**Ram Rivlin - Scholarly Biography**

My main area of research is family law. I primarily use the methodology of “Law and Philosophy,” which focuses on discussions in normative ethics and political philosophy and makes use of the philosophical style of careful and precise argumentation. This approach is not common in family law; much of the scholarly research in the field is now concentrated in the social sciences (under the umbrella of “law and society”). However, I believe that family law is not only an arena for *social* tensions (in the form of oppression based on gender, sexual orientation, or class) but also a realm of *philosophical-theoretical* tensions and questions. These include the tensions between autonomy, obligation, and commitment; the interaction of relational and monetary aspects; the dictates of fairness within the family unit; and the intersection between spousal and parental interests. I am also interested in the way traditional institutions operate and evolve under social change. I thus focus on family structures that combine spousal bonds with coparenting; in other words, what I define as “old” families (though this framework is not necessarily limited to legally married couples, to heterosexual couples, or to biological children). Beyond family law, my research also touches on general questions about voluntariness, coercion, and consent. My work brings philosophical tools to bear on the study of areas of the law that have not traditionally been investigated in that manner, and brings insights to philosophy from fields that philosophers have traditionally ignored. Let me now describe my scholarly work in more detail.

Family Law

With support from a research grant from the GIF Young Scientists program, much of my work has focused on normative aspects of the contractual ordering of familial relations and its normative limits, with a stress on the tradeoffs between relational and financial considerations, on the one hand, and between spousal and parental considerations, on the other. My article “The Puzzle of Intra-Familial Commodification” (published in the *University of Toronto Law Journal* #5), examines the much-discussed problem of commodification — turning personal and intimate goods into a commodity — from a novel angle. The article compares trading babies or brides for money, which are usually seen as wrongful commodifications, with similar exchanges in custody or reconciliation agreements. These cases as well involve the interweaving of parental or spousal relations with financial exchanges, but face much less resentment and criticism, not to mention legal regulation. The article offers new insights into both the centrality of the market pricing mechanism for the general problem of commodification, and the way that familial ties might save intimacy from the “corruption” of monetary exchange.

In “The Morality of Get-Threats: Withholding Divorce as Extortion” (forthcoming in the *International Journal of Constitutional Law* #7), which likewise scrutinizes the norms governing the exchange of considerations in familial agreements, I examine the use of divorce as a bargaining chip. The article relies on normative ethics and criminal law theory to explore the problem of withholding Jewish divorce for bargaining purposes. This problem is usually examined through the lens of Jewish law, or as part of larger political and ideological controversies (such as the subordination of women in religious law, or the liberalization of divorce laws). By contrast, I demonstrate that the problem and the debates that surround it lie in a much broader context, one that relates to the structure of coercion claims and the philosophical explication of extortion. From this fresh perspective, the article provides a new conceptualization of the problem and a novel normative argument for its proper resolution.

In “Fairness in Allocations of Parental Responsibilities” (forthcoming in the *Canadian Journal of Law & Jurisprudence* #9), I extend and deepen my analysis of the norms that govern such exchanges, concentrating on the relation between the allocation of parental time (i.e., custody) and the allocation of matrimonial property or child-support duties. Current law either separates the allocations (apportioning them according to independent standards), or perceives custody as an extra burden justifying compensatory reward in the allocation of property or support. Parents, however, who often interweave these issues in their settlement negotiations, might perceive parental time as a benefit rather than a burden. Should that affect the other beneficial allocations to the noncustodial parent, or would such a view violate the commitment to the principle of the “best interests of the child”? Which kind of exchange in a divorce settlement agreement should therefore be regarded as “fair”? Through philosophical scrutiny, the article also untangles questions about parental interests vis-à-vis children’s rights, and about the relationship between the basic legal norms that should apply to private ordering and the *moral* norm that applies to the contracting parties, thus shedding new light on the normative limits of law.

In collaboration with Shahar Lifshitz, I have recently commenced a new project that focuses on the content of familial agreements. The two major indices of the liberalization of Western family law are the abandonment of fault-based considerations and a permissive approach toward spousal agreements. However, the literature usually neglects possible scenarios in which those trends conflict, such as marital agreements that *incorporate* fault-based considerations, cases in which fault-based considerations affect the contractual ordering (such as mistake or fraud regarding past marital behavior), and so on. In *Bargaining around the Fault Line* (work in progress), we aim to provide a comprehensive account of the conceptual, theoretical, and normative challenges that surround the fault-agreement junction, and attempt to clarify the unique nature of private ordering in familial life.

I believe that the study of law is unique in its ability to combine theoretical questions with practical-doctrinal ones. To this end, I developed a unique course on divorce settlement agreements, taught collaboratively with a practicing lawyer, Shlomit Bekerman, in order to bring together both aspects in devising such agreements. In the same spirit, in “Divorce Settlement Agreement: Towards a Model of Supervised Bargaining” (#6), I relied on my previous theoretical work to propose a novel legal framework for divorce bargaining that bolsters the power of courts to review such agreements. The article received positive feedback from both judges and practitioners.

