**Siblings in Less Traditional Families:**

**Mapping the Dilemmas**

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1. **Introduction**

Traditional family law has centered on the couple. Its emphasis was on the legal relationship between husband and wife. The law regulated in great detail entry into marriage, as well as exit from it, and the economic relationship between the spouses, particularly when they separated. As shown by June Carbone, it was only later that parent-child relationships became an important and distinct category of family law.[[2]](#footnote-2) This transformation happened, among other reasons, as a consequence of the significance of children in family and social life, and a fundamental transformation in attitudes towards children, including recognition of the need to protect them. These changes found expression in the creation of new laws aimed at providing children with protection, and in amendments and adjustments to existing law, thereby transforming the child into a significant element of family law.[[3]](#footnote-3)

This article aims to draw attention to a third category of family relationships, which is gaining increasing, yet still only partial, recognition in recent years: Sibling relations. As will shortly be made clear, despite its great importance, the sibling relationship cannot be equated legally to the parent-child or the spousal relationship. Nonetheless, as argued by Jill Hasday,[[4]](#footnote-4) William Patton[[5]](#footnote-5) and other scholars who have written about siblinghood in law,[[6]](#footnote-6) these relations still should be recognized and provided with legal protections.[[7]](#footnote-7) The primary reason is the great importance of siblinghood in our lives.

Research by Hasday and by others has explored the role of the law in regulating sibling relationships in families conforming to the heteronormative model (hereafter: traditional families). Topics covered by these studies include the role of sibling relationships in formulating parental care arrangements and responsibilities following divorce, or in other words, custody arrangements,[[8]](#footnote-8) as well as the maintaining of sibling bonds in instances of adoption.[[9]](#footnote-9) This article will touch upon less-traditional families, specifically families created through sperm donations. In such families, we find siblings with a shared genetic load who do not reside in the same household – donor siblings[[10]](#footnote-10) – a relationship discussed at length in the work of Naomi Cahn. Alternately, there are siblings growing up in the same household who do not share a common genetic load, or who are only partially linked genetically. These situations raise new dilemmas regarding sibling relationships and the maintenance of such bonds over time. This article focuses on such siblings.

The first section will deal with the unique aspects of the sibling relationship. It will briefly review the emotional significance of this relationship in the context of one’s life cycle, and present some of its key expressions in sociological and psychological literature. The second section of the article will present a legal overview of sibling relationships. It will discuss trends in the legal treatment of siblings and changes taking place at this point in time, and attempt to uncover the reasons underlying that legal approach taken in the past and that of the present. The following, central section, turns to sibling relationships in less traditional families, particularly those formed with the aid of sperm donations. In such families, I argue, the need to recognize sibling relationship is more acute and the risk of harm to these relations is greater. Following a general discussion of less traditional families, the article will delve into three case studies. These three cases deal with sibling relations created through sperm donations. In two of the cases, sibling relations were created de facto in families headed by two women, based on an emotional bond between the children; in the third case, I discuss a genetic sibling relationship between donor siblings raised in separate families. The differences between these cases makes it possible to distinguish more clearly between the characteristics of each case, but also to uncover and discuss shared dilemmas. The final section will present these dilemmas and suggest preliminary avenues for addressing them. Among others, it will attempt to uncover the significance of different sibling relationships, whether different rights are derived from each type, and whether they should enjoy equal levels of protection. Is the sibling relationship per force dependent on parents, or can there be a sibling relationship without shared parents; and what weight should we ascribe to the parents’ say in the forming of such relationships, or in other words, can parents object to the formation of such a relationship, and to what extent should their objection count.

This article does not purport to provide a complete normative framework for determining the solution to each dilemma or situation regarding sibling relations. As a preliminary study dealing with siblinghood in less traditional families, its aim is to map out the various questions that might arise in certain real-life situations and draw attention to them, to demonstrate the limitations of the existing law and propose a general direction for action, while outlining the distinctions between different types of situations and fundamental dilemmas.

1. **The Significance and Importance of Sibling Relations**
	1. **Sociological Perspectives**

Of all of one’s relationships through life, the sibling relationship is typically the longest one. It is formed at birth (of the second sibling) and ends with the death of one sibling. In most cases, it is longer than the parent-child relationship (which ends, usually, with the death of the parent first) or the conjugal/spousal relationship, which begins at a much later age. In most cases (though not all), the sibling relationship includes cohabitation for a significant period of time, common education and shared life experiences. It extends beyond childhood and adolescence and transforms significantly over the span of decades as the result of various external circumstances and changing life events.[[11]](#footnote-11)

The relationship may include significant elements of sharing and caring: first, the siblings share the care provided by their parents; often they also assume caregiving roles towards one another, both during their childhood and later, during their adult life and even in old age (in accordance with differences in age, gender[[12]](#footnote-12) and personality, dependent on the relevant culture and society[[13]](#footnote-13)); in many case it includes sharing or dividing the burden of caring for elderly parents,[[14]](#footnote-14) especially with the present increase in life expectancy.[[15]](#footnote-15) In addition to caring, siblings also participate in the socialization of their younger siblings, as their agents of socialization, and as such, serve as positive and also negative role models, as will be discussed below in the psychological section.

In contrast with other relationships, which in most cases, combine elements of choice (choosing whether to marry and whom, or deciding to have a child)[[16]](#footnote-16) siblinghood, by definition, never entails a choice. The decision to bring a child into the world is perceived primarily as an autonomous decision made by the parents, thereby forcing siblinghood upon their children, even if it is often seen as being in their best interests. There is no formal possibility of release from the sibling “status,” in contrast with marriage which can be ended through divorce, or parenthood which can be severed by giving a child away for adoption. Siblinghood is an involuntary relationship and siblings cannot free themselves from it in the formal-legal sense.

Nonetheless, over the years, siblings can allow other family ties to shape their relationship, through choice, as a close relationship that includes elements of sharing and/or caring, or as more distant, to the point of complete emotional detachment. In some cases, sibling relations involve love, intimacy, a sense of mutual responsibility or caring, but in other cases (or during different times) can involve enmity, competition and jealousy.[[17]](#footnote-17) Often emotions are mixed.[[18]](#footnote-18) Various external elements can affect the nature of the relationship. For example, a correlation was found between the quality of the relationship and the gender of the siblings (sisters tend to maintain closer relationships with both brothers and sisters), and studies have found that geographical distance and the marital status of the siblings can also predict the level of closeness and intensity of the bond.[[19]](#footnote-19) The quality and the nature of the sibling relationship, it is argued, has an effect on personal welfare and on individual behavior in other realms of life. These findings will be presented in the following section, which deals with insights into siblinghood from psychological research.[[20]](#footnote-20)

Before turning to what we can learn from psychology about sibling relations, however, it should be reiterated that this article’s focus is on less-traditional families. Thus, we must first understand who these siblings are. In traditional families, the question of “who count as siblings” seldom arises, since siblings born to and raised by the same parents are intuitively recognized as siblings; in less traditional families, in contrast, identifying siblings is less intuitive and more complex.

Single-sex families and single-parent families bring children into the world with the aid of artificial methods of procreation, using sperm or egg donors, or surrogacy. Even in heteronormative families, procreation can be similarly aided by third parties – gamete donors and surrogates. Similarly, blended families, where children are born to one parent with a new partner (who might also have children from a previous relationship), complicate and challenge the intuitive definition of siblinghood. With such a variety of family forms, there can be children who are raised together in the same household but have no genetic affinity, or alternately, children can grow up in separate homes, sometimes without even knowing each other or knowing of one another’s existence, despite their genetic affinity.

Less traditional families create different kinds of sibling affinity. In some, the affinity is strictly emotional, where relational siblings are made through cohabitation and care by the same parental figures. In others, an emotional affinity exists alongside a genetic affinity to a common parent (as in second marriage families, which had additional children) or a genetic affinity to a party external to the family unit (for example, when two children are conceived with the aid of the same sperm donor). In other cases, the affinity remains solely genetic, without any emotional or care bond, as when children from a common gamete donor are born to separate families. In such cases, they are ‘donor siblings.’ This article will attempt to address this range of sibling relationships and outline distinct normative approaches to each.

* 1. **Psychological Perspectives**

A review of psychological research literature reveals two interesting facts. First, that sibling relations received very little scholarly attention until recently, and second, that research has focused on the negative effects of the sibling relationship. Relevant research began flourishing in the past two decades, especially the last decade. [[21]](#footnote-21) White and Riedmann note in their 1992 article that studies of siblings are few and marginal, and in any case, based on small study groups.[[22]](#footnote-22) If there were studies of siblings, these examined the negative influences siblings had on each other, rather than focusing on the positive effects of such relationships: their beneficial and supportive influences. This narrow perspective and the limited scope of existing research were highlighted in the introduction to the groundbreaking volume devoted to sibling relations in the therapeutic context from 2010,[[23]](#footnote-23) as well as in a 2013 review published in the multidisciplinary journal *Adolescent Health.*[[24]](#footnote-24)Both essays note an emerging transformation. In recent years sibling relations have received much more attention,[[25]](#footnote-25) and the nature of these treatments has changed as well: Alongside an extensive debate on the pathological affects siblings have on one another,[[26]](#footnote-26) the positive aspects of the sibling relationship have also been studied and highlighted.

