

# THE FEDERALIZATION OF FAMILY LAW AND THE FUTURE

## I. INTRODUCTION

Since the 1920's, the federalization of family law has been steadily proceeding.<sup>1</sup> The Supreme Court has extended its jurisprudence to the realm of family law in order to address issues that invoke the rights of due process, equal protection, full faith and credit among the states, and privacy. The great impact of this jurisprudence has been to increasingly federalize family law so that Constitutional rights and protections are extended to the family process and the dynamics therein. Congress has promoted this federalization by the passage of numerous federal statutes aimed at assuring these rights and protections throughout the states. Additionally, Congress has adopted Hague Conventions in order to protect the rights of American families in an international setting. The federalization of family law has contributed to a more nationalized view and approach among the states regarding family law. Uniform state laws, interstate compacts, the nationalization of alternative dispute resolution, and national family law organizations are all evidence of increasingly nationalized views. As our country faces new and ongoing issues involving family rights, continued federalization of family law is foreseeable into the future.

## II. CONSTITUTIONAL PROTECTION & THE FAMILY

The United States Constitution was hammered-out after a prolonged series debates and compromises. Once the Constitution was drafted, it took well over a year for the original 13 states to ratify it. Central to the debates at the constitutional convention, and to later debates regarding ratification, was the issue of how much power to allocate to the federal government and how much power to reserve to the states. While the Federalists advocated the need for a more "energetic" federal government to provide for national safety, protection, and welfare, the Anti-Federalists warned against a powerful centralized government and advocated the

need for more safeguards of individual rights from the government.<sup>2</sup>

This same tension of finding a balance between governmental power and individual freedom from governmental intrusion on personal liberties continues to be a key force in American law and politics today. Indeed, a brief survey of federal treatment of family law reflects this tension. As of 1890, the Supreme Court designated family law as a province belonging entirely to the individual states holding, "[t]he whole subject of the domestic relations of the husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *In re Burrus*, 126 U.S. 586, 594 (1890). This is no longer the federal approach to family law. Over the past 86 years, as justiciable controversies have emerged in which states have invaded family rights, the Supreme Court has interceded to preserve those rights and set Constitutional standards for individual rights as they pertain to family relations.

### A. Federal Recognition of the Parental Right to Control Upbringing

In 1923, with its hearing of *Meyer v. Nebraska*, the Supreme Court ventured into family law. *Meyer v. Nebraska*, 262 U.S. 390 (1923). Here, the Court first recognized family autonomy and the right of parents to control the upbringing of their children. *Id.* At issue in *Meyer v. Nebraska* was a state law prohibiting teaching at public schools in any language other than English. *Id.* While the Court recognized that a state could "do much...to improve the quality of its citizens," the statute in controversy violated substantive due process by impinging on the right of parents to make decisions for their children. *Id.* at 401. The Court held that the "liberty" protected by the due process clause "[w]ithout a doubt denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children...and generally to enjoy those privileges long recognized...as essential to the orderly pursuit of happiness by free men." *Id.* at 399.

<sup>1</sup> Meyer, David D., *The Constitutionalization of Family Law*, Family Law Quarterly, Vol. 42, No. 3, Fall 2008, 529-72. This article presents a good analysis of constitutional cases reflecting concerning family law over the past century.

<sup>2</sup> Although the term "energetic" is used specifically by Alexander Hamilton in Federalist Papers 1 & 23, the need for a more energetic federal government, one that has enough power to protect its citizens and provide for national welfare, is a recurring theme throughout the Federalist Papers. Likewise it was a recurring theme of the Constitutional Convention debate in 1787. Hamilton, Jay, Madison, *The Federalist Papers*, edited by Rossiter, Charles 2003, Signet Classics.

