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EMBRACING THE AFFECTIVE FAMILY

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Scholars are often quick to label the affective family a relic. Indeed, the description of this panel invites us to “return to the conventional understanding of the family as a primarily affective, altruistic, and solidaristic social domain,” and then asks “[w]hat is to be done with this archaic remnant of separate spheres ideology?”¹ As this description accurately expresses, the separate spheres ideology demands that we bifurcate emotion and rationality, directing the former into the family and the latter into the market.

Although I reject the separate spheres ideology, I am not ready to disown the affective family. The corrective to this descriptively inaccurate and normatively undesirable ideology is not to discard the family as a site of affective activity. I believe it is the rejection of the family as a site of affective ties that is archaic and is itself a remnant of defensiveness about the place of family law in the academy. I agree that families are not always solidaristic nor altruistic, but in challenging these notions we should not reject emotion itself. There is tremendous traction in exploring the affective lives of families and family members, as the readings for this panel so well demonstrate.

I begin with the understanding that emotion is interwoven into every aspect of our lives—the trading floor, the classroom, the playing field, the street, the courthouse, the kitchen table. All these areas of human life are marbled with emotion. The emerging neuroscience of brain functioning demonstrates that without emotion we simply cannot function in society because emotion is central to making decisions well, following social norms—in short, living a recognizable life. The problem, then, lies not in recognizing emotion as a central element of human life but rather in describing the family as the only, or the primary, site of affective ties. This description is archaic and surely inaccurate, but this misunderstanding does not mean that the remedy is to abandon the idea of the emotional family. The problem is not in locating emotion in the family but rather in *failing* to locate it elsewhere. A more productive way forward is to develop our understanding of the role of emotion in all spheres of human life and then explore the particulars of emotion in the family.

When embracing the affective family, however, we need to move beyond the two dominant notions—that families are either solidaristic and altruistic, filled with love and care, or, conversely, that families are filled with

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¹ Reconceptualizing the Affective Family: A Tribute to Eve Kosofsky Sedgwick, Family Law Summer Camp, Harvard Law School (July 14–15, 2009).

anger and jealousy, leading to violence and danger. Too often, depictions of the affective lives of families choose one of these overly simplified narratives. But family life is neither all about the positive (love, forgiveness, caring, altruism), nor all about the negative (anger, jealousy, envy). Rather, family life is a mixture of these emotions and many more, and in this jumble, there is much to be learned.

The texts we read for this discussion demonstrate the tremendous potential of studying emotion in the family. The pieces do not necessarily show us how to study emotion in the family, but rather why we should do so.

Freud and Sedgwick present different approaches to understanding emotion in families. Freud believes we *can* know what we are feeling and more importantly why we are feeling it. Anamnesis is the hallmark of a successful psychoanalysis. Freud is confident both of the process and the outcome, delineating, for example, the three ways repression is operative in transforming sadism into masochism.² To Freud, our affective lives constitute a known universe. As his entire body of work demonstrates, Freud embraces the affective family, finding the roots of later neuroses and pathologies in our earliest relationships. From differences either in temperament or time period, Sedgwick seems more uncertain about our ability to know ourselves, but she is equally interested in emotions and processes and in the affective family.

Even with these different approaches to our affective lives, the texts are more similar than dissimilar. Both writers view the family as the site and source of tremendous emotion, confusion, and identity. In particular, three aspects of the affective family emerge from both readings.

First, both Freud and Sedgwick paint a rich picture of the emotional life of a child. For Freud this is a world of shame, guilt, jealousy, love, and pleasure, especially sexual pleasure.³ Sedgwick, in describing the reaction to her own spankings, talks of "the plural possibilities of sadism, voyeurism, horror, *Schadenfreude*, disgust, or even compassion."⁴ For both, there is a fruitful tension in recognizing these multiple and often conflicting emotions. These are not simplistic depictions of emotion in family life. Freud and Sedgwick embrace the conflict of these emotions, complicating each emotion by stacking it up against others.

Recognizing the multiplicity of emotions, and particularly recognizing the possibility of this complexity in a child, is an important antidote to the tendency to simplify emotion in families, particularly in children. Sedgwick challenges us as the reader not to demonize her parents or overly sympathize with her as a child. Instead, Sedgwick locates her spankings, and the attend-

² See SIGMUND FREUD, "A Child is Being Beaten," *A Contribution to the Study of the Origin of Sexual Perversions*, in FREUD ON WOMEN: A READER 215, 231 (Elisabeth Young-Bruehl ed., 1990).