Thus, for example, studies have looked at the role of older siblings in the lives of their younger siblings as caregivers, role models, mentors, teachers and playmates.[[27]](#footnote-27) Such studies have found that in certain circumstances siblings can compensate for the absence or emotional distance of parents.[[28]](#footnote-28) Positive sibling bonds have been found to be predictive of greater emotional and social understanding, cognitive abilities, moral sensitivity and psychological ability to adapt.[[29]](#footnote-29) Nurturing the sibling bond led to positive behavioral outcomes (such as self-control and social skills), as well as a positive effect on academic accomplishments.[[30]](#footnote-30) Research has shown that sibling support can serve as a barrier/inhibitor to various risk factors such as poverty,[[31]](#footnote-31) and that it had a cushioning effect during family crises and stressful life events.[[32]](#footnote-32) It is important to emphasize that, because of the long endurance of the sibling relationship, it is important not just in childhood, but also throughout adulthood and old age.[[33]](#footnote-33) The adult sibling bond has the potential to provide substantial emotional support.[[34]](#footnote-34) In sum, it is now clear that siblinghood has a significant impact on the development and behavior of the individual, and that sibling relations are of great importance.[[35]](#footnote-35)

A specific sub-field of psychological research focuses on placement in foster and adoptive families. It has produced data demonstrating the positive effects of joint placement, both in terms of behavior in the foster home and behavior outside, in contexts such as school (reduced behavioral problems and improved academic achievements).[[36]](#footnote-36) Joint placement of siblings can lead to better relationships with peers, emotional wellbeing[[37]](#footnote-37) and resilience.[[38]](#footnote-38) On the other hand, a conflictual relationship between siblings, together with other pathologies, particularly those derived from shared traumatic experiences and crises, can be a risk factor.[[39]](#footnote-39) Thus, joint placement of siblings is not right or potentially beneficial in all cases. As far as it is appropriate, it does apparently hold the potential to contribute to the siblings’ wellbeing.[[40]](#footnote-40)

Another branch of psychological research focuses on the sibling relationship during and following divorce. Although most researchers agree that the relationship is affected by divorce and its process, that is, by the intensity and duration of the conflict,[[41]](#footnote-41) they are less agreed on the nature of this affect.[[42]](#footnote-42) Psychological research suggests, reasonably at least, that the sibling relationship should be maintained during and after the divorce, in order to protect the sibling support system and defend the children against the negative effects of the dissolution of the family unit, the parental conflicts, and sometimes, the absence of one of the parents.[[43]](#footnote-43) Kluger has argued that split custody arrangements exacerbate the trauma children experience during a divorce: the pain of separation from the parent who did not get custody will be even worse if it is compounded by separation from a sibling as well. If the siblings were to stay together, they could comfort one another and the pain of the divorce will be easier to bear, since a joint trauma is usually a lesser trauma.[[44]](#footnote-44) Various studies reveal, among other things, that split custody denies children important sibling support and comfort, leads to the development of unhealthy alliances between the child and the parent receiving custody, and harms the development of sibling relationships by denying the high level of physical and emotional interaction they require.[[45]](#footnote-45)

Although the overwhelming majority of psychological studies have investigated the sibling relationship in the context of traditional families, at least part of this scholarship should also be applicable to less traditional families. As long as the siblings live in the same household and maintain a sibling relationship, particularly one that began in infancy, it is not unreasonable to assume that the relationship should contain similar elements to those found in the sibling relationships by the studies discussed above.[[46]](#footnote-46) A survey of the literature to date regarding families where stepsiblings (those without genetic affinity) and halfsiblings (sharing one genetic parent) live together reveals a range of findings.[[47]](#footnote-47) Some of this research, for example, found no difference in the degree of affection felt by full siblings in traditional families and the affection felt by siblings in blended families.[[48]](#footnote-48) Even a study focusing on families containing both adopted and biological children did not find differences in their sibling relationships.[[49]](#footnote-49) One study, however, found greater complexity in the relationships of halfsiblings, stemming, it is argued, from the asymmetry in their links to their parents: one has a double genetic affinity, while the other has a genetic affinity to only one of the parents. Such asymmetry could cause jealousy and competition.[[50]](#footnote-50) However, this particular situation is ascribed in part to the fact that these were second families, formed following a divorce, rather than families that were shaped like that originally. According to this study, at least some of the characteristics are explained by the resistance children from a previous marriage feel toward the very decision to establish a new family.[[51]](#footnote-51)

The relationships of donor siblings should be fundamentally different from those of siblings growing up in the same household. This article refers to their relationship at the point in time where there is no sibling connection (or any other kind of relationship) between them, but desire and curiosity motivates them to embark on a journey in search of one another. Some of the research that has accumulated thus far examined the motivations of mothers of children conceived from a sperm donation to search for their own children’s donor siblings. The study revealed the motives for such a search – curiosity and desire for information – but also the desire to create familial bonds between the siblings.[[52]](#footnote-52) A study of donor siblings themselves found similar motives. The overwhelming majority of those who sought out their siblings reported curiosity as a motive for their search and many indicated it was their primary motivation.[[53]](#footnote-53) Many reported the desire to create a family bond, a desire that was stronger in children of single-parent families.[[54]](#footnote-54) Other studies reported that the contact did not end after a single meeting, and that an ongoing relationship was formed, with meetings as frequent as monthly.[[55]](#footnote-55) The great majority reported a high level of satisfaction from the contact and relationship formed with their donor siblings, and some reported an instant connection, or as one subject said: “It is like we have known each other all our lives.”[[56]](#footnote-56)

1. **Siblings in Family Law: General Trends**

The investigation in this article of sibling relationships in law and the discussion of the entailed dilemmas focuses on under-age children and on the non-economic aspects of their relationships, with an occasional foray into adulthood in highly relevant contexts. In fact, the focus of discussion is not the array of rights and obligations between the siblings themselves, but rather the question of protecting their relationship or ensuring its future realization vis-a-vis others – mostly the state and its authorities – courts and child protective services and also the parents.

The primary focus of interest in the relations of young siblings has to do with maintaining those relationships in crisis situations and during the dissolution of the family unit. Two key issues are addressed in numerous legal systems, including those of various U.S. states. The first has to do with ensuring and preserving the sibling relationship after their parents have separated, in the context of custody arrangements. The other relates to maintaining a sibling relationship following adoption, or placement in foster homes and boarding schools. Additional issues arise in related areas, as in, for example, abduction to a foreign country by one of the parents in the context of a dispute between the parents; or in the case of adoption, when one of the siblings searches for the others many years later. As noted in the introduction, these subjects have been studied by Hasday and others, and will be referred to only briefly in this article.

An examination of the contexts in which questions surrounding sibling relations arise in traditional families reveals the relative weakness of this relationship in the legal sense.[[57]](#footnote-57) This relationship, which is taken for granted in “normal” families where the family functions as a single integrated unit, is not fully protected when the family breaks up. In certain contexts, the relationships receive no legal consideration at all, while in others they are “present absentees,” in the sense that the law implicitly recognizes their sibling status, their rights and the need to protect their interests, but this recognition is barely expressed and is perceived as “self-evident.”[[58]](#footnote-58)

One explanation for this silence might be the former confusion (which still persists) between parental and sibling relations. When children were first recognized legally, parent-child relations were intertwined with the parents’ relationship as a couple, and were addressed as part of the regulation of that relationship. These were, thus, “mediated” relationships rather than independent ones.[[59]](#footnote-59) In other words, the law did not ignore these relationships, but it did not bestow upon them an independent status and did not regulate them separately.[[60]](#footnote-60) The need to regulate them independently was not prioritized, among other reasons, because there was an overlap or correlation between the interest in maintaining the parent-child bond and this interest, as far as the siblings are concerned. There was rarely a sibling relationship that was not the result of common parentage, and thus siblinghood and parentage were interrelated. Siblings had common parents (or at least one parent in common) and, therefore, the regulation of sibling relations was part of the legally recognized parent-child relationship and drew primarily on parental rights.[[61]](#footnote-61) This was particularly true in the key issue of custody. Custody arrangements that safeguard the relations between parents and their children, also de facto protected the relationships amongst the children themselves. Complicated issues did not come up in the shaping of custody arrangements, since these arrangements usually had a single format: maternal custody of all the children and visitation rights for the father. In these circumstances the sibling relationship was ensured in any case. However, with transformations in the division of labor in the traditional family, leading to a growing paternal participation in childcare; the recognition of the father as a caregiver even after separation; and the increased variation in family structures that will be discussed below, there is no longer a self-evident correlation between parental relations and sibling relations. This social transformation requires legal transformations, which are now slowly taking shape.

Another possible reason that the law traditionally, as noted, did not formally recognize sibling relationships, could be the way these relationships are formed and their internal array of rights and obligations. As noted, siblinghood is the inevitable result of the decisions and actions of others. Siblings do not elect to become siblings and cannot voluntarily leave that relationship. This feature could explain the law’s reluctance to place a legal responsibility on siblings. Thus, for example, economic responsibilities toward one another, such as alimony, are undeveloped.[[62]](#footnote-62) It is possible that this basic legal position refraining from defining siblinghood as a status entailing positive legal obligations has influenced the shaping of this relationship as an extralegal one, thereby also affecting other aspects of the relationship – those having to do with maintaining it – discussed in this article. In other words, it might be that the emotional bond between siblings enjoys limited legal protection because the law does not recognize siblinghood as a fully-fledged legal status and does not deal with it in the legal contexts of other family relationships.