Two years later, in *Pierce v. Society of Sisters*, the Supreme Court likewise held a state law requiring parents to send their children to public school and prohibiting parents from choosing a parochial education for their children to be unconstitutional. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Rather than focusing on the First Amendment aspect of case, the Court again recognized parental autonomy stating, “[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for his additional obligations.” *Id.* at 535. Moreover, the Court found that a states has no power “to standardize its children by forcing them to accept instruction from public teachers only.” *Id.*

Although *Meyer v. Nebraska* and *Pierce v. Society of Sisters* make clear the federal recognition of parents’ autonomy in making child-rearing decisions, the Court has balanced this right with the state’s interest in protecting children. In *Prince v. Massachusetts*, the Court reiterated that there is a “private realm” of family life into which the state may not enter; however, it simultaneously held that “the family itself is not beyond regulation in the public interest,” and the state may restrict parent’s control if necessary for the well-being of a child. *Prince v. Massachusetts*, 321 U.S. 158 (1944). Here, the Court upheld the state’s enforcement of its child labor law, which prevented the parents from forcing their nine-year-old daughter to solicit for the Jehovah Witness religion daily rather than attending school. *Id.*

### B. The Right of Marital Privacy

In 1965, in *Griswold v. Connecticut*, the Supreme Court continued its venture into family law. *Griswold v. Connecticut*, 381 U.S. 479 (1965). Here, the Court recognized a right to privacy within a marriage. *Id.* At issue was a Connecticut law that prohibited the use and distribution of contraceptives. *Id.* The state criminally prosecuted Dr. Estelle Griswold for distributing contraceptives to married women through the planned parenthood clinic she ran. *Id.*

After recognizing the right to privacy, the Court held that the Connecticut law violated this right by its prohibition of married couples use of contraceptives. *Id.* “Would we allow the police to search the sacred precincts of the marital bedroom for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy

surrounding the marriage relationship.” *Id.* at 485-486.

In this decision, the focus of the court did not yet reach the right to use contraception or to make reproductive choices, but rather the need to protect privacy, and here, particularly marital privacy. Justice Douglas, writing for the court, found privacy to be a fundamental right. *Id.* He postulated, that privacy was implicit in provisions of the Bill of Rights, which had “penumbras, formed by emanations from those guarantees that give them life and substance.” *Id.* at 484. Although the court agreed by a majority that a right to privacy indeed existed, what exactly created this right to privacy was not agreed upon. Concurring opinions attributed the right to privacy to the Ninth Amendment and the liberty of the due process clause of the Fourteenth Amendment. Whatever the source of the right to privacy, *Griswold* is seminal in its recognition of privacy, a recognition that has greatly guided and influenced subsequent family law jurisprudence.

### C. The Fundamental Right to Marry

Two years later, following *Griswold*, the Supreme Court relied upon the Due Process Clause to find a fundamental right to marry. *Loving v. Virginia*, 388 U.S. 1 (1967). In *Loving v. Virginia*, the Court found unconstitutional the state’s anti-miscegenation law that prohibited a white person from marrying anyone outside of the white race. *Id.* Here, the court held: “[the] freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.” *Id.* at 12. Thus, any abrogation of the right to marry would “surely” deny liberty without the due process of law. *Id.*

In *Boddie v. Connecticut*, in 1971, the Court found that the right to marriage would be precluded if a person was prevented from divorcing so as to be available to marry again. *Boddie v Connecticut*, 401 U.S. 371 (1971). Here, the Court held that a state law requiring the payment of court fees and costs in order to be divorced violated an indigent person’s right to due process. *Id.* On the same premise that the right to marriage cannot be prevented by a state law contingency, in *Zablocki v. Redhail*, the Court found that a Wisconsin law denying a person, who was delinquent in child support payments, the right to marry was unconstitutional. *Zablocki v. Redhail*, 434 U.S. 374 (1978). However, *Zablocki* is distinguishable in that the Court based its holding on equal protection rather than due process. *Id.*

## D. The Right to Reproductive Autonomy

### 1. The Right to Prevent Reproduction

In 1972, with the case of *Eisenstadt v. Baird*, the Supreme Court began a long line of deliberations concerning the right to reproductive autonomy. *Eisenstadt v. Baird*, 405 U.S. 438 (1972). In *Eisenstadt*, the Court found unconstitutional a Massachusetts' law that allowed only physicians to distribute contraceptives and that likewise provided distribution could only be to married persons. *Id.* The defendant in the case had been convicted for distributing contraceptive foam to an unmarried woman. *Id.* Here, the Court expanded on the right to privacy first articulated in *Griswold* and stated: "If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as a decision whether to bear or beget a child." *Id.* at 453. Thus, unmarried people were found to have the same right as married people to possess contraception and, by implication, to engage in potentially procreative sexual intercourse.

