Multicultural Issues in Family Law:
An Annotated Bibliography

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This bibliography covers law review articles published, for the most part, after 2009. Articles for which the title is self-explanatory or that concern only a single case, state, or statute are cited, but not annotated.

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Adoption

Barbara L. Atwell, *Nature and Nurture: Revisiting the Infant Adoption Process*, 18 WM. & MARY J. WOMEN & L. 201 (2011) (detailing recent scientific knowledge about the awareness of newborn infants and proposing changes in the infant adoption placement process, including education about the babies' mental health needs, to help ease the transition for them).

Cynthia R. Mabry, *Joint and Shared Parenting: Valuing All Families and All Children in the Adoption Process with an Expanded Notion of Family*, 17 AM. U. J. GENDER SOC. POL’Y & L. 659 (2009) (addressing decisions regarding whether two unmarried people, who may or may not have a romantic bond, can jointly adopt).

Sara C. Mills, *Perpetuating Ageism Via Adoption Standards and Practices*, 26 WIS. J.L. GENDER & SOC’Y 69 (2011) (addressing the phenomenon of age discrimination by adoption agencies and identifying possible statutory provisions and constitutional arguments that can be used to combat this practice).


International Adoption

reformulation of the subsidiarity standard so that a sending nation need not exhaust every possible avenue for local adoption before allowing an international placement).

J. Savannah Lengsfelder, *Who Is a “Suitable” Adoptive Parent?*, 5 Harv. L. & Pol’y Rev. 433 (2011) (observing that because many adoptions these days are international under the Hague Convention, it may be illuminating to consider international criteria for suitability from the United Kingdom and Ireland).

Rachel J. Wechsler, *Giving Every Child a Chance: The Need for Reform and Infrastructure in Intercountry Adoption Policy*, 22 Pace Int’l L. Rev. 1 (2010) (surveying the laws regarding international adoption, as well as the costs, corruption, and individual country regulations and prohibitions).


**Native American Adoption**

Megan Scanlon, Comment, *From Theory to Practice: Incorporating the “Active Efforts” Requirement in Indian Child Welfare Act Proceedings*, 43 *Ariz. St. L.J.* 629 (2011) (noting that states vary on the extent to which they require active remedial efforts to prevent Indian family break-ups before allowing termination of parental rights and urging a “wraparound” model based on North Dakota’s practice of providing community services tailored to the individual child’s and family’s needs).
Ryan Seelau, *Regaining Control over the Children: Reversing the Legacy of Assimilative Policies in Education, Child Welfare, and Juvenile Justice That Targeted Native American Youth*, 37 AM. INDIAN L. REV. 63 (2013) (urging the adoption of tribal self-regulating mechanisms, such as tribal child welfare agencies, teen courts, and day schools, to address a variety of social and health issues facing Native American children).


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Same-Sex Couple Adoption

Joyce Kauffman, Protecting Parentage with Legal Connections, 32 FAM. ADVOC. 24 (Winter 2010) (addressing co-parent adoption and the portability of parentage across state lines).

Jennifer B. Mertus, Barriers, Hurdles, and Discrimination: The Current Status of LGBT Intercountry Adoption and Why Changes Must Be Made to Effectuate the Best Interests of the Child, 39 CAP. U. L. REV. 271 (2011) (identifying barriers to intercountry LGBT adoption at the levels of the sending country (under the Intercountry Adoption Act of 2000), U.S. federal government, and U.S. states, with specific attention to the five primary sending countries: China, Ethiopia, Russia, South Korea, and Ukraine).


Nadia Stewart, Note, *Adoption by Same-Sex Couples and the Use of the Representation Reinforcement Theory to Protect the Rights of Children*, 17 Tex. Wesleyan L. Rev. 347 (2011) (covering statistics on the number of children waiting to be adopted, various state approaches to adoption by same-sex couples, and the theory that the children who are awaiting adoption are a discrete and insular minority deserving constitutional equal protection to adoption rights).


Tanya Washington, *Suffer Not the Little Children: Prioritizing Children's Rights in Constitutional Challenges to ‘Same-Sex Adoption Bans’*, 39 Cap. U. L. Rev. 231 (2011) (noting that since courts do not recognize LGBT rights or a constitutional right to adopt, a better strategy might be to argue from a children's rights perspective that an “orphan placement ban” is unconstitutional).

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**Transracial Adoption**

Kelly Cruze, Note, *Changing Identities, Unchanging Standards: Race as a Factor in Transracial Adoptions*, 13 Rutgers Race & L. Rev. 97 (2011) (urging the elimination of language in statutes and adoption regulations that seems to prioritize intra-racial adoptions, pointing out the benefits of transracial adoption, and suggesting a focus instead on the adoptive family’s ability to promote the best interests of the adopted child).