All the same, changes over time reveal that the sibling relationship is receiving greater attention, as well as certain reinforcement by the laws and policies of relevant authorities. Scholarly literature is also increasingly interested in these relations.[[63]](#footnote-63) There seem to be two reasons for this transformation, which, it must be noted, is still in its infancy: First, it accords with the overall changes in the general social and legal treatment of children and their status in the family. The traditional position relegated children to the margins of society and law, and viewed family law primarily as meant to address the relationship between spouses,[[64]](#footnote-64) and later also their relationship with one another vis-à-vis their children. This perspective is gradually changing. For some time now, children have been given more significant attention in academic discourse, the legal sphere and in social reality. This transformation, it seems, has not overlooked sibling relationships, and in recent decades they are drawing increasing attention, whether as a separate category, or as part of a recognition of their relationships with other significant persons.[[65]](#footnote-65) The discourse that followed the Troxel verdict on relationships with grandparents[[66]](#footnote-66) has repercussions for the sibling relationship as well.[[67]](#footnote-67)

Furthermore, this transformation appears to be taking place in parallel to changes in other fields of research, and might even be influenced by those changes. Accordingly, in the past there was no professional-scholarly recognition of the importance of siblinghood to the welfare and development of children, and thus, no apparent legal reason to recognize and defend it. However, with the above noted changes in psychological research, which began in the last two decades to examine this relationship more extensively and significantly, and highlight its positive elements, the law appears to be changing as well. The greater the emphasis on child welfare in general legal discourse and the greater the role played by psychology in shaping child custody verdicts specifically,[[68]](#footnote-68) combined with growing recognition of the psychological significance of siblinghood, indicate possibly that this relationship is beginning to be recognized as an element deserving legal protection. Although the link between psychological and legal fields in this sense appear self-evident,[[69]](#footnote-69) it is possible that the increasing recognition of the importance of sibling relations in the legal world is taking place in parallel to and independently of the aforementioned recognition in the world of psychology. In either case, the transformation is apparent and highly significant.

1. **Siblinghood in Less Traditional Families**

**4.1 Overview**

In traditional families, a mother bears children who inherit their genes from her and her partner. The children are defined as full biological siblings, and have a genetic affinity with each other and with their two parents. They are born into the same household and are cared for by the same parents, and therefore, in principle, form significant emotional bonds, as described above. The formation of the sibling relationship requires being born to the same parents and living together in the same household. Their definition as siblings is beyond questioning; there is both a genetic affinity and an emotional bond, and their “status as siblings” is obvious and recognized. The maintenance of their relationship over time, even in the case of their parents’ separation, is derived, as noted, from the arrangements made by the parents and the protection of the relationship to them.

The need to recognize siblinghood as separate legal category and the need to assign that category protections, has become more apparent in a reality where family units are increasingly varied and the types of affinity between children are transforming.[[70]](#footnote-70) The range of families typically found now in contemporary Western society challenges the intuitive definitions of siblinghood. For example, children may grow up in the same household, without having any genetic affinity to one another, or alternately, grow up in separate homes, sometimes without even knowing one another, despite a genetic affinity. Under such circumstances, sibling affinities (of various kinds) can exist independently of parental mediation or links. That is, two children might be siblings without sharing parents psychologically, or without having genetic parents in common. Without shared parenting, the interests of the children to remain in contact with one another can “slip between the cracks” and fail to receive recognition by the existing law. A recognition of these interests and their protection entails explicit recognition of sibling relations.

This reality would seem to beg a preliminary discussion of the definition of siblinghood; of the questions “what is siblinghood” or “who are the siblings” that are entitled to be included under this distinct category and receive the said protection. As noted, less traditional families, such as those created with the aid of procreative technologies, but also blended families, create sibling affinities of different kinds. In some the affinity is solely emotional, and relational siblings are created through shared living and care by the same parental figures; in others the emotional affinity is accompanied by a genetic affinity to one common parent or exists alongside a genetic affinity to a shared gamete donor. In others the affinity is solely genetic, as in the case of children born from a common gamete donor into separate families. These are donor siblings who do not know one another a priori.

The uniqueness of the sibling relationship – the fact that it is not a “legal status” that entails a given set of rights and obligations, and the fact that there is no registry of siblinghood – enables, as I see it, avoiding the necessity of precisely defining the criteria for identification of siblings. The variety in family forms characteristic of our times, however, requires a close examination of the range of sibling affinities and the existing interests in protecting them. It is reasonable to expect that the stronger the affinity between two siblings (the children whose siblinghood is being examined), containing both genetic-biological components and emotional components, the greater the protection it should enjoy. It may even be argued, I believe, that an emotional sibling bond originating in a shared life in the same family unit, is worthy of greater protection than a purely genetic bond that has no emotional aspects. All the same, I wish to argue that even a sibling relationship founded exclusively on a genetic affinity and lacking any emotional affinity created through living together is deserving of protection, even if less so. This relationship is not insignificant. The prominence of genetics in western culture,[[71]](#footnote-71) the emotional significance ascribed to genetic origins, and to elements of similarity and continuity, all justify legal recognition of the significance of this relationship as well, even if it is only in order to create the conditions that will allow the development of an emotional bond.[[72]](#footnote-72)

In the following sections, I discuss three test cases that emerge following conception with the aid of a sperm donation. The dilemmas that arise out of the first two situations are similar, while the third one is inherently different. The detailed discussion that follows will look into the distinctions between the types of bonds created between siblings, including half siblings, relational siblings, and donor siblings, as well the interests formed by these bonds and the appropriate protection they need. Nonetheless, it is important to reiterate that this discussion does not purport to exhaust the issue of sibling relationships in less traditional families, but rather, to raise the questions emerging in this field’s early stages of formation.

**4.2 Siblinghood in women-led families**

For this discussion I have selected two test cases. Both involve children born into families headed by two mothers. In both cases, conception was made possible by the use of a sperm donation from a sperm bank, with no involvement of the father or legal recognition of him as a parent. In both cases, the identity of the parents of each of the children is not the same, or in other words, the children have at least one parent in common (genetic or caregiver), but also one who is not shared. The legal status of the children vis-à-vis one of their mothers (the partner of the birth and legal mother) has not been settled, and in the case of separation, a dispute arises over the continued care of the children and the protection of the sibling relationship.[[73]](#footnote-73) In order to facilitate the discussion, some of the central characters are given names. These names are arbitrary and have nothing to do with reality.

**4.2.1 Test case one: Relational siblings**

In this first case, two women have been in a long-term relationship for many years and during which they have two children. The first women (let’s call her Sarah) conceives via sperm donation and delivers a baby girl. Then, two years later, her partner, Karen, also conceives via sperm donation and delivers another baby girl. They do not regulate their formal parental status regarding each other’s biological child (either because the law does not allow it or because they do not think it is necessary).[[74]](#footnote-74) The girls are being raised together by the two, with Sarah and Karen sharing parental responsibilities and care.

When the older daughter is 6 years old, Sarah and Karen separate. Sarah wants to keep her parental role, not only for her biological and legal child, but also with respect to Karen’s daughter, who she views as her own child as well. Her former partner, Karen, in contrast, prefers to disengage completely and refuses to let her daughter remain in touch with Sarah. In a possible alternative of this scenario, both women wish to sever all connections – Sarah to Karen’s child, and Karen to Sarah’s child - and to split into two households and two separate families. What can the legal system offer to their daughters, girls who have functioned and experienced life as siblings from the day they were born?

It is hard to dispute the fact that these are two siblings. After all, even if they do not share a genetic affinity, they grew up together sharing a life experience that creates siblinghood. They were born into the same family, with the intention and desire that they be part of the foundations of that family and, it is assumed, live together as a family throughout their life cycle. The fact that their mothers separated (which could happen in every family) should not dictate the severing of the relationship between them. Even if were possible to theoretically justify their separation from a parental figure who raised them together with their birth mother (and it cannot be justified in my opinion), the state should at least protect their relationship to one another. The state must create a framework to ensure the protection of the sibling relationship and the courts must rule to protect it, similarly to the protection of the sibling relationship in “normal” families.

It is interesting to note that in some cases that are similar to this one, the women were assisted by the same donor in conceiving their children, and thus, the children also share a genetic affiliation and a genetic progenitor. The question then arises, if the system provides another solution for the siblings in this case, does it matter that they also have a genetic affinity? One would assume that the system will feel more obliged to find a proper solution that will safeguard the siblings’ relationship in such a case, although in my opinion the genetic affiliation (or its absence) should not make a difference. It is the emotional aspect of their relationship that should be the decisive factor.

