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Introduction to the Symposium
on the American Law Institute's
Principles of the Law of Family Dissolution

Lynn D. Wardle*

On February 1–3, 2001, several dozen leading family law scholars joined a number of other scholars from other disciplines and family law practitioners at Brigham Young University's J. Reuben Clark Law School for a Symposium entitled *The ALI Family Dissolution Principles: Blueprint to Strengthen or to Deconstruct Families?* The Symposium was co-sponsored by the J. Reuben Clark Law School and the Marriage Law Project of the Columbus School of Law at The Catholic University of America in Washington, D.C. for the purpose of examining, discussing, and debating the American Law Institute's newly approved *Principles of the Law of Family Dissolution* (hereinafter "*Principles*"). The BYU Symposium was the first academic symposium on the *Principles* since the American Law Institute gave its final approval to the *Principles* at annual meeting in May 2000. Additionally, the BYU Symposium was also one of the first academic conferences to examine domestic partners (Chapter 6 of the *Principles*) since the Vermont legislature enacted a "civil union" domestic partnership statute in 2000 in response to the ruling of the Vermont Supreme Court in *Baker v. State*.¹ This issue of the *BYU Law Review* contains half of the publishable papers produced for that pioneering symposium. The other half are published in a companion issue of the University of Utah's *Journal of Law and Family Studies*.

The *Principles* were over a decade in the creation. The ALI project began questionably when the ALI project leaders made the decision to exclude from any discussion or consideration such fundamental issues as grounds for marital dissolution, jurisdiction, ADR

* Professor of Law, J. Reuben Clark Law School, Brigham Young University. I was an active member of the ALI's Member's Consultative Group advising the Reporters who drafted the *Principles of the Law of Family Dissolution*, and I took an active role in the discussion at the May 2000 Annual Meeting of the ALI in which the *Principles* were given final approval. I was the convener of the BYU Symposium of the ALI *Principles*.

1. 744 A.2d 864 (Vt. 1999).

possibilities, and other fundamental procedural and jurisdictional issues. The project ended with similar controversy when, as the long drafting project (over a decade in the crafting) approached completion, the Reporters significantly expanded and altered the scope of the project by adding a new chapter recognizing “domestic partners” (chapter 6) and extending to them all of the economic rights that married couples enjoy when marriages terminate.

The potential impact of the *Principles* upon family law is tremendous. The *Principles* propose new regulatory standards and rules that would apply (if adopted by the states) in proceedings relating to divorce and dissolution. The subjects covered by the ALI *Principles of the Law of Family Dissolution* include child custody, child support, property division, alimony (renamed “compensatory payments”), antenuptial agreements (covering nonmarital cohabitation as well), and domestic partners. While some of the principles are very familiar to law professors who teach family law, many of the proposals go far beyond existing law and recommend significant policy changes, including official recognition of homosexual and extramarital concubine-like domestic partnerships, on an economic par with marriage. The prestige of the Institute, and the fact that many well-placed lawyers, distinguished law professors, and influential judges belong to the ALI guarantees that it will have some impact. Even before the *Principles* were adopted by the ALI, the draft provisions had been cited and discussed in dozens of law review articles. Yet, despite the great potential impact of the *Principles* and despite (or, perhaps, because of) the gerrymandering of the scope of this ALI project, the *Principles* show little imprint of serious conceptual criticism. The ALI’s process of crafting and approval left the few critics in the ALI feeling that their views were simply not heard or disregarded.

It was the goal of the BYU Symposium to generate a very high level of high quality exchange of ideas about the ALI proposals. The two major themes of the BYU Symposium were: (1) How would adoption of the ALI *Principles* change existing family law? (2) Would those changes be good or bad—strengthen or deconstruct families? The BYU Symposium included both pro- and con-*Principles* presentations from some of the finest scholarly proponents and critics of the *Principles*. Several strong supporters of the *Principles* were specifically invited to participate, including all three of the Reporters for the ALI *Principles*, and while all initially expressed interest in coming, regrettably none of the Reporters chose to attend.

Convenor's Introduction

While the drafters of the *Principles* were not present, the *Principles* were very capably defended by many of the articulate participating scholars. Also, several thoughtful critics of the *Principles* were invited to participate, resulting in a robust discussion and debate. While nearly all of the chapters of the *Principles* were discussed, the bulk of the presentations at the BYU Symposium focused on chapter 2 (dealing with child custody) and chapter 6 (dealing with domestic partners). Both of these chapters would substantially broaden the categories of relationships given special privileges and protections as family (parental and spousal or alleged functionally equivalent) relationships.

The participants in the Symposium included J. Herbie DiFonzo, Stephen Bahr, Douglas Haymore, Elizabeth Scott, David D. Meyer, Greg Loken, Emily Buss, David Wagner, Barbara Bennett Woodhouse, Carolyn Graglia, Francis J. Catania, Jr., Janet Leach Richards, Christine M. Szaj, Paul James Birch, Craig Dallon, Allen M. Parkman, June Carbone, Scott FitzGibbon, David Orgon Coolidge, Terry Kogan, Lynne Marie Kohm, Mark Strasser, Margaret Brinig, Lino Graglia, Michael McConnell, William Duncan, Renata Forste, Thomas Montoya, Teresa Collett, Ralph U. Whitten, and myself. Many other scholars from other disciplines served as moderators.

The scholars who participated in the Symposium deserve special praise for two reasons. First, they were operating under the handicap of not having the published, final version of the *Principles*. Although the ALI had approved the *Principles* nearly nine months earlier, the final version of the PLFD was not published before the BYU Symposium convened in February—indeed, as these issues go to press (approximately 18 months after the ALI voted final approval) the *Principles* still have not been published in final form. Thus, the authors had to work from various preliminary, tentative and semi-final drafts in order to understand and critique the *Principles*. (Likewise, the student editors of the *BYU Law Review* and the University of Utah's *Journal of Law and Family Studies* deserve credit for their work in checking the citations to such a variety of drafts of the *Principles*.) Second, over eighty-five of the scholars who participated in the Symposium produced finished, final, publishable manuscripts of their papers within just two months of the conference. In fact, so many excellent manuscripts were generated that it was impossible to publish them all in the *BYU Law Review*, which had expressed interest in publishing papers from the Symposium. Fortunately, the *Journal of*

Law and Family Studies, published at the nearby University of Utah College of Law, responded enthusiastically to the opportunity to publish a matching issue containing the remainder of the papers. Thus, the papers were split evenly between the two publications, with the only deliberate grouping done to insure balance on particular topics in each of the issues.

As the Symposium convenor, and on behalf of the authors, I express gratitude to the editors of the *BYU Law Review* and the *Journal of Law and Family Studies* for the diligent, hard work they have done to facilitate prompt publication of these papers. I am confident that the many lawyers, judges, lawmakers, and scholars who read these papers will also be grateful to them for making available the high caliber of scholarly exchanges published herein that enhance the public's understanding of the significance, controversies, potential advantages and potential flaws of the ALI *Principles of the Law of Family Dissolution*.