Barbara Fedders, *Race and Market Values in Domestic Infant Adoption*, 88 N.C. L. Rev. 1687 (2010) (discussing the absence of discernible impact from the 1994 federal Multiethnic Placement Act, which barred adoption agencies from denying placements based on the race of either the child or the prospective adoptive parents and providing information about race-based fee structures in adoption).


**Alternative Dispute Resolution**

Rebecca Golbert, *An Anthropologist’s Approach to Mediation*, 11 Cardozo J. Conflict Resol. 81 (2009) (comparing North American mediation practices to those of other countries, where other cultures may utilize independent third party facilitators or heavily emphasize certain values, such as harmony and respect).


F. Peter Phillips, *“There Is a World Elsewhere”: Preliminary Studies on Alternatives to Interest-Based Bargaining*, 13 Cardozo J. Conflict Resol. 413 (2012) (examining alternative dispute resolution approaches from other cultures, focusing on the Arab practice of “sulha,” which emphasize honor and respect,
and Hawaiian principles of Ho’oponopono, which highlight spiritual balance and reconciliation).


Lorig Charkoudian & Ellen Kabcenell Wayne, *Does It Matter If My Mediator Looks Like Me? The Impact of Racially Matching Participants and Mediators*, 15 DISP. RESOL. MAG. 22 (Spring 2009).


Child Abuse and Neglect

Shiv Narayan Persaud, Is Color Blind Justice Also Culturally Blind?, 14 BERKELEY J. AFR.-AM. L. & POL’Y 23 (2012) (examining the cultural impartiality and biases of various parties in the criminal justice system, such as law enforcement officers, prosecutors, defense attorneys, and judges).

Alison Dundes Renteln, Corporal Punishment and the Cultural Defense, 73 LAW & CONTEMP. PROBS. 253 (Spring 2010) (evaluating the potential for misinterpretation of different cultural methods of parental discipline as child abuse, and proposing criteria to distinguish appropriate methods from those necessitating state intervention).


Evelyn Wotherspoon et al., Neglected Infants in Family Court, 48 FAM. CT. REV. 505 (2010) (explaining that child neglect, unlike child abuse, is concerned with omissions and that assessments of neglect often depend on cultural factors and community standards, including “available resources for responding to complaints,” all of which mean that most prosecuted neglect cases involve physical neglect; and urging a definition of neglect that
encompasses children’s needs for “emotional nurturance, food, shelter, clothing, supervision, medical care, education, protection from dangerous persons, and moral guidance”).


Steven H. Resnicoff, Jewish Law and the Tragedy of Sexual Abuse of Children—The Dilemma Within the Orthodox Jewish Community, 13 RUTGERS J. L. & RELIGION 281 (2012).


Child Custody and Visitation

Anat S. Geva, Judicial Determination of Child Custody When a Parent Is Mentally Ill: A Little Bit of Law, a Little Bit of Pop Psychology, and a Little Bit of Common Sense, 16 U.C. DAVIS J. JUV. L. & POL’Y 1 (2012) (reporting interviews with seventeen Illinois judges about the factors they consider regarding custody
when parents suffer from depression, bipolar disorder, or Munchausen by proxy, or threaten suicide).

Cynthia R. Mabry, *The Browning of America—Multicultural and Bicultural Families in Conflict: Making Culture a Customary Factor for Consideration in Child Custody Disputes*, 16 Wash. & Lee J. C.R. & Soc. Just. 413 (2010) (noting that most states’ custody statutes do not consider culture among their best interests criteria, and urging that cultural and ethnic heritage be considered as one factor among others in custody determinations).

Melissa Murray, *What’s So New About the New Illegitimacy?*, 20 Am. U. J. Gender Soc. Pol’y & L. 387 (2012) (noting that parental rights claims of fathers often depend on whether the father seeking rights also functioned as a husband and not just as a father to the child).


**International Child Custody and Visitation** *(See also Parental Kidnapping)*

Linda D. Elrod, *National and International Momentum Builds for More Child Focus in Relocation Disputes*, 44 Fam. L.Q. 341 (2010) (providing a chronology of the American and international efforts to develop standards for relocation cases and comparing the factors used in the United States with those employed by other countries around the world).


Matthew J. Hulstein, Commentary, *Recognizing and Respecting the Rights of LGBT Youth in Child Custody Proceedings*, 27 Berkeley J. Gender L. & Just. 171 (2012) (arguing that LGBT children have substantive due process rights under *Lawrence v. Texas* to have courts consider in custody disputes ways to protect the expression of their sexual orientation).


Erika Skougard, Note, *The Best Interests of Transgender Children*, 2011 Utah L. Rev. 1161 (addressing the outcomes of sev-
eral custody battles when one parent understands the needs of a transgendered child and the other does not).


Toni S. Boettcher, Same-Sex Couples and Custody and Visitation, 45 MD. B.J. 48 (Feb. 2012) (Maryland).


