring the principle of not separating children from parents, Hacker relates a horrific story of a mother – an undocumented migrant to the US – whose baby was adopted away from her without her consent. Although many are shocked about the recent stories about migrants being separated from their children, Hacker clarifies that this phenomenon is not novel, even if a child is born within the US (2017, pp. 183–191).

Hacker asks whether ‘familial citizenship [should] be recognized as a basic human right?’ (2017, p. 193) and answers a firm ‘yes’, subject to certain restrictions. She suggests strategies that would challenge the privileging of the nuclear family (e.g. via family reunification in immigration policies), which can be seen as culturally biased. For instance, in the context of economic migration (Hacker, 2017, pp. 194–195), needy families from developing countries might nominate one *immigrating*

<sup>1</sup>See e.g. Laughland (2018); such discussions are also occurring in Canada: Yakabuski (2018).

*representative* to start a new life in a developed country and support the family via remittances. That person would not be able to bring family members from the country of origin. Parents and children could once again be separated under this approach, yet Hacker adds that family-law principles should be taken seriously in immigration law, such as the best interests of the child, and that the traditional separation between family law and immigration law should be overcome: ‘*Familyzing the other* makes it harder to treat her or him as an *it*’ (2017, p. 196, emphasis in original).

Chapter 7 on ‘Familial violence’ deals with global norms that now rightly condemn both spousal and parental violence – ‘a very dramatic, rapid, and impressive global legal isomorphic shift’ (Hacker, 2017, p. 249) – but highlights the gap between these norms and socio-legal reality. This gap is especially acute for immigrant women, who are particularly vulnerable to abuse by their spouses in the destination country, and women who seek asylum based on the abuse they suffered in their country of origin. Even countries that have taken some steps to assist the first category of abused women impose significant impediments to a woman taking advantage of these measures (Hacker, 2017, pp. 252–254). In addition, abused women seeking asylum encounter the significant hurdle of the United Nations Refugee Convention omitting gender as a ground for persecution and some countries, such as Canada and the US, failing to add gender formally to their national refugee law (Hacker, 2017, pp. 255–258). Hacker highlights the risk to abused women leaving their home country to seek asylum of being prosecuted for international child abduction, should they take their children with them.

Hacker offers a broad definition of familial violence (‘any act by a family member against another family member, of omission or commission, which harms the latter’s physical, sexual, emotional, or economic wellbeing’) (2017, p. 245), in part to encompass acts such as marital rape or corporal punishment that are not perceived in all cultures as acts of familial violence. Law should not, however, according to Hacker, always be used to ‘penetrate the privacy of family life and protect one family member from another’ (2017, p. 289). Hacker offers a three-component model that might justify certain parental violence, looking at harms, benefits and cultural meaning (Hacker, 2017, p. 289).

Hacker controversially suggests that female genital manipulation (FGM), male circumcision (MC) and child beauty pageants (CBPs) all are forms of parental violence, but not all should be outlawed. FGM should be outlawed, but only as one strategy in conjunction with dialogue, education and alternatives within various communities (Hacker, 2017, pp. 268–269). MC, in contrast, should be allowed after full disclosure to parents of risks and benefits and minimisation of risks (Hacker, 2017, p. 273). But CBPs, a multi-billion-dollar industry in the US and an increasing global phenomenon that sexualises young girls and exposes them to physical and psychological risks (Hacker, 2017, pp. 275–276), should be outlawed, although parents should by and large not be prosecuted (p. 279). Regulatory laws, such as labour laws, would not suffice. Should such pageants be outlawed, however, might they not go underground or migrate to a nation that does not regulate them, given the global environment?

Finally, Hacker argues that international child abduction is a form of familial violence across borders. Gender makes a difference here, because international child abduction can be both a *form* of domestic violence and a *response* to domestic violence (Hacker, 2017, p. 280). Interestingly, although most abductors were non-custodial fathers when the Hague Convention on the Civil Aspects of International Child Abduction was drafted in 1980, most abductors are now mothers, often returning to their home country (Hacker, 2017, pp. 282, 283). Hacker explores the complex gendered implications of these trends, notably that some abused mothers may ‘abduct’ their children in an attempt to escape abuse, yet the Convention does not mention spousal violence as an exception to the rule that a child should be returned to the country of origin. She concludes by highlighting, again, the fact that, all over the world, girls and women are at a much higher risk of familial violence than boys and men, and far more must be done to translate the global norms condemning familial violence into a social reality. Throughout this book, Hacker’s careful sensibility about the limits of law, perhaps especially in a global world, shines through.

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## Book Review

# Considering children's hunger in the era of bordered globalisation

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In *Legalized Families in the Era of Bordered Globalization* (2017), Daphna Hacker charts new ground in a field she identifies and defines as familiality in the era of bordered globalisation (pp. 2, 5, 37, 40). The book, meticulously crafted and blending insights from both law and sociology, is a tour de force of contemporary socio-legal scholarship. It powerfully argues that today's families are fusion families, at once both grounded within borders and extending into global space; it beautifully illuminates how *all* families – those that have all their members living under one roof and those whose members are spread out across the globe – are in fact living within the framework of bordered globalisation (Hacker, 2017, p. 43). The phenomenon she identifies as 'globordered families' (Hacker, 2017, p. 43) is vividly illustrated with regard to one of the most challenging manifestations of this world order: children's hunger.

Chapter 6, entitled 'Feeding children', explores the challenges of feeding children in impoverished parts of the world. It paints a poignant picture of children's hunger. In the poorest parts of the world, a person dies of starvation every 3.6 seconds and most are under the age of five; there are almost 800 million hungry people in the world and 98 percent of them live in developing countries; and 156 million children are underdeveloped for their age due to lack of adequate nutrition (Hacker, 2017, p. 198).

The quest for food has led to three solutions, which Hacker juxtaposes at the outset: Parental Remittances, Working Children and Intercountry Adoption. The first solution identified is the practice of sending parental remittance payments by a parent who has left a child in a developing country and crossed borders in the quest to secure economic needs. The second is the practice of child labour in developing countries. The third is the practice of parents in developing countries giving up children for adoption to parents in affluent countries. In this short review, I can focus only on remittance payments and child labour. In this regard, Hacker shows how the common, normatively accepted solution of parents' labour migration to developed countries is actually deeply problematic. In a provocative argument, she argues that the option of child labour, which has for decades been condemned by the West, actually has the potential to be empowering for children and could better ameliorate children's hunger.