³ Throughout the text, Freud recognizes and names these emotions. See, e.g., *id.* at 218, 223–27.

⁴ EVE KOSOFKY SEDGWICK, *A Poem is Being Written*, in TENDENCIES 177, 183 (1993).

ant need for power, within a more nuanced family setting. She convincingly claims that she was not an abused child and that “it matters that this narrative is about an attentive, emotionally and intellectually generous matrix of nurturance and pedagogy.”⁵

Second, both readings embrace the theatricality of families and of emotion. Sedgwick refers to the “theater of th[e] family”⁶—an apt metaphor for thinking about the affective family. Although she focuses on the theatricality of the spankings,⁷ as does Freud,⁸ it is the accompanying emotions that make the performances resonate. Whether it is the “high degree of pleasure” Freud sees in the phantasized spanking,⁹ or the shame and rage Sedgwick recalls from her own spankings,¹⁰ the power is in the evoked and evocative emotions.

Understanding the theater of the family is a useful step toward breaking down the separate spheres ideology. Although the family is often conceptualized as a private institution, it has a public, decidedly performative, aspect to it. In one sense, the family performs *in* society, economically by caring for dependents, and expressively by embodying love, fear, desire, and so many other emotions we are often reluctant to locate elsewhere. In another sense, the family performs *for* society. For example, parents know that fathers and mothers at the playground watch and judge the parenting decisions of other parents. Aware of the audience, parents perform for each other. Whether performing in or for society, the family is not private, and in both contexts, emotion is the currency of the performance, making it salient.¹¹

The final aspect of the affective family that I want to mine from these readings is the power imbalance that attends parenting and the emotional response of the child to this imbalance. Freud recognizes violence in this power imbalance, by pure dint of the relative positions of parent and child.¹² Sedgwick picks up on this theme and seems in part trying to reverse it, reclaiming her power as an adult. I read her childhood poetry as an effort to grasp some power. The child Eve presents a tender portrait of a girl striving for some control. Her poem about the stillborn child,¹³ written around age

⁵ *Id.* at 182.

⁶ *Id.* at 178.

⁷ *Id.* at 182–83.

⁸ See FREUD, *supra* note 2, at 234.

⁹ *Id.* at 223.

¹⁰ See SEDGWICK, *supra* note 4, at 182.

¹¹ I intend to explore these twin aspects of the performative family in a full-length law review article.

¹² See FREUD, *supra* note 2, at 218 (“Each of these children was bound to have become aware at one time or another of the superior physical strength of its parents.”).

¹³ *Stillborn Child*:

Crumpled face
On a sea
Of pillowcase.

11, is particularly evocative in this regard—locating death is surely a power move.

Sedgwick further recognizes the child's need for authority when describing her childhood spankings (as well as the lyric poem), referring to "the rhythmic hand whether hard or subtle of authority itself. What child wouldn't be ravenous for dominion in this place?"¹⁴ Here, Sedgwick offers both the child and the reader a sense of power:

Among the powers to be won was the power to brazen, to conceal, to savage, to adorn, or to abstract the body of one's own humiliation; or perhaps most wonderful, to *identify with* it, creating with painful love and care, but in a temporality miraculously compressed by the elegancies of language, the distance across which this body in punishment could be endowed with an aura of meaning and attraction—across which, in short, the *compelled* body could be *chosen*.¹⁵

In identifying the need for power, a power necessary *in relation* to a parent, Sedgwick offers us hope that the child may find at least some power as a child and, with greater certainty, as an adult.

One final quote—I am so moved by her language that I cannot help quoting her writing at length—also explores this theme of power imbalances and the accompanying emotional response. Sedgwick, still talking about poetry and spankings, says "these stigmata of 'decisiveness' in and authority over one's language are recognizable as such by their family resemblance to the power, rage, and assault that parents present to the child with a demand for compulsory misrecognition of them as discretion and love."¹⁶

This demand for misrecognition reminds me of the misrecognition of the separate spheres ideology, that emotion belongs in the family and rationality in the market. To counter this misrecognition, we should not strip both

Greyish skin
Withered not
By age or sin,

Creamy smooth.
Expression—
Angel-aloof.

Burning-red
Hair that feels
Singed and dead.

Eyes that see
Nothing. Void
Of Expression,

They are faced . . .