### 2. The Right to Abortion

A year following *Eisenstadt*, the Supreme Court continued its deliberation concerning the right to reproductive autonomy in regards to whether or not such autonomy included a right to terminate an unwanted pregnancy. As set forth below, the Court in fact deemed there was a right to abortion; however, limitations regarding that right continue to be judicially explored.

#### a. Recognition of the Right to Abortion

In 1973, the Court considered *Roe v. Wade* and held that a woman has a constitutional right to choose to have an abortion any time prior to the final trimester of pregnancy and/or fetal viability. *Roe v. Wade*, 410 U.S. 113 (1973). Here, the case involved a challenge to a Texas law that prohibited all abortions except those necessary to save the life of the mother. *Id.* In accordance with this decision, other state laws otherwise restricting abortion were voided.

Writing for the court, Justice Blackmun explained the holding to be based on the right to privacy, stating: "[t]his right of privacy, whether it be founded in the Fourteenth Amendment's conception of personal liberty and restrictions upon state action, as we feel it is, or...in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision

whether or not to terminate her pregnancy." *Id.* at 153. Because "motherhood or more" children has to potential to force upon a woman a "distressful life and future," because "mental and physical health may be taxed by child care," and because "psychological harm may be imminent," the Court found that prohibiting abortions necessarily infringes upon a woman's right to privacy. *Id.* at 153.

After recognizing that the right to abortion is not absolute, but that it must be balanced against other considerations such as the state's interest in protecting prenatal life, the Court set forth a trimester viability standard for permissible state abortion laws. *Id.* at 150 and 164. According to this standard, during the first trimester, a state could not prohibit abortions, but could regulate it as it would other medical procedures. *Id.* at 164. During the second trimester, again a state could not prohibit abortion, but could regulate the procedure as it related to maternal health. *Id.* Finally, during the last trimester, the stage prior to birth and viability, states were permitted to outlaw abortions unless necessary to preserve the life or health of the mother. *Id.*

#### b. Limitations on the Right to Abortion

In 1989, with continued controversy regarding the *Roe v. Wade* decision, the Court heard *Webster v. Reproductive Health Services*. *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989). At issue was the constitutionality of a Missouri law that prohibited use of state funds or facilities from performing or counseling a woman to have an abortion and that allowed abortions after 20 weeks of gestation only if it was shown that the fetus was not viable. *Id.* Additionally, the Missouri law set forth the state's view that life begins at conception. *Id.*

The Court upheld the law in a 5-4 plurality decision in which Chief Justice Rehnquist, writing for the court, strongly criticized *Roe v. Wade* and its trimester viability framework for being inconsistent with the text of the Constitution. *Id.* at 518. Additionally, the prior decision was criticized by Justice Scalia in his concurring opinion stating that he believed that the plurality opinion actually overturned *Roe v. Wade* and should have done so more explicitly. *Id.* at 532. The dissent opined: "Today, *Roe v. Wade* and the fundamental constitutional right of women to decide whether to terminate pregnancy, survive but are not secure...the signs are evident and very ominous, and a chill wind blows." *Id.* at 537.

In 1992, the Court presided over *Planned Parenthood v. Casey*, which called into question a Pennsylvania law that regulated abortion by imposing a 24-hour waiting period for the procedure, by requiring

doctors to inform women of the availability of information about the fetus, by requiring parental consent for unmarried minors to have an abortion, and by requiring spousal notification prior to an abortion. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). In another plurality decision, the Court upheld the right for a woman to have an abortion before a fetus was viable; however, it simultaneously eliminated the trimester standard as well as the strict scrutiny standard for evaluating state regulation of abortions. *Id.* The Court replaced strict scrutiny in favor of allowing states to regulate abortion prior to viability so long as such regulation would not place an “undue burden” on the accessibility of abortion. *Id.* Despite these changes, the Court expressly affirmed that the right to abortion would be retained, and under the new “undue burden” test, the Pennsylvania law at issue was upheld in its entirety.