It can be argued that this situation is not unique to families led by a pair of women. Heterosexual couples might also decide in principle to “divide” their shared children between them, so that one sibling is placed with the mother’s household and the other with the father’s, thereby severing (completely or partially) the bond between them. If this was the result of an agreement that the courts did not participate in, no one, in theory, would know of the situation and act to protect the sibling bond. However, if the case were brought before the courts (for example, as part of a process of endorsing the agreement, or if one of the parents changed their minds), the courts might intervene and attempt to prevent the said separation. Nevertheless, in contrast to a heterosexual family where parenthood is automatically recognized from birth, in a single-sex family, where there is no recognition of parental relations, the courts might endorse the couple’s separation agreement without interfering in its content and without acting to safeguard a sibling relationship that is not recognized by the law.[[75]](#footnote-75) This is also true in the case of second families, when a couple brings children from previous relationships into the same household. The children, who grow up together in the same household for significant number of years, lack a biological or formal legal connection, and might find themselves in a similar situation when the couple separates later on.[[76]](#footnote-76)

As noted, our aim here is not to exhaust the discussion of all these questions. Each one of these issues deserves independent attention, and the goal here is merely to raise these issues so that they are given due consideration during the shaping of judicial and legislative rulings, and with the hope of stimulating the relevant scholarly discussion.

**4.2.2 Test case two: Can siblinghood create parenthood?**

In the second case (again dealing with the family created by a same-sex female couple), one of the women (Kim) cannot become pregnant due to infertility. The women decide to have children through the assistance of a sperm donation, with only one of them (Diane) carrying the babies on behalf of their joint family. The first child born is raised together, sharing care and parental responsibilities. After four years they decide to have another baby in the same way. In the meantime, they regulate Kim’s parental status with the first child by court order (parentage judgment or second parent adoption).[[77]](#footnote-77) But, unfortunately, they separate a few weeks before Diane gives birth to their second child and before regulating Kim’s status as his legal parent. Diane, the biological mother, refuses to allow Kim see the baby and to form a bond with him, let alone to formalize her parental status. Kim subsequently petitions the court for visiting rights.[[78]](#footnote-78)

This set of circumstances leads to the question whether it is worth taking into consideration the status of the siblings, their mutual affinity and their interest in preserving the bond between them, as part of the deliberations over a woman’s petition for visiting rights and a connection to the child born to a former partner.

Although the question of the sibling connection is less crucial in this case as compared to the first one since, even if Kim’s motherhood is not recognized, and even if her rights to visit and see the second child are unrecognized, the siblings’ interest in a connection is not overlooked completely. After all, this connection is guaranteed, at least partially, through Diane’s motherhood, during the times and days that the first child is in her care.

Nonetheless, it is obvious that splitting the sibling in terms of their legal status, by recognizing the first as the legal child of both Diane and Kim and the second only as Diane’s, is far from optimal in all that concerns the sibling relationship between them. The distinctions in the status of the mothers, and certainly failure to recognize Kim’s rights to a relationship with the second child, will at the very least mean distinct custody arrangements for each child, and in extreme circumstances may even lead to a severing of the connection between them. Thus, for example, if Diane is declared unfit to have joint custody of the first child and thus sole custody is ruled for Kim; or under the tragic circumstances of Diane’s death. In the first case, Kim would have custody of the older child, while the younger one would remain with Diane or be taken away, and the link between them might be severed completely. If Diane were to die, the older child would remain in Kim’s custody while the younger would most probably be transferred to the custody of third party. In such cases the connection between the siblings could be severed or severely curtailed.[[79]](#footnote-79)

To this complex situation we must add the specific nature of the sibling relationship at the point in time in which the family breaks up. In contrast to the first case presented above, where the siblings were raised in the same household from birth and cared for by the same parental figures throughout their childhood, and thus the interest in protecting the sibling bond is intuitive, in this second case, despite the fact that the children share common genes (at least Diane’s, and perhaps also the genes of the common sperm donor), the family break-up occurred prior to the second child’s birth, before concrete sibling bonds were formed. All the same, it is impossible to overlook the emotional significance of the sibling bond for the older child already at this moment. This child, one may assume, is aware of the pregnancy and expecting the birth. As far as he is concerned, he has already begun establishing a sibling relationship with the child who will be or was just born. Even if the relationship is not mutual or concrete yet, its emotional significance is not dismissible.

It is worth noting that recognition of the importance of the sibling bond under similar circumstance led in a case outside of the U.S. to recognition of a former spouse’s petition to have a relationship with a newborn baby.[[80]](#footnote-80) In this case, the family court decided to recognize the former partner’s claim for visitation with the second child, based on the children’s “best interest” and based upon their siblinghood. Note that the court did not question whether there is, or should be, a sibling bond between the children, given that they did not yet have the opportunity to establish a meaningful relationship, but rather understood that the relationship would be generated through their shared genetic heritage and common birth mother, and from this it was willing to draw the conclusion that the woman who did not give birth to the child, did not share a genetic connection and did not yet form a relationship with the it, is nonetheless in a position to enjoy visitation rights. The court did not mention whether the children share the same sperm donor, but in any event, a semi-parental status was granted based on the interest of the **siblings** to have the same familial narrative and symmetrical relationships.

Although clearly such a ruling would not have been given in the U.S., where the legal parent’s rights are a significant barrier to recognition of additional parents and recognition of other people’s visitation or guardianship rights, it is nonetheless interesting to consider siblinghood as having implications for the shaping of parental affinity.

* + 1. **Case study three: Tracing siblings born from a common sperm donor**

The third case, which features prominently in the work of Naomi Cahn, deals with children who are conceived using the sperm of a common donor, but raised in separate families that have no a priori relationship to one another.[[81]](#footnote-81) These children, who are donor siblings, might decide to search for one another. This case reveals their interest in finding their donor siblings, rooted in the desire to complete missing information and acquire a fuller picture of their genetic heritage, and well as possibly create a personal connection, a friendship or even a family bond.[[82]](#footnote-82) This interest exists when the sperm donation is anonymous, but also when information about the donor is available.[[83]](#footnote-83)

Today, such interest is not fully recognized legally and the question of such offspring’s access to information is largely shaped in private by the parents.[[84]](#footnote-84) Parents can select an anonymous or identified sperm donation, in a track that allows children to receive identifying information about their siblings or not. In the US, in most cases, sperm banks do not provide information about siblings, whether general or specific,[[85]](#footnote-85) and thus, in such cases, the offspring have no professional recourse and no one to turn to for help in locating one another. Even if two genetic siblings wish to meet one another, they have no means of doing so formally.

One might argue that such cases have nothing to do with siblinghood. The emphasis on the emotional bond, on siblinghood as the result of intimacy, care in the same household by shared parents and as the result of shared education and life experiences, is indeed appropriate and justified. These elements form the foundation of familial relationships. Yet, all the same, despite the fact that genetic affinity is not all (and should not be all), it still is an important cornerstone of familial bonds.[[86]](#footnote-86) It is impossible to ignore the significance of genetic origin as an element of one’s consciousness, because of the role genetics play in Western culture.

There are two types of interest in information about one’s genetic siblings: one is a desire for general information, but first and foremost, discovering whether there are any genetic siblings and how many; the other is the desire for identifying information. The search for identifying data might be grounded in a specific interest (such as avoiding romantic involvement with a sibling), or, as noted, the attempt to establish a personal relationship, be it a friendly interpersonal connection or a familial connection with a sibling. The identifying data, which makes it possible to locate siblings, can thus form the foundations for a future relationship.[[87]](#footnote-87)

Clearly, in the age of social networks[[88]](#footnote-88) and of voluntary genetic databases such as 23 and Me and My Heritage, there are alternative avenues for searching. However, these avenues are not regulated by law, and it is doubtful whether they properly protect the interests of all relevant parties. The expanding access to data means that in practice it is possible to circumvent restrictions meant to preserve anonymity.[[89]](#footnote-89) The protection of family privacy – both the mothers using a sperm donation and the rest of their family members – requires that general information, and even more specific identifying data, be provided through a regulated framework that is mediated by sperm banks or other professionals.

1. **Siblinghood in less traditional families: Questions**

Before concluding, I would like to comment on some of the questions raised by the above three test cases; some of these were answered along the way, while others remain open. It is beyond the scope of this article to answer all of these questions (and I am not sure that proper answers exist for all of them at this point in time), but they can (and should) be addressed in future research.

The first question is how should we define the sibling relationship? Or to put it differently, under what circumstances should we recognize two children as siblings?

In the spirit of the present, when there is a push to avoid a single strict definition of family relations (including parenthood and couples), and in light of the fact that siblinghood is not a distinct status entailing rights and obligations, there is no need (and indeed it would not be right) to draw a strict definition of siblinghood. As we have shown in this article, siblinghood can exist with or without a genetic component, with or without shared care by a common parent. However, at least one of these conditions must exist. The emotional bond – whether it is a bond that has already been formed, or an initial, imaginary or potential connection – is of central importance and constitutes the heart of the recognition of siblingship and its legal consequences.

Assuming we have successfully answered the question of who are defined as siblings, the next question that arises is: what are the legal consequences of being recognized as siblings? And consequently, we must also ask: is siblinghood a fixed and defined legal structure, which must always confer the same rights and protections, or can we speak of different kinds of siblinghood that deserve different rights and different levels of protection? For instance, do emotional siblings who also share a genetic connection deserve more protection than emotional siblings who do not share a genetic connection (when both were raised by the same parental figures in the same household for a significant period of time)?

As was reiterated several times in this paper, I believe that the key element of siblinghood that confers legal protection upon siblings is the emotional-care bond. However, I have also indicated that genetics have a real significance. The importance of genetics was emphasized in relation to donor siblings, where it establishes the motivation to find one’s siblings and the recognition of their interest in identifying one another. In the case presented here, shared genetics add weight to the sought-after recognition, even if it is important to allow for protection of a relationship based on actual shared family life experience. The significance of genetics might be greater in borderline cases, when the emotional-caring bond has not existed for many years. In any case, this article does not claim to define precisely the necessary conditions or details of arrangements, but rather to indicate the appropriate general direction.