SEDGWICK, *supra* note 4, at 184–85.

¹⁴ *See id.* at 184.

¹⁵ *Id.*

¹⁶ *Id.* at 187.

the family and the market of emotion. As Frances Olsen says, it is incoherent to talk about a family/state split.¹⁷ It is also incoherent to talk about an affective split. Our affective lives encompass everything we do, not just the people with whom we, in various combinations, have sex, raise children, share homes, and comingle finances.

The curative to the separate spheres ideology, then, is to see both family *and* market as affective sites and then to develop a far more nuanced understanding of the emotions at play. Sedgwick refers to hers as a “project of disentanglement,”¹⁸ and this is what I would like to see us do in family law: disentangle (by identifying, questioning, and understanding) the emotions at play in familial relationships. Families certainly are not always solidaristic and altruistic, but in rejecting these caricatures of families, we should not create another caricature that denies the affective lives of families altogether. Once we see our affective lives as multi-sited, it makes sense to study affect in families and develop a deeper understanding of how emotion operates in familial relationships.

For scholars who explore the many ways the state regulates the family, both directly and indirectly, studying emotion advances this scholarly enterprise. With a more nuanced understanding of the role of emotion in families we can begin to examine how the law exploits and cultivates emotion, and how the law might better account for the complexity and variety of emotions. When the state regulates the family it is necessarily engaging with emotion. But this does not mean that the law properly accounts for emotion or is cognizant of how it is shaping emotion. Indeed, as I have argued elsewhere,¹⁹ family law does acknowledge emotions, but it does so in a particularly narrow and dichotomous way, accounting for simple positive emotions (love) and negative emotions (hate, guilt, anger), but little else. The law can do far more to recognize the complexity of emotions, particularly the cycle of emotions and the drive that many experience to repair harm they may have caused in their relationships.²⁰ This recognition, in turn, opens the door to a different kind of family law, one that emphasizes the role the law can play in piecing relationships back together, where appropriate.

Similarly, by exploring the emotional life of families we can also see how the law exploits emotion. In this regard, Carol Sanger has described the state laws that require a woman seeking an abortion to first view an ultra-

¹⁷ See generally Frances E. Olsen, *The Myth of State Intervention in the Family*, 18 U. MICH. J.L. REFORM 835, 835–36 (1985) (arguing that there is no private family and thus we cannot meaningfully talk about state intervention versus nonintervention because “[a]s long as a state exists and enforces any laws at all, it makes political choices. The state cannot be neutral or remain uninvolved, nor would anyone want the state to do so”).

¹⁸ SEDGWICK, *supra* note 4, at 203 n.17.

¹⁹ Clare Huntington, *Repairing Family Law*, 57 DUKE L.J. 1245 (2008).

²⁰ See generally *id.* (describing the reparative drive that typically follows guilt over negative emotions).

sound of the fetus (or sign a waiver declining to view the ultrasound).²¹ Sanger contends that through these laws, the state seeks to alter the emotional calculus of those facing abortion decisions, while also reinforcing larger social messages about reproductive choices.²² Likewise, in studying emotion in families we can see how the law scripts certain emotions, such as assuming an abusive mother does not love her child and thus requires her to act contrite and loving in a hearing where she seeks to regain custody of her children from the state.

Exposing the uncomfortable reality that the law often tries to manipulate our affective lives creates the possibility that we might use this dynamic for more appealing ends, such as cultivating greater tolerance for family choices and parents falling outside the dominant norm. Instead of glorifying motherhood and assuming all mothers love their children at all times, if the law, or even the social norms surrounding parenthood, embraced parental ambivalence, there might be greater tolerance for those parents who abuse or neglect their children. In other words, if parental ambivalence were the norm, rather than parental saintliness, those who abuse and neglect their children would not be seen as so far off the norm. In short, the challenge is to update the current accounting of emotion, not pretend that either the emotion, or its interface with the law, does not exist.

As these texts demonstrate, without romanticizing the family it is possible to understand the family as a site of tremendous affective activity. I want us to savor the rich visions of affective family life that Freud and Sedgwick have given us, visions that are far from altruistic or solidaristic, but are still rife with emotion. These readings promise much more to come, if we only embrace, rather than resist, the affective family.

²¹ See Carol Sanger, *Seeing and Believing: Mandatory Ultrasound and the Path to a Protected Choice*, 56 UCLA L. REV. 351, 351 (2008).

²² See *id.*