In 2000, in *Stenberg v. Carhart*, the Court applied the undue burden standard to determine the constitutionality of a Nebraska law which made performing partial-birth abortion illegal, without providing exceptions to preserve a woman's health. *Stenberg v. Carhart*, 530 U.S. 914 (2000). Here, the Court articulated that an undue burden exists “if its purpose or effect is to place a substantial obstacle in the path of woman seeking an abortion before the fetus attains viability.” *Id.* at 878. However, the Court also opined that because of a “state’s profound interest in potential life” a state may take “measures designed to advance this interest ... as long as their purpose is to persuade the woman to choose childbirth over abortion.” *Id.* Applying the undue burden standard, the Court found the Nebraska statute to be unconstitutional. *Id.*

In 2007, in *Gonzales v. Carhart*, the Court considered the constitutionality of the Partial-Birth Abortion Ban Act of 2003. *Gonzales v. Carhart*, 550 U.S. 124 (2007). With new Chief Justice Roberts and new Justice Alito joining the 5-4 majority, the Court upheld the federal act. *Id.* The Court distinguished the Act from the Nebraska law in *Stenberg v. Carhart*, holding that Act was not vague as was the Nebraska statute, but rather reasonably tailored to achieve a legitimate governmental purpose. *Id.*

The forgoing cases make clear the Court’s willingness to continue its involvement in family law matters and indicate a continuation of the federalization of family law.

#### **E. Rights of Unmarried Parents and Non-marital Children**

In 1972, the same year that the Supreme Court decided *Eisenstadt v. Baird* and recognized the right of unmarried people to possess contraception, the Court also turned its attention to the legal rights of unmarried fathers. In *Stanley v. Illinois*, the Court considered a state law that made children of an unmarried mother, wards of the state upon the mother’s death. *Stanley v. Illinois*, 405 U.S. 645 (1972). Here, a mother and father had lived together for 18 years and had three children together, but were not married. *Id.* Despite no showing of a lack of parental fitness on the part of the father, upon the mother’s death, the state took the children from the father and made them wards of the state. *Id.* Finding both due process and equal protection to have been violated, the Court held that a termination of parental rights based on marital status alone, rather than parental fitness, was unconstitutional. *Id.* Reiterating earlier decisions, the Court asserted that the right to conceive and raise one’s own children is a fundamental right. *Id.* at 651.

A year later in *Gomez v. Perez*, the Court considered the rights of children of unmarried parents. *Gomez v. Perez*, 409 U.S. 535 (1973). *Gomez v. Perez* involved the challenge of a Texas statute that created a legal obligation for fathers to support their marital children, but created no such duty in regards to children fathered outside of marriage. *Id.* The Court found that denying non-marital children substantial benefits that were awarded to marital children was invidiously discriminatory and a violation of equal protection. *Id.* at 538. Accordingly, the Court held “that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a natural child simply because its natural father has not married its mother.” *Id.* For a state to do so would be “illogical and unjust.” *Id.*

Similarly, in *Trimble v. Gordon*, the Court found unconstitutional a law that denied only non-marital children inheritance from fathers who died intestate. *Trimble v. Gordon*, 430 U.S. 762 (1977). Specifically, the state law in question permitted marital children to inherit from either parent who died intestate, while non-marital children were allowed to inherit only from their mothers. *Id.* The Court recognized that paternity must be established, but that such a concern could not justify the denial of inheritance to non-marital children. *Id.*

In *Lalli v. Lalli*, the Court addressed the need to establish paternity for such inheritance purposes and held that paternity must be established during the father’s life in order for the non-marital child to be able to inherit. *Lalli v. Lalli*, 439 U.S. 259 (1978).

However, what was not clear from this case, was how long during its father's life, a child would have to establish paternity, another key issue in such cases. In 1988, in *Clark v. Jeter*, the Court held a Pennsylvania law creating a 6 year statute of limitations to establish paternity in order to receive financial support to be unconstitutional. *Clark v. Jeter*, 486 U.S. 456 (1988). The court disapproved this time limitation opining that six years did "not necessarily provide a reasonable opportunity to assert a claim on behalf of an illegitimate child." *Id* at 463. Such a limitation was not found not to be within state's interest of avoiding fraudulent or delayed claims. *Id* at 464.

#### **F. The Parental Right to Custody, Control & Possession**

The Supreme Court has held parental rights to custody, control and care of their children to be a protected fundamental right. In 1982, in *Santosky v. Kramer*, the Court ruled that before a parent's rights could be permanently terminated, the state must find such termination to be implicated by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 746 (1982). In so finding, the Court stated that a "natural parent's desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right." *Id* at 758-759. Furthermore, the Court held that "freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." *Id* at 753.