Yet another question raised during the discussion of the above test cases is: can siblings be recognized as siblings without having mutual parents? And framed more generally: what is the connection between parenthood and siblinghood? Can we separate them?

In traditional families, siblinghood is derived from parenthood. Siblings are siblings because they were born to the same parents and were raised at the same house. The siblings’ relationship was to a great extent recognized legally through the parental connection. For instance, in custody and visitation arrangements, their connection was assured as part of their parents’ rights, and to some extent this was so also in the case of adoption, since the siblings’ connection was maintained as a byproduct of their connection with their parents. In the case of less traditional families, as shown by the test cases, it seems that siblinghood may evolve, de facto, without (formal) mutual parent/s.

On the one hand, recognizing siblings who do not share common parents, or recognizing siblings separately from their parents’ status is, without a doubt, another step in the fragmentation of the family that began during the last century as part of the separation of marriage from parenthood and as part of granting children individual rights independent from their parents, sometimes even contradicting their parents’ rights. On the other hand, this fragmentation does not lead to the disappearance of the family, but rather to its revival and regeneration. New forms of families are being created, new familial relations are being woven. This may not only be the creation of new relations, but also the recreation of old relations in a novel way.

In more traditional families, parenthood creates siblinghood. The question is to what extent siblinghood can create parenthood? Let’s think about the second case presented here. As described, two women separated a short time before the delivery of the second child, already having one four-year-old child who was legally adopted by the former-partner. In a similar case, a court outside of American jurisdiction decided to recognize the ex-partner’s claim for visitation rights with the second child, and de-facto granted her parental rights based on the children’s “best interests” and based upon their siblinghood. Note that the court understood that the relationship between the separated parents with respect to one child will generate siblinghood with respect to the other child and, from that, drew the conclusion that the woman who did not give birth to, did not share a genetic connection with and did not yet form a concrete relationship with the child (but nevertheless had the intention to be his mother) is in a position to enjoy parental rights. The semi-parental status was granted also based on the interest of the **siblings** to have the same familial narrative and symmetrical relationships.

A final question: Can we recognize and protect the connection between siblings despite the objections of their respective parents? I believe we can say, preliminarily, that even if siblings without mutual parents can be recognized, their relations (as siblings) are part of a larger web of relationships from which they should not be detached. Families form a complex and delicate fabric of interactions and relations, and we have to deal with them with the necessary sensitivity. As we learn from relational theory, the individual is not an isolated atom.[[90]](#footnote-90) In the same way, the sibling relationship is not an isolated relationship, but rather one relationship within a network of multiple relationships. This means we cannot disregard the position of the parents (unless they do not act as parents, as the case of sperm donors). A conflict may arise and a solution to it must be found. The solution cannot ignore the impact of the future sibling relationship on other relationships and must also provide answers to the underlying fear of “family fragmentation.” Giving voice and legal recognition to siblinghood does not automatically entail bestowing upon this status a veto power or preference over all other relationships.[[91]](#footnote-91)

1. **Concluding Remarks**

Modern families and the artificial reproductive technologies they use, create new situations which challenge family law. Although family law has established doctrines to tackle new situations, like the best interest of the child, those situations may contradict some basic principles and common insights we have in this area.[[92]](#footnote-92)

It used to be the case that siblinghood got its protection (sometime too limited, as shown by Hasday) through the parents and their right to establish and secure relations with their children. Nowadays, when siblinghood may be formed independently of parenthood, and sometimes even of couplehood, we need to look at it separately.

The three cases presented in this article are each different. Although all are consequences of having children with the aid of a sperm donation, each case entails a different kind of siblinghood: some are future potential relations that have yet to come into being, while others are established at birth. The interests underlying each are also different, among other reasons, because of the types of relationships between the siblings. In the first case, the emotional bond is most important, based on the intimacy formed between children sharing a common life; in the second case, these were potential relations that should have developed, but were cut short by the separation of the mothers prior to their actual emotional establishment; the third case examines a mysterious and perhaps even abstract genetic affinity, which gives rise to the desire to gain information and even trace siblings born to the same donor. This case has to do with an interest in data that can under certain circumstances lead to the establishment of a relationship.

In this discussion we have considered different affinities, different interests, and the different level of protection they deserve. An up-to-date understanding of familial relationships dictates a recognition of the emotional connections within these relationships. These demand and deserve robust legal recognition, and the same holds true for the sibling relationship. Certainly, when this conflicts with other interests, including the parents’ interests, a cautious and complex balance must be shaped. Nonetheless, the focus of this consideration must be the children, for whom the sibling bond, that unique and close familial relationship, is deserving of preservation and legal protection. The absence of such a bond, as in the case of donor siblings who are raised in different household and have no acquaintance or relationship with one another, does not necessarily mean that their interests should be ignored. Genetic affinity may not be all, but it is the starting point for a relationship. It is grounds for forming a connection (real or imagined) with the other, someone with whom one shares a physical element with real emotional consequences.

Although siblinghood has always been a key component of the individual’s life, it remained for years on the margins of academic scholarship and received only partial recognition by legal regulations. This situation, it would appear, is now undergoing changes. Sibling relations enjoy more prominent recognition by the discipline of psychology than they did in the past, and they are also more present in legal discourse. All the same, the awareness of siblinghood forming in the realm of general family law is still absent when it comes to less traditional families.

Recognition of siblinghood generally, and as distinct from parenthood specifically, is an expected development in the relevant law. It is necessary, among other reasons, because of the personal-emotional importance of the relationship, increasingly recognized also in psychological research; in light of the growing recognition of children’s right and the striving to protect their interests separately from those adults; because of the central place afforded to the term ‘function’ in family law (instead of status or contract); and as a result of the variety in family structures. All these changes justify a reconsideration of siblinghood in family law and awarding it legal protection.

A key question in this context has to do with creating a separate category for brothers and sisters. That is, with the legal need to establish protection of siblinghood as siblinghood, as opposed to, for example, the courts’ instructions to protect the child’s “significant relationships,” the guideline that tasks the courts with locating and identifying familial and extra-familial relationships that require special treatment by the law. This becomes even more pertinent in light of the trend critiquing the use of categories and calling for breaking free of them, as part of identifying their alleged shortcomings. The problem is with imprecise categories that suffer, almost by definition, from being over general, rigid, and detrimental to judicial discretion, and subsequently, can lead to less than optimal solutions to a variety of problems. A related question has to do with identifying siblinghood uniquely (or exclusively) as a distinct category worthy of special treatment. This is much more complicated.

The said critique and the questions it entails are substantial and should not be dismissed. They deserve attention while siblinghood is established as a separate category and its norms come into being. Despite the criticism of categories, there are advantages to creating them. Categories assist in the formal identification of interests, guaranteeing their impact and their protection.

The call to recognized siblinghood as a separate category does not rule out recognizing other categories of significant relationships.[[93]](#footnote-93) All the same, despite the fact that I believe that there is room to cast our gaze even further afield and discuss the need to legally recognize children’s relations with a range of significant figures in their lives, both caregivers (such as grandparents), and peers (such as good friends), I do think that sibling relations deserve a separate discussion. First, as discussed in the beginning of this article, siblinghood is a relationship of utmost importance. Secondly, the sides to this relationship, in some of the contexts addressed in this paper, are children. It is precisely children who deserve a category that will provide them with effective protection. Setting it as a legal term obligates decision makers – officials in the executive authorities, primarily welfare personnel, and the courts – to recognize them and provide them with legal protection even if they cannot be heard and there is no one else to speak for them while the parents are busy representing their own interests or when there are no functioning parents who can speak for them.

 However, in the process of shaping this category it is possible and necessary to define the norms derived from the category as a standard rather than a closed fixed list of rules. In other words, the norms accompanying the category of siblinghood should be broad and flexible enough to enable variety in the types of siblinghood, in their characteristics, the interests voiced in their name, and the balance struck with conflicting interests of people such as other family members, and parents in particular. In any case, siblinghood cannot dictate the treatment of all siblings as one type. We should note that the call to recognize the category of siblings, which is crucial in the legal and administrative realms, is no substitute for legislation. The legislator must reexamine the legislative processes (those that are already in place and future ones) in order to ensure that siblings and the protection of their relationship are afforded their proper place. In other words, where there is legislation that embodies the interest to preserve siblinghood, and certainly in places where legislation already recognizes the protection of other familial relationships (parenthood or couplehood), a systematic examination by the legislator aimed at determining whether that protection should be extended to siblinghood, is necessary. In other areas that are uniquely relevant to siblinghood, such as in the context of determining parental custody or maintaining an independent relationship between the siblings, the law should recognize siblinghood explicitly. Until that time comes, the task of protecting the relationship falls to the courts. In the context of family law, where the principle of the child’s best interest is in any case recognized as a leading principle, the courts must ensure that the preservation of the sibling connection is being considered and afforded sufficient protection in their rulings.[[94]](#footnote-94)

This article does not presume to exhaust the discussion of the various questions raised by siblinghood; all it can do is introduce them in brief, as the first stage to a more extensive and precise debate that must take place elsewhere. The discussion here does not detail the range of conflicting interests and the complexity entailed in ruling on them. It likewise, does not attempt to outline the solution for each case. It does, however, put forth the basic normative argument that the legislators and the courts must see the sibling interests, recognize them and provide them with protection in general and in the context of less traditional families specifically.