Nellie Herchenbach, Giving Back the Other Mommy: Addressing Missouri’s Failure to Recognize Legal Parent Status Following the Same-Sex Relationship Dissolution, 44 FAM. L.Q. 429 (2010) (Missouri).


Nancy Levit, Theorizing and Litigating the Rights of Sexual Minorities, 19 COLUM. J. GENDER & L. 21 (2010).


Megan Snider, Note, *Mongerson v. Mongerson: Georgia Employs Evidence-Based Test and Avoids Discrimination Against


Christina M. Tenuta, Note, Can You Really Be a Good Role Model to Your Child If You Can’t Braid Her Hair? The Unconstitutionality of Factoring Gender and Sexuality into Custody Determinations, 14 CUNY L. REV. 351 (2011).


Third Party Child Custody and Visitation

Jeff Atkinson  Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children, 47 FAM. L.Q. 1 (2013) (addressing recent state statutory changes after Troxel v. Granville that have created additional protections for parental rights to determine custody and visitation by third parties).

Cynthia Grant Bowman, The Legal Relationship Between Cohabitants and Their Partners’ Children, 13 THEORETICAL INQUIRIES L. 127 (2012) (drawing on social science evidence regarding relationships between stepparents and stepchildren to argue for standing for cohabiting stepparents to seek custody and visitation and to be obligated to pay child support).

Pamela Laufer-Ukeles & Ayelet Blecher-Prigat, Between Function and Form: Towards a Differentiated Model of Functional Parenthood, 20 GEO. MASON L. REV. 419 (2013) (noting the breakdown of exclusivity in the prevailing models of parenthood and addressing the considerations that courts examine when they make determinations that a variety of relationships are tantamount to functional parenthood).

Lawrence Schlam, Federalism and the Question of Uniform Laws: The Case of Third Party Custody “Standing” Provisions,


**Cultural Competence and Lawyering (See also Trials)**

Clare Huntington, *Familial Norms and Normality*, 59 Emory L.J. 1103 (urging a deeper understanding of both the role of emotions and the power of the state in shaping social norms).


Kia H. Vernon, *No Se Habla Español: Ethical and Practical Considerations for Non Spanish-Speaking Attorneys Representing Spanish-Speaking Clients*, 26 J. Civ. Rights & Econ. Dev. 223 (2012) (tracing significant demographic changes occurring in the United States and addressing problems that can arise when attorneys represent clients whose language they do not speak, including problems with interpreters, immigration, family members, perceptions, and cultural conventions).


Beryl Blaustone & Carmen Huertas-Noble, *Lawyering at the Intersection of Mediation and Community Economic Development*: 


Melody Finnemore, Culture of Awareness: As Oregon’s Population Grows More Diverse, the Legal Profession Strives for Multicultural Understanding, 71 Or. St. B. Bull. 24 (Nov. 2010) (Oregon).


**Divorce**


Benjamin Shmueli, *Civil Actions for Acts That Are Valid According to Religious Family Law But Harm Women's Rights: Legal Pluralism in Cases of Collision Between Two Sets of Laws*, 46 Vand. J. Transnat’l L. 823 (2013) (evaluating whether tort law should trump practices such as polygamy, bigamy, or refusal to allow a get, which are approved by particular religions).

Peter M. Walzer, *A World of Agreements*, 33 Fam. Advoc. 30 (Winter 2011) (observing that foreign marital agreements are unlikely to be enforced in the United States and offering suggestions about choice of law clauses for such agreements).


**Same-Sex Divorce**

**Domestic Violence** *(See also Immigration—Domestic Violence and Immigration)*


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**Immigration**


Kerry Abrams, *Marriage Fraud*, 100 Cal. L. Rev. 1 (2012) (examining the wide range of tests invoked by courts and legislatures to ascertain whether a marriage is fraudulent; these tests include only proof of formal marriage, proof of formal marriage “plus” some other bright line factor, such as length of the marriage, proof that the couple acts married, and tests that incorporate multiple of these requirements).


Heather L. Poole, *International Affairs*, 34 L.A. Law. 16 (June 2011) (evaluating the validity of proxy marriages for immigration purposes).


Marcia Yablon-Zug, *Separation, Deportation, Termination*, 32 B.C. J.L. & Soc. Just. 63 (2012) (noting that parental fitness is not the standard used when immigrant children are separated from their undocumented and deportable parents, but instead that the parents must meet a best interests test to retain custody, and explaining the ways in which courts consider negative stereotypes about undocumented immigrants in the best interests analysis).


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Benjamin Thomas Greer & Scott Davidson Dyle, Determining the Reasonableness of Non-Compliance: Examining the “Trauma Exception” for T-Visa Applicants, 15 Scholar 385 (2013).