I believe that the most interesting theoretical problems arise from the need to account for practical questions of the sort raised by the sophistication of private law. Hence, the monetary aspects of familial life are the richest vein for theoretical analysis; such analysis can contribute to real, pressing legal challenges as well as to understanding the nature of spousal and parental bonds and the connection between them. This belief informs another research project, in collaboration with Shahar Lifshitz, on property relations between spouses upon death. In this project, we investigate how the norms of matrimonial property function when the marriage ends in death rather than divorce, and how these norms interact with succession law. Scrutinizing this relatively neglected topic, we expose some overlooked aspects of the theory of marital property law, which has traditionally focused on divorce, as well as advocate a reform in the way that marital property law intersects with the law of succession. Another planned project, in collaboration with Adam Hofri, investigates the effect of family law on private and commercial law by delving into the use and abuse of trusts in the context of property relations between spouses. These areas of interest are also reflected in two seminars I teach — “Contemporary Studies of the Traditional Family” and “Financial Aspects of Family Law” — as well as in my “Advanced Family Law” class (for LLM students).

Religious (Family) Law

My interest in the way traditional institutions function within a changing environment, as well as in the gaps between the moral norms of conduct and the according of legal rights, led me to questions that relate to religious law, which partly governs family law in Israel. Most studies of Jewish family law approach the topic either from an internal, doctrinal point of view or a sociological point of view. By contrast, my approach employs the theoretical tools of general legal theory and jurisprudence to investigate how religious law adapts when facing contemporary challenges. In this fashion, “Religious Norms between Ethics and Law: The Death and Afterlife of Jewish Divorce Law”(*Oxford Journal of Law and Religion,* #4) demonstrates how rabbinic rulings that are often identified with conservative and reactionary circles surprisingly show an internalization of modern legal thinking on the allocation of rights (as insights that follow from law and economics). This marks a paradigm shift in the nature of religious law: from a source of normative guidance to a mechanism of allotting bargaining positions. In *Rav, Dayan, Cohen: Rabbinic Courts and the Agunah Problem* (#8), I offer a typology of religious family law comprising three separate functions: deciding normative-legal questions, providing pastoral care and moral counseling, and executing metaphysical rituals. This typology enables us to ask how religious courts are supposed to function in modern society and sheds new light on the problem of the *agunah* (the “chained wife,” i.e., a wife whose husband will not give her a divorce). In a current work in progress, I apply a similar analysis both to inquire into the regulation of religious adjudication of minorities’ familial matters in Western countries and to explain the relative centrality of religion in contemporary family law overall. This last theme was also the topic of an international workshop I organized (“The Contested Place of Religion in Family Law: A View from the Holy Land”), held at Hebrew University. Additionally, I presented lessons from the Israeli experience on this issue as an invited speaker at the 14th Symposium for European Family Law.

Law and Philosophy

Beyond my work on theoretical aspects of family law, I also apply philosophical analysis of the law to contribute to other areas. “Blackmail, Subjectivity and Culpability” (*Canadian Journal of Law & Jurisprudence,* #2), contributes to the theory of criminal law and to general questions regarding coercion and consent (with implications for contracts, torts, and more). The notorious “paradox of blackmail” (i.e., why one cannot demand something in exchange for not performing a permissible act, like telling a secret) has prompted numerous scholarly articles in both law and philosophy. I argue for a novel solution, which grounds the phenomenon of coercion in the relative responsibility of the parties to the constraints on their choices. In this view, the extent to which consent is transformative—meaning that consent turns an impermissible act into a permissible one—is *distributional*: one should not be able to rely on “consent” that was induced by malicious and blameworthy behavior. In the future, I plan to investigate the nature of wrongly induced consent through an analysis of the case of coercion by a third party. An additional planned project ties my work on coercion and consent to issues relating to the family—such as the capacity of minors to give consent in various contexts—and the relationship between autonomy, coercion, and children’s right to an open future and freedom from indoctrination. Finally, whereas the philosophical analysis of law is a methodology rather than a discipline, in “Reasonable Self-Doubt”(coauthored with Ofer Malcai and forthcoming in *Criminal Law & Philosophy,* #10) we analyze the law of evidence with an eye to contemporary discussions in epistemology about the notion of higher-order evidence. We discuss and categorize cases in which accumulating evidence for a proposition leads to an overall decrease in that proposition’s credibility and point to possible ramifications for evidence law and institutional design.

My interest in investigating the nature of voluntariness and choice in the context of agreements and of coercion claims led to a collaboration with a group of neuroscientists from the California Institute of Technology and other institutions. We evaluated the alleged neuroscientific challenges, which question the role of consciousness in decision making, to the notion of “free will” and to moral and legal responsibility. Our project, supported by a Templeton Foundation grant, focused on exposing the deficiencies of the scientific work that undergirded these challenges (see, e.g., *On Reporting the Onset of the Intention to Move*, #9]. My contribution focused on the conceptual phase of the project and the initial experimental paradigm design. The work identified different neural mechanisms that control deliberate and arbitrary decisions, questioning the generalizability of neuroscientific work that has explored purposeless, unreasoned decisions. This collaboration led me also to develop a unique course in neuroethics (together with Dr. Yoni Pertzov from the Psychology Department), which attracts students from law, philosophy, psychology, and the Center for Brain Sciences.

To conclude, my research attempts to bring insights from philosophy and legal theory to areas that usually are not analyzed through such lenses, thus offering novel approaches to much discussed questions. The combination of abstract philosophical inquiries and a deep attentiveness to practical, down-to-earth legal problems ensures the fruitfulness of this research as well as its importance and relevance to policymakers.