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2. In this context, see the monumental volume by June Carbone, From Partners to Parents: The Second Revolution in Family Law (2000). [↑](#footnote-ref-2)
3. For changes in the legal status of children, even if partial only, see: Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 Yale L. J. 1448, 1460–1467 (2018). For a call to make that transformation more complete, see: Barbara Bennett Woodhouse*, “Out of Children’s Needs, Children’s Rights”: The Child’s Voice in Defining the Family*, 8 BYU J. Pub. L. 321 (1994). [↑](#footnote-ref-3)
4. Jill Elaine Hasday, *Siblings in Law*, 65 Vand. L. Rev. 897 (2012). [↑](#footnote-ref-4)
5. William Wesley Patton & Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings’ Association Rights*, 48 U. Miami L. Rev. 745 (1994); William Wesley Patton, *The Status of Siblings’ Rights: A View into the New Millennium*, 51 DePaul L. Rev. 1 (2001). [↑](#footnote-ref-5)
6. See for example, Joel V. Williams, *Siblings Rights to Visitation: A Relationship Too Valuable to be Denied*, 27 U. Tol. L. Rev. 259 (1995); Dawn J. Post et al., *Are You Still My Family? Post-Adoption Sibling Visitation*, 43 Cap. U. L. Rev. 307 (2015); Ellen Marrus, *Fostering Family Ties: The State as Maker and Breaker of Kinship Relationships*, 2004 U. Chi. Legal F. 319 (2004); Ellen Marrus, *“Where Have You been, Fran?”: the Right of Siblings to Seek Court Access to Override Parental Denial of Visitation*, 66 Tenn. L. Rev. 977 (1999); Barbara Jones, *Do Siblings Possess Constitutional Rights?*, 78 Cornell L. Rev. 1187 (1993); Kevin Heimler, *Dependency Hearings: California’s Current Inability to Preserve the Bond Between Siblings*, 12 Whittier J. Child. & Fam. Advoc. 129 (2012); Randi Mandelbaum, *Delicate Balances: Assessing the Needs and Rights of Siblings in Foster Care to Maintain Their Relationships Post-Adoption*, 41 N.M. L. Rev. 1 (2011); Angela Ferraris, *Sibling Visitation as a Fundamental Right in Herbst v. Swan*. 39 New Eng. L. Rev. 715 (2005). [↑](#footnote-ref-6)
7. Hasday, *supra* note 5, at 902. [↑](#footnote-ref-7)
8. *Id*. at 912–919. [↑](#footnote-ref-8)
9. *Id*. at 903–912. [↑](#footnote-ref-9)
10. Naomi Cahn, The New Kinship: Constructing Donor-Conceived Families (2013). [↑](#footnote-ref-10)
11. On the characteristics of this relationship see: Victor G. Cicirelli, Sibling Relationships Across the Life Span 1–3 (1995). [↑](#footnote-ref-11)
12. Particularly among sisters. See: Jerrie L. McGhee, *The Effects of Siblings on the Life Satisfaction of the Rural Elderly,* 47 J. Marriage & Fam. 85 (1985). [↑](#footnote-ref-12)
13. On the effects of culture in general, see: Cicirelli, *supra* note 11, at 69–85. In non-industrial agricultural societies, siblings fill a caregiving role that is similar in essence to the parental role: Thomas S. Weisner & Ronald Gallimore, *My Brother’s Keeper: Child and Sibling Caretaking*, 18 Current Anthropology 169 (1977). The caregiving role often comes at the expense of sibling’s personal needs, but they nonetheless perform it in recognition of its social significance: Patricia Zukow-Goldring, *Sibling Caregiving*, *in* Handbook of Parenting: Volume 3 Being and Becoming a Parent 253, 258, 266 (Marc H. Bornstein ed., 2nd ed. 2002). [↑](#footnote-ref-13)
14. Bonnie Lashewicz, *Sibling Resentments and Alliances During the Parent Care Years: Implications for Social Work Practice*, 11 J. Evidence-Based Soc. Work 460 (2014). [↑](#footnote-ref-14)
15. Research shows that in many cases one of the siblings is chosen to be the exclusive or leading caregiver: Tennille J. Checkovich & Steven Stern, *Shared Caregiving Responsibilities of Adult Siblings with Elderly Parents*, 37 J. Hum. Resources 441, 442 (2002). [↑](#footnote-ref-15)
16. Clearly, however, not every marriage guarantees a choice, and certainly not every pregnancy, and every choice, even one that does not entail direct coercion, is affected by socio-cultural pressures. [↑](#footnote-ref-16)
17. For scholarship on love and intimacy between siblings see, for example: Kory Floyd, *Brotherly Love II: A Developmental Perspective on Liking, Love, and Closeness in the Fraternal Dyad*, 11 J. Fam. Psychol. 196 (1997). On competition and jealousy, see for example: Jennifer L. Bevan & Kristen A. Stetzenbach, *Jealousy Expression and Communication Satisfaction in Adult Sibling Relationships*, 24 Comm. Research Reports 71 (2007). [↑](#footnote-ref-17)
18. For a comprehensive study of sibling relations, their significance, importance and variety, see: Jeffrey Kluger, The Sibling Effect: What the Bonds Among Brothers and Sisters Reveal About Us (2011). [↑](#footnote-ref-18)
19. Lynn K. White & Agnes Riedmann, *Ties among Adult Siblings*, 71 Soc. F. 85, 99 (1992). See also McGhee, *supra* note 12. [↑](#footnote-ref-19)
20. Laurie Kramer & Lew Bank, *Sibling Relationship Contributions to Individual and Family Well-Being: Introduction to the Special Issue*, 19 J. Fam. Psychol. 483 (2005). [↑](#footnote-ref-20)
21. Thus, for example, Cicirelli notes in his 1995 book, that research on the topic of siblings is lagging behind research on couples or parents relationships. See: Cicirelli, *supra* note 11, at 1. Subsequent scholarship similarly notes that relatively little attention has been given to siblings in research, as compared with studies of other familial ties, such as parenthood and couplehood: Avidan Milevsky & Mary J. Levitt, *Sibling Support in Early Adolescence: Buffering and Compensation across Relationships*, 2 Eur. J. Dev. Psychol. 299, 300 (2005); also see: Kramer & Bank, *supra* note 20, at 483. The reigning assumption was that the sibling bond has a limited influence on the development and behavior of individuals as compared with parental influence. [↑](#footnote-ref-21)
22. See: White & Riedmann, *supra* note 19. [↑](#footnote-ref-22)
23. Sibling Development: Implications For Mental Health Practitioners (Jonathan Caspi ed., 2011). [↑](#footnote-ref-23)
24. Katherine Jewsbury Conger, *Beyond Tattling: What Can Siblings Tell Us About Adolescent Behavior?*, 53 J. Adolescent Health 151 (2013). [↑](#footnote-ref-24)
25. I attempted to the estimate the scope these studies through the following general survey: Using the ProQuest psychology database, I mapped the number of articles published in peer reviewed journals which included the words ‘sibling, ‘sister,’ or ‘brother’ in the their title over the past two decades. I found the number of articles on siblinghood during the period 2008-2018 to be 1.6 times greater than their number during 1998-2008. [↑](#footnote-ref-25)
26. Many studies have shown that negative behaviors externalized by older siblings (antisocial behavior, violence, use of drugs and alcohol, early sexual activity, and more) predict similar negative behaviors among their younger sibling: Ivy N. Defoe et al., *Siblings Versus Parents and Friends: Longitudinal Linkages to Adolescent Externalizing Problems*, 54 J. Child Psychol. & Psychiatry 881 (2013); Jim Snyder, Lew Bank & Bert Burraston, *The Consequences of Antisocial Behavior in Older Male Siblings for Younger Brothers and Sisters*, 19 J. Fam. Psychol. 643 (2005); Shawn D. Whiteman, Alexander C. Jensen & Jennifer L. Maggs, *Similarities in Adolescent Siblings’ Substance Use: Testing Competing Pathways of Influence*, 74 J. Stud. Alcohol & Drugs 104 (2013); Shawn D. Whiteman, Alexander C. Jensen & Jennifer L. Maggs, *Similarities and Differences in Adolescent Siblings’ Alcohol-Related Attitudes, Use, and Delinquency: Evidence for Convergent and Divergent Influence Processes*, 43 J. Youth Adolescence 687 (2014); Abigail A. Fagan & Jake M. Najman, *Sibling Influences on Adolescent Delinquent Behaviour: An Australian Longitudinal Study*, 26 J. Adolescence 546 (2003). [↑](#footnote-ref-26)
27. See, for example: Zukow-Goldring, *supra* note 13; Robert S. Stewart*, Sibling Attachment Relationships: Child-Infant Interactions in the Strange Situation*, 19 Dev. Psychol. 192, 198 (1983); Robert B. Stewart & Robert S. Marvin, *Sibling Relations: The Role of Conceptual Perspective-Taking in the Ontogeny of Sibling Caregiving*,55 Child Dev. 1322, 1330 (1984). [↑](#footnote-ref-27)
28. Wyndol Furman & Duane Buhrmester, *Children’s Perceptions of the Qualities of Siblings Relationships*, 56 Child Dev. 448 (1985); Grania Sheehan et al., *Children’s Perceptions of Their Sibling Relationships During Parental Separation and Divorce*,41 J. Divorce & Remarriage 69, 71 (2004). This study found siblings to be protecting figures during parental divorce. [↑](#footnote-ref-28)
29. See, for example: Milevsky & Levitt, *supra* note 21, at 300. Mary D. Salter Ainsworth, *Attachments and Other Affectional Bonds across the Life Cycle*, *in* Attachment Across the Life Cycle 33, 46 (Colin Murray Parkes, Joan Stevenson-Hinde & Peter Marris eds., 1991). [↑](#footnote-ref-29)
30. Mark E. Feinberg et al., *Siblings Are Special: Initial Test of a New Approach for Preventing Youth Behavior Problems*, 53 J. Adolescent Health 166, 170 (2013). [↑](#footnote-ref-30)
31. See Milevsky & Levitt, *supra* note 21, at 317; Susan J.T. Branje et al., *Perceived Support in Sibling Relationships and Adolescent Adjustment*,45 J. Child Psychol. & Psychiatry 1385, 1393 (2004). [↑](#footnote-ref-31)
32. Krista Gass, Jennifer Jenkins & Judy Dunn, *Are Sibling Relationships Protective? A Longitudinal Study*, 48 J. Child Psychol. & Psychiatry 167, 172 (2007). [↑](#footnote-ref-32)
33. Glenna Spitze & Katherine Trent*, Gender Differences in Adult Sibling Relations in Two-Child Families*, 68 J. Marriage & Fam. 977, 977 (2006). [↑](#footnote-ref-33)
34. A study by White & Riedmann (*supra* note 19) found that about half of the participants in a survey of about 8,000 adults with siblings were in contact with their siblings on a monthly basis, and nearly two thirds counted at least on sibling as a close friend. [↑](#footnote-ref-34)
35. For a survey of the range of effects and implications, some positive and others negative, see: Shawn D. Whiteman, Julia M. Becerra Bernard & Alexander C. Jensen, *Sibling Influence in Human Development*, *in* Sibling Development: Implications For Mental Health Practitioners 1 (Jonathan Caspi ed., 2011). [↑](#footnote-ref-35)
36. Devi Miron, Ayesha Sujan & Melissa Middleton, *Considering the Best Interests of Infants in Foster Care Placed Separately from Their Siblings*, 35 Children & Youth Serv. Rev. 1385, 1389–1390 (2013); Rebecca L. Hegar & James A. Rosenthal, *Foster children Placed with or Separated from Siblings: Outcomes Based on a National Sample*, 33 Children & Youth Serv. Rev. 1245, 1250 (2011). It is interesting to note that joint placement of siblings, in foster homes and other frameworks, increases the chances that effective relations with the parents be maintained. Split placement makes it objectively more difficult for parents who must travel to different places, and devote more time and money to managing these relationships. Considering the difficulties parents experience, this task sometimes seems insurmountable. [↑](#footnote-ref-36)
37. See: Miron, Sujan & Middleton, *supra* note 36, at 1389. [↑](#footnote-ref-37)
38. Sabrina M. Richardson & Tuppett M. Yates, *Siblings in Foster Care: A Relational Path to Resilience for Emancipated Foster Youth*,47 Children & Youth Serv. Rev. 378 (2014). [↑](#footnote-ref-38)
39. Karen Rothschild & Daniel Pollack, *Revisiting the Presumption of Jointly Placing Siblings in Foster Care*, 12 Seattle J. Soc. Just. 527 (2013). [↑](#footnote-ref-39)
40. L. Oriana Linares et al., *Placement Shift, Sibling Relationship Quality, and Child Outcomes in Foster Care: A Controlled Study*, 21 J. Fam. Psychol. 736, 741–742 (2007). [↑](#footnote-ref-40)
41. For a survey of possible effects and the various studies more generally, see: Kluger, *supra* note 18, at 129–139. [↑](#footnote-ref-41)
42. One cluster of studies indicates that children who experienced divorce maintain strong and beneficial relationships with their siblings. See: Caroline Abbey & Rudi Dallos, *The Experience of the Impact of Divorce on Sibling Relationships: A Qualitative Study*,9 Clinical Child Psychol. & Psychiatry 241 (2004). Another group of studies show, on the other hand, that the relationship of siblings whose parents divorced (especially if the divorce happened when the children were older and the level of conflict between the parents during the divorce was high) can be characterized as distant and conflictual in comparison to siblings in families without divorce. See for example: Avidan Milevsky, *Perceived Parental Marital Satisfaction and Divorce: Effects on Siblings Relations in Emerging Adults*, 41 J. Divorce & Remarriage 115 (2004); Patricia Noller et al., *Conflict in Divorcing and Continuously Married Families: A Study of Marital, Parent–Child and Sibling Relationships*, 49 J. Divorce & Remarriage 1 (2008).

