SECTION I
Defining Families

WHAT IS THE FAMILY?

Most of the time when we think of the meanings of family, we think of the social and emotional experiences of family as they relate to us as individuals. Our sense of emotional, social, and material support is intimately woven into our sense of what family should mean. For good or bad, family comprises relationships that are more intimate, emotionally powerful, and enduring than other connections. Family relationships are long-lasting; from birth onward, and even when alienated from family members, we still speak of them as family. We participate in a wider number of activities with family members than with others—eating, sleeping, traveling, illness, fighting—and family members are most often with whom we shape milestones in our lives. And typically, we experience a wider range of emotions with family members than with anyone else—no one can make us more angry, happy, or can hurt us more than our family. Family relationships are indeed unique. Since family is so personal, it seems odd to think of family as also an institution regulated by law and policy.

This book aims to link the ways we experience family with the ways family is organized, defined, and governed as an institution that grants rights and responsibilities. Said differently, family life provides privileges but also creates obligations. Although we do not often recognize it, family members get dozens of benefits simply by being defined and recognized as family. Here are a few: the right to make medical decisions for family members, to automatically inherit property when a family member dies, to gain custody of children after divorce, to file joint tax returns, to access immigration processes, to decide how one’s own children should be educated. At the same time, family life comes with obligations: to provide care to children, to pay child or spousal support, to support aging parents.

Of course, the rights and obligations of family are not absolute. Although parents have choices of how to educate and discipline their children, they must do so within legal requirements that mandate education or define excessive punishment as child abuse. Individuals may choose who to marry, but they do so within state laws that define who is eligible to marry, which may exclude some kinds of relationships. Legal action may result when family members fail to meet their obligations, including garnishing of wages to pay child support or social service intervention in the case of child or elder abuse or neglect. The selection of readings featured in this book aims to give some understanding not only of how families matter personally and interpersonally to the people in them, but also of how families matter to the community in ways that lead to legal regulation of them.
DEFINING FAMILIES

How Should Families Be Defined?

The formal definition of family includes those people who are related through blood (or genetic relationship), marriage, or adoption. This is clearly a fairly narrow definition and is the one used most often in law. However, when we think of who we define as family, we often think in terms of broader criteria. Family friends who are like uncles or aunts, roommates, and best friends who we define as our chosen family, our parents’ long-term romantic partners who helped raise us. Ex-spouses who are still close friends. Foster siblings. Even pets. These definitions reflect a functional definition of family, which raises an obvious question: if we function like a family, are we not family? More generally, we might wonder, why can’t any group that feels like family be recognized as a family?

Admittedly, it is difficult to come up with one definition of family as we see a growing diversity in family forms and relationships. That diversity could support the view that since family is personal, individuals should define for themselves who counts as family. However, because the family is not just a source of personal experience, but is also an institution that distributes privileges and obligations, definitions matter. There are good reasons we should make sure that our definition of family does not just recognize those who want rights, but also recognizes those who want to share responsibilities. For example, we have to decide who should be eligible for health benefits or survivor benefits that come with being a family member. Who should be presumed a decision maker when someone is incapacitated? Who should decide how children should be educated or with what religion they should grow up? The chapters by law professor Martha Minow and communication scholars Lynn Turner and Richard West take up these very questions.

Regulating the Family

Regulation of family life happens on multiple levels. In the United States, most questions of how to define and regulate the family have been left to the states. For example, states pass laws to dictate who can marry—including how old you must be or whether you can marry a cousin. The chapter by gender scholar Nicholas Syrett highlights the continuing presence of child marriage within US state law as an example. Laws about the process of adopting a child are state laws. The federal government may also regulate family life. Most commonly, Congress passes laws that set funding or policy priorities, including requirements for accessing public benefits or guiding states in their own legal processes. For example, in 1978, Congress passed the Indian Child Welfare Act, which established standards that agencies had to meet before children of Native American heritage could be adopted outside of tribal lands and to non-Native families. In 1997, Congress passed the Adoption and Safe Families Act, which set priorities for states and counties to increase the number of children adopted from foster care and gave states funding to meet these goals. In the past few decades, the federal government has taken a larger role in regulating family than it has in the past. Interstate child support enforcement, welfare reform, funding for abstinence-only sex education, marriage promotion education, and family medical leave are examples of federal laws that affect family life.

State laws must be compatible with federal law. They can go further than federal law but cannot contradict or undermine federal law. Federal courts may review state laws to make sure they do not violate the US constitution. Here is one example. In 1992, California passed a state law that said that people who move to California and apply for welfare benefits could only receive the amount of money they would have received in the state where they used to live for the first year they live in California. Since California at the time had the sixth highest level of public assistance benefits in the country, the state argued this change would save them $10.9 million in welfare benefits. Welfare recipients sued arguing this was discriminatory. The US Supreme Court reviewed this case and ruled that the US Constitution’s Fourteenth Amendment protects the right to travel “by allowing citizens to move freely between states, securing the right to be treated equally in all states when visiting, and securing the rights of new citizens to be treated like long-time citizens of a state” (Saenz v. Roe). This state law violated rights guaranteed in the constitution and, thus, could not go into effect.

Family is also regulated in ways that are less obvious. The tax code—both state and federal—defines family and attaches benefits, including tax credits, depending on who is recognized as a member of the family. Building codes in cities or counties may identify certain neighborhoods as residential or as zoned for
single-family homes, or may recognize age requirements for some communities, like ones built for seniors. Counties or cities might require that businesses in their territory provide benefits to unmarried domestic partners. These local laws must also not violate state or federal law and must be constitutional.