Gabriel Hallevy, Culture-Based Crimes Against Women in Societies Absorbing Immigrants—Rejecting the “Mistake of Law” Defense and Imposing Harsher Sentencing, 16 Cardozo J.L. & Gender 439 (2010).


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Domestic Violence and Immigration (See also Domestic Violence)


Anna Hanson, *The U-Visa: Immigration Law’s Best Kept Secret,* 63 Ark. L. Rev. 177 (2010) (explaining the purpose of the U-visa, to offer protection to crime victims and law enforcement
officials, and describing the qualification requirements for U-visas).

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**International Law**


**LGBT Rights** *(See also specific topics, such as Custody, Divorce, and Marriage)*


Jason Scott, Comment, One State, Two State; Red State, Blue State: An Analysis of LGBT Equal Rights, 77 UMKC L. Rev. 513 (2008) (evaluating the differential success of LGBT parental rights, discrimination, and marriage claims in “red” and “blue” jurisdictions).


**Marriage** *(See also LGBT Rights; Religion)*


**Marital Contracts**

Barbara A. Atwood, *Marital Contracts and the Meaning of Marriage*, 54 ARIZ. L. REV. 11 (2012) (examining the wide variation in courts’ approaches to different types of spousal contracts that disrupt the default rules regarding marriage, from prenuptial agreements to separation and dissolution agreements).

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(describing the Uniform Premarital and Marital Agreements Act (UPMAA)).


Same-Sex Marriage (See also Divorce—Same-Sex Divorce)

Mark Kleinman & Katelyn D. Wicks, *Legal Recognition of Same-Sex Relationships*, 13 Geo. J. Gender & L. 365 (2012) (tracing the history of court decisions regarding same-sex marriage and civil unions and cataloguing each state’s rules on the issues).

Michael A. Laing, *Supreme Court Rulings on Same-Sex Marriage*, SV006 ALI-ABA 497, Sept. 27, 2013 (recapping the U.S. Supreme Court decisions in *United States v. Windsor* and *Hollingsworth v. Perry*, and addressing the effects of those rulings on retirement, pension, and health care plans).

Susan Silber & Susan Francis, *The Evolution of Family Law, Marriage, and the LGBT Community—The Long Road for Family Recognition and the Remaining Gaps in the Patchwork of Pro-
tection, 46 Md. B.J. 42 (Oct. 2013) (addressing the practical effects of the United States v. Windsor decision, and the questions for family law that the decision raises).

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Dustin F. Robinson & Sandra Soderstrom, Legal Recognition of Same-Sex Relationships, 12 Geo. J. Gender & L. 521 (2011).


Miscellaneous


Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. Rev. 1474 (2012) (addressing the number of incarcerated black mothers whose children are placed in foster care, and evaluating the ways in which racial inequalities in sentencing practices intersect with aggressive practices to remove black children from their homes).


Melody Finnemore, *Culture of Awareness*, 71 Or. St. B. Bull. 24 (Nov. 2010)


**Parental Kidnapping** (See also Child Custody—International Custody and Visitation)


Rhona Schuz, *The Relevance of Religious Law and Cultural Considerations in International Child Abduction Disputes*, 12 J. L. &
FAM. STUD. 453 (2010) (examining two situations—where the country of origin has laws that violate international human rights norms and where the abducting parent argues that return to the other parent, who follows different cultural or religious practices, would harm the child).


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Religion (See also Alternative Dispute Resolution; Divorce; Marriage—Marital Contracts)


Lisa Shaw Roy, The Evangelical Footprint, 2011 MICH. ST. L. REV. 1235 (discussing the rise and funding of Christian litigation firms and the developing equal access agenda regarding schools and public facilities).

religious beliefs, unless they pose a risk of substantial harm to the child).


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Charlee Lane, *For Heaven’s Sake, Give the Child a Voice: An ADR Approach to Interfaith Child Custody Disputes*, 10 PEPP. DISP. RESOL. L.J. 623 (2010).


**Trials** *(See also Cultural Competence and Lawyering)*

English proficiency and linguistic and cultural differences essentially translate into incompetence to stand trial).


**Interpreters**

Laura K. Abel, *Language Access in the Federal Courts*, 61 Drake L. Rev. 593 (2013) (reviewing the American Bar Association standards for language access in court for limited English proficiency speakers and discussing ways in which state courts have been far ahead of federal courts in the provision of free interpreters, forms in several languages, and criteria for court interpreter certification).


Maxwell Alan Miller et al., *Finding Justice in Translation: American Jurisprudence Affecting Due Process for People with Limited English Proficiency Together with Practical Suggestions*, 14 Harv. Latino L. Rev. 117 (2011) (although the focus of this article is on the right to an interpreter in criminal proceedings, many of the same principles would apply to serious due process deprivations in family law, such as termination of parental rights).


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