A third group of studies share the conclusion that divorce affects the sibling relationship, but found that the effects are not necessarily exclusively positive or negative. Thus, for example, children whose parents were divorced had more intensive relationships with their siblings, relations that were characterized on the one hand by greater closeness and warmth, and greater hostility and conflict on the other hand: Sheehan et al., *supra* note 28. Yet another study found that greater parental conflict may have led to greater conflict among siblings, but that this did not affect the positive aspects of the sibling bond, such as the quality of the relationship and the frequency of interaction: Anne-Right Poortman & Marieke Voorpostel, *Parental Divorce and Sibling Relationships: A Research Note*, 30 J. Fam Issues 74 (2009). [↑](#footnote-ref-42)
43. Sheehan et al., *supra* note 28, at 90. [↑](#footnote-ref-43)
44. See: Kluger, *supra* note 18, at 129–139. One study found that splitting custody of the siblings did not necessarily have a negative effect on their relationship and that it may have even had a beneficial element to it. See: Bruce Hawthorne, *Split Custody as a Viable Post-Divorce Option*, 33 J. Divorce & Remarriage 1 (2000). [↑](#footnote-ref-44)
45. Thus, for example, one study found that siblings separated as the consequence of a divorce, were in less frequent contact and their relationship was less stable and harmonious than that of siblings who were not separated by a divorce: Sylvie Drapeau et al., *Siblings in Family Transitions*, 49 Fam. Relations 77 (2000). [↑](#footnote-ref-45)
46. Step siblings who were not raised together from birth and did not spend their entire childhood together have a different relationship: Their connection is weaker and their emotional support for each other more limited. The study ascribes these differences to the fact that they were not together from birth and to the shorter amount of time they spent together, rather than to other differences: Kathryn Harker Tillman, *“Non-traditional’’ Siblings and the Academic Outcomes of Adolescents*, 37 Soc. Sci. Research 88 (2008). [↑](#footnote-ref-46)
47. See the detailed survey presented by Plewes covers a range of findings (some contradictory) by studies about step-siblings and half-siblings, as well as their direct conclusions, indicating similarity between step siblings and “ordinary” siblings: Pamela Sandeau Plewes, The Presence of Siblings and Stepsiblings and Adolescent Adjustment in Stepfamilies (2002) (unpublished Ph.D. thesis, University of Miami) (on file with author). Also see, E. Mavis Hetherington & Kathleen M. Jodl, *Stepfamilies as settings for child development*, *in* Stepfamilies: Who benefits? Who does not? 55 (Alan Booth & Judy Dunn eds., 1994). [↑](#footnote-ref-47)
48. Michael Yee Shui, Blended Families and Their Influence on Sibling Relationships and First Union Formation (Dec. 2015) (unpublished Ph.D. dissertation, College Bowling Green State University), *available at* <https://core.ac.uk/download/pdf/47055757.pdf>. [↑](#footnote-ref-48)
49. Shelley R. Joseph, The Relationship Between Adopted Young Adults and Their Non-Adopted Siblings in the Perceptions of Current Family Relationships 63–64, 58–60 (2002). [↑](#footnote-ref-49)
50. Harker Tillman, *supra* note 46, at 91. [↑](#footnote-ref-50)
51. William R. Beer, Strangers in the House: The World of Stepsiblings and Half-Siblings (1989). For me - find and combine ordered through A [↑](#footnote-ref-51)
52. [Rosanna Hertz](http://journals.sagepub.com.ezprimo1.idc.ac.il/author/Hertz%2C%2BRosanna) & [Jane Mattes](http://journals.sagepub.com.ezprimo1.idc.ac.il/author/Mattes%2C%2BJane), *Donor-Shared Siblings or Genetic Strangers: New Families, Clans, and the Internet*, 32 J. Fam. Issues 1129 (2011); Joanna E. Scheib & Alice Ruby, *Contact Among Families Who Share the Same Sperm Donor*, 90 Fertility & Sterility 33 (2008). [↑](#footnote-ref-52)
53. Vasanti Jadva et al., *Experiences of Offspring Searching for and Contacting Their Donor Siblings and Donor*, 20 Reproductive BioMedicine Online 523, 527 (2010); Sherina Persaud et al., *Adolescents Conceived Through Donor Insemination in Mother-Headed Families: A Qualitative Study of Motivations and Experiences of Contacting and Meeting Same-Donor Offspring*, 31 Children & Soc’y 13 (2017). [↑](#footnote-ref-53)
54. Jadva et al., *supra* note 53, at 528. [↑](#footnote-ref-54)
55. *Id*. at 529. [↑](#footnote-ref-55)
56. *Id*. at 530. [↑](#footnote-ref-56)
57. Dailey & Rosenbury, *supra* note 3, at 1487–1493. [↑](#footnote-ref-57)
58. Aaron Edward Brown, *He Ain’t Heavy, He’s My Brother: The Need for a* *Statutory Enabling of Sibling Visitation*, 27 B.U. Pub. Int. L.J. 1, 13–14 (2018). [↑](#footnote-ref-58)
59. Rebecca L. Scharf, *Separated at Adoption: Addressing the Challenges of Maintaining Sibling-of-Origin Bonds in Post-Adoption Families*, 19 U.C. Davis J. Juv. L. & Pol’y 84, 123 (2015). [↑](#footnote-ref-59)
60. According to Dailey & Rosenbury (*supra* note 3, at 1490), under the present legal model, sibling relations are recognized as deriving from the parent-child relationship. [↑](#footnote-ref-60)
61. For a general discussion of the existing legal emphasis on hierarchical relations rather than vertical relations, see: *Id*. at 1456–1472. [↑](#footnote-ref-61)
62. Allan V. Horwitz, *Siblings as Caregivers for the Seriously Mentally Ill*, 71 Milbank Q. 323 (1993). [↑](#footnote-ref-62)
63. Brown, *supra* note 58, at 19–20. [↑](#footnote-ref-63)
64. With an emphasis on the couple’s relationship within a marriage: Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 Stan. L. Rev. 167 (2015). [↑](#footnote-ref-64)
65. Dailey & Rosenbury, *supra* note 3, at 32–33. [for me- make sure the pages are ok)