Families in Public and Private Life

Most people think of our family life as intensely personal. We also see decisions about family as an expression of our individualism. In fact, this view of family is supported by (and seemingly incompatible with) law and policy. Many of the legal decisions that have shaped family life reference the importance of allowing individuals to pursue their own interests and sense of personal reward. For example, in the 1967 US Supreme Court case of Loving v Virginia, in which the Supreme Court overturned a law that forbid marriage between individuals of different races, the majority decision explained, “The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” (This case is discussed in more detail in Section III.) Similarly, the 2003 US Supreme Court decision of Lawrence v Texas struck down a Texas law that made it a crime for two persons of the same sex to engage in certain intimate sexual conduct. In that decision, the justices highlighted the importance of individual freedom. The decision explained, “Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.” We do not necessarily expect total freedoms, as we each face social pressures, family obligations, and cultural rules within our family—and the families we may join. However, individuality and personal liberty, that is the ability to exercise one’s rights without limitation by the government, are key aspects of what we expect from family life.

As much as family is fundamental to our individual happiness (and sometimes misery), the family also holds benefits for the community beyond the individuals within those families. Where families live, how they treat their children, how they pay taxes, and what benefits they receive are all matters of public concern. While we must be free to exercise liberty, we are never isolated in those freedoms. Communities invest in families and families rely on the community for resources they could not otherwise obtain alone. For example, communities rely on families to produce and raise children who will become workers, service providers, and contributors to social security and other tax-based programs. We want children to be safe and raised well so our communities are safe, productive, and successful. In many less visible ways, communities and companies benefit from the unpaid labor that happens in households. Small daily acts to support household members—from laundering work clothes to cooking meals—all support workers who in turn support the economy.

Because we rely on families to make communities function, communities support families too. For example, communities fund schools, parks, recreation programs, healthcare, and social services. Even individuals who do not have children—or whose children are grown—benefit from the work other families do to raise children and are therefore asked to invest in community resources to benefit other families. For example, homeowners, even those without children, may pay property taxes to support schools. Taxes may support drug treatment programs for those who need them but cannot afford them. Perhaps no one in our family will use those programs, but we accept that our communities are better when those who want treatment can access it. We can think of other examples of similar investments, like in programs for the aging, health insurance for people who have disabilities, or subsidized preschool.

The relationship between families and communities is reciprocal. It would be difficult for individuals in families to accomplish all their goals without community support. Food safety, education, transportation, ramps on sidewalks for strollers or wheelchairs, and traffic lights are all public investments that help families achieve their goals. Some families need help from the state to access nutrition. Others rely on government agencies to inspect restaurants, which makes food safer. Families in turn can contribute to the workforce and the economy, and can more fully participate in making communities better.

Politicizing the Family

The family is both intensely personal and fundamentally public. The result is that the family is subject to political and social debates about what it should be and how it should function. The shapes and meanings
of family are not fixed and have changed over time as a result of political, economic, and social pressures, as the chapter by Maxine Baca Zinn in this section and many others throughout the book show. Social change has also led to and resulted from declines in marriage rates, as Bella DePaulo points out in her chapter. The result is that many family forms, particularly those that violate forms seen as traditional, are portrayed as the result of individual choices and as causing other social problems. Claims about the decline of the family, family immorality, increasing rates of cohabitation, or too much or too little childbearing map on to existing systems of inequality. Accusations most often focus on those whose race, class, gender, ethnicity, immigration status, sexuality, or abilities have limited their access to power and resources in the community. Whether it is single parents, queer families, immigrant parents, mothers with disabilities, fathers who can’t find work in rural communities, or couples choosing not to marry, we often hear claims that by existing as a family, these families cause societal problems. The result is often laws and policies that target certain families, particular family members, or certain behaviors in order to change or punish them. How the family is politicized tracks on to other systems of inequality.

If we agree that policies relating to family should work to improve the lives of family members, and, thus, our communities, we need to consider some core questions when examining laws. We should ask what has been identified as the problem, what are the proposed solutions, who is targeted by the proposed law or policy, and how will the proposal be implemented—and at what monetary and social cost? When laws and policies target those who are already the most vulnerable, and may deliberately or accidentally make their circumstances worse, community members need question whether they should be implemented.

**Overview of this Book**

This book looks closely at the state of the family. I aim to take seriously the issues of how we define family, how we regulate family, and how the experiences of family reflect other systems of inequality. Each section provides a sample of readings that offer an opportunity to think about the different ways people experience family, feel recognized as family, and are regulated as family. The sections also highlight how family has changed over time.

Most of the chapters have been edited from their original form and some citations and discussions of related research that were in the original articles have been removed or abbreviated to make it possible to cover more topics. The citations to the original material are included in this book and readers with additional questions should look to those for more detail or background. The chapters here aim to provide a variety of perspectives to think about the multiple dimensions of the family. This section begins by delving into ways of thinking critically about how we define families and how families have changed over time. The next three sections look at formal and informal regulation of relationships, including dating and courtship, marriage and partnerships, and divorce and dissolutions. The following sections examine reproduction, adoption, families without children, and children in families to explore different family choices and configurations. The remaining sections look closely at motherhood, fatherhood, welfare policy, and aging. By thinking about the complexities of family life, we can begin to critically examine claims that are made about the family and can work toward ensuring our policies support families, which in turn will make our communities better.