Also see Susan Tomaine, *Troxel V. Granville: Protecting Fundamental Parental Rights While Recognizing Changes in the American Family*, 50 Cath. U. L. Rev. 731 (2001). [↑](#footnote-ref-65)
66. Troxel v. Granville, 530 U.S. 57 (2000). [↑](#footnote-ref-66)
67. Some taking the position that differentiates siblings from third parties, like grandparents: Scharf, *supra* note 59; Brown, *supra* note 58, at 11–19; Natalie Amato, *Black v. Simms: A Lost Opportunity to Benefit Children by Preserving Sibling Relationships When Same-Sex Families Dissolve*, 45 Fam. L.Q. 377 (2011). [↑](#footnote-ref-67)
68. Daniel W. Shuman, *The Role of Mental Health Experts in Custody Decisions: Science, Psychological Tests, and Clinical Judgment*, 36 Fam. L.Q. 135, 136–137 (2002); Robert F. Kelly & Shawn L. Ward, *Allocating Custodial Responsibilities at Divorce: Social Science Research and the American Law Institute’s Approximation Rule*, 40 Fam. Ct. Rev. 350 (2002). [↑](#footnote-ref-68)
69. Including, as explained in detail by Huntington, as part of trend. Clare Huntington, *The Empirical Turn in Family Law*, 118 Colum. L. Rev. 227 (2018). [↑](#footnote-ref-69)
70. Amato, *supra* note 67. [↑](#footnote-ref-70)
71. Dorothy Nelkin & M. Susan Lindee, The DNA Mystique: The Gene as a Cultural Icon (2004). [↑](#footnote-ref-71)
72. On the significance of the genetic connection and it significance in terms of emotions vis-à-vis the donor in the context of sperm donations, see *supra* note 52 and the adjacent text. Also see: [Rosanna Hertz](http://journals.sagepub.com.ezprimo1.idc.ac.il/author/Hertz%2C%2BRosanna), [Margaret K. Nelson](http://journals.sagepub.com.ezprimo1.idc.ac.il/author/Nelson%2C%2BMargaret%2BK) & [Wendy Kramer](http://journals.sagepub.com.ezprimo1.idc.ac.il/author/Kramer%2C%2BWendy), *Donor Sibling Networks as a Vehicle for Expanding Kinship: A Replication and Extension*, 38 J. Fam. Issues 248 (2017); Lucy Frith et al., *Searching for ‘Relations’ Using a DNA Linking Register by Adults Conceived Following Sperm Donation*, 13 BioSocieties 170 (2018). [↑](#footnote-ref-72)
73. Amato, *supra* note 67. [↑](#footnote-ref-73)
74. To the endeavor of women to be recognized as mothers in same sex families see Douglas Nejaime, *The Nature of Parenthood*, 126 Yale L.J. 2260 (2017); Nancy D. Polikoff*, A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-first Century*, 5 Stan. J. C.R. & C.L. 201 (2009); Richard F. Storrow, *Rescuing Children from the Marriage Movement: The Case Against Marital Status Discrimination in Adoption and Assisted Reproduction*, 39 U.C. Davis L. Rev. 305 (2006); Jessica Feinberg, *A Logical Step Forward: Extending Voluntary Acknowledgment of Parentage to Female Same-Sex Couples*, 30 Yale J.L. & Feminism (forthcoming 2018); Leslie Joan Harris, *Voluntary Acknowledgements of Parentage for Same-Sex Couples*, 20 Am. U. J. Gender Soc. Pol’y & L. 467 (2012). [↑](#footnote-ref-74)
75. Amato, *supra* note 67. [↑](#footnote-ref-75)
76. June Carbone & Naomi Cahn, *Parents, Babies, and More Parents*, 92 Chi-Kent L. Rev. 9, 20–23 (2017). [↑](#footnote-ref-76)
77. For these options see, Feinberg, *supra* note 74; Harris, *supra* note 74. [↑](#footnote-ref-77)
78. To the possibility to form parental status or gain visitation rights see June Carbone & Naomi Cahn, *supra* note 76; Naomi Cahn & June Carbone, *Custody and Visitation in Families with Three (or More) Parents*, 56 Fam. Ct. Rev. 399 (2018). [↑](#footnote-ref-78)
79. Compare: Lisa Westergaard, *What’s Going to Happen to Us? The Legal Right of Half-Siblings to Remain Together Once Their Custodial Parent Has Succumbed to a Terminal Illness*, 70 UMKC L. Rev. 471 (2001). [↑](#footnote-ref-79)
80. FA (Hi) 72549-01-18 Anonymous v. Anonymous (Mar. 11, 2018), Nevo Legal Database (by subscription, in Hebrew) (Isr.). [↑](#footnote-ref-80)
81. Cahn, *supra* note 10; Naomi Cahn, *No Secrets: Openness and Donor-Conceived “Half-Siblings”*, 39 Cap. U. L. Rev. 313 (2011). [↑](#footnote-ref-81)
82. Jadva et al., *supra* note 53, at 527–530; Sonia Allan, *Donor Conception, Secrecy and the Search for Information*, 19 J. L. & med. 631, 637–638 (2012); Cahn, *No Secrets*, *supra* note 81, at 232–234. [↑](#footnote-ref-82)
83. For an extensive discussion of this case, see: Naomi Cahn, *The New Kinship*, 100 Geo. L.J. 367 (2012). [↑](#footnote-ref-83)
84. Naomi Cahn, *Do Tell! The Rights of Donor-Conceived Offspring*, 42 Hofstra L. Rev. 1077 (2014). [↑](#footnote-ref-84)
85. In general and in the USA, see: Eric Blyth & Lucy Frith, *Donor-Conceived People’s Access to Genetic and Biographical History: An Analysis of Provisions in Different Jurisdictions Permitting Disclosure of Donor Identity*, 23 Int’l J.L., Pol’y & Fam. 174 (2009); Michelle Dennison, *Revealing Your Sources: The Case for Non-Anonymous Gamete Donation*, 21 J.L. & Health 1, 11 (2008). [↑](#footnote-ref-85)
86. The most typical example of this, or course, is parent-child relations, in which genetics is even today the starting point for their identification and definition. [↑](#footnote-ref-86)
87. The most up to date research indicates that many offspring categorize this relationship as a familial connection. Hertz, Nelson & Kramer, *supra* note 72. [↑](#footnote-ref-87)
88. Hertz & Mattes, *supra* note 52. [↑](#footnote-ref-88)
89. For example, https://www.donorsiblingregistry.com. [↑](#footnote-ref-89)
90. Ruth Zafran, *Children’s Rights as Relational Rights: The Case of Relocation*, 18 Am. U. J. Gender Soc. Pol’y & L. 163 (2010). [↑](#footnote-ref-90)
91. For a suggestion to work the conflict through mediation, see Scharf, *supra* note 59, at 123. [↑](#footnote-ref-91)
92. Particularly, for example, in light of the emphasis in classical family law on the marriage-based family (see: Clare Huntington, *supra* note 64), and the emphasis on judicial autonomy and parental rights. [↑](#footnote-ref-92)
93. As presented in Dailey & Rosenbury, *supra* note 3. [↑](#footnote-ref-93)
94. Erin Bajackson, *Best Interests of the Child – A Legislative Journey Still in Motion*, 25 J. Am. Acad. Matrimonial Law. 311, 315–316 (2013); Katharine T. Bartlett, *U.S. Custody Law and Trends in the Context of the ALI Principles of the Law of Family Dissolution*, 10 Va. J. Soc. Pol’y & L. 5, 16 (2002). [↑](#footnote-ref-94)