In *Troxel v. Granville*, the Court considered the parental right to custody, control, and care of children as it related to a grandparent's rights. *Troxel v. Granville*, 530 U.S. 57 (2000). Under a Washington state law that allowed "any person" to petition a court to grant visitation whenever visitation may serve the best interest of the child, the high court of that state had awarded extensive visitation to paternal grandparents in opposition to the lesser visitation favored by the mother. *Id*. Here, The Supreme Court found the underlying statute to be "breathhtakingly broad" with the practical effect of it being the ability of a court to disregard any decision of a fit custodial parent relating to any third party visitation whenever a third party filed a visitation petition. *Id* at 67. Acknowledging that "[t]he liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court," the court found the statute to be

unconstitutional. *Id* at 72. In the absence of any allegation of parental fitness, infringement upon the parental right to custody, control, and care is an impermissible intrusion on a fundamental right.

#### **G. The Right of Autonomy in Sexual Choices**

In 2003, in *Lawrence v. Texas*, the Supreme Court held that an individual's right to consent to intimate sexual conduct was protected by due process of the Fourteenth Amendment. *Lawrence v. Texas*, 539 U.S. 558 (2003). At issue was the conviction of two men who were prosecuted under a Texas statute prohibiting "deviate sexual intercourse," which was defined by that statute as sexual relations between members of the same gender. *Id*. In finding the Texas statute to be an unconstitutional limitation of private relationships, the Court in *Lawrence* embraced the the right to privacy it had formerly articulated in recognition of rights to family autonomy, contraception, and abortion. *Lawrence* represents the Courts recognition of constitutional protection for the individual right to engage in consensual, adult sexual activity. *Id*. Just as importantly, by articulating this right in regards to a statute discriminatory of homosexuals, the Court implicitly recognized a freedom to choose sexual orientation. .

### **III. SELECTED FEDERAL STATUTES**

As the Supreme Court has extended its jurisprudence to family law, so has Congress invoked its legislative powers to impact family law. The following statutes are examples of Congressional action contributing to the federalization of family law.

***Social Security Act of 1935***: the first entry of the federal government into child welfare issues.

***Child Abuse Prevention and Treatment Act (CAPTA)***: first federal mandates to set standards for handling child abuse and neglect.

***Indian Child Welfare Act of 1974***: federal act simultaneously (1) gave jurisdiction to Native American tribes over the state in custody proceedings for any child residing on a reservation and presumptive jurisdiction of Native American children not residing on a reservation; (2) set federal minimal standards for conducting most custody proceedings.

***Family Support Act of 1974***: inception of the existing IV-D child support program.

***Adoption Assistance and Child Welfare Act of 1980***: provision of federal funding for foster families, hard

to place children, and federal restrictions on long term state intervention.

***Parental Kidnapping and Prevention Act of 1980:*** mandate for full faith and credit to child custody orders of the individual states.

***Uniformed Services Former Spouses' Protection Act of 1982:*** provisions permitting the division of military retirement.

***Child Support Enforcement Amendments of 1984:*** new mandates for child support guidelines and requirement of states to have income withholding. Additionally, mandated guidelines for establishing paternity.

***Retirement Equity Act of 1984:*** act resulting in QDROs for the division of retirement benefits.

***Family Support Act of 1988:*** act requiring child support guidelines to establish a presumptive amount.

***Victims of Child Abuse Act of 1990:*** act which spawned national CASA movement.

***Multiethnic Placement Act of 1994:*** statutory bar to racial preference in adoption.

***Full Faith and Credit for Child Support Orders Act of 1994:*** mandate for states to give full faith and credit to support orders of other states.

***Violence Against Women Act 1994:*** mandate requiring states to give full faith credit to protective orders.

***Personal Responsibility and Work Opportunity Reconciliation Act of 1996:*** mandated UIFSA, enhanced computer mandates.

***The Health Insurance Portability and Accountability Act of 1996:*** act creating standards for the release and protection of medical information.

***Defense of Marriage Act of 1996:*** states released from any duty to give full faith and credit to same sex relationships recognized by other states.

***Adoption and Safe Families Act of 1997:*** act giving family reunification a boost.

***Servicemembers Civil Relief Act of 2004:*** federal update of the prior 1940 act.

#### IV. HAGUE CONVENTIONS

In addition to enacting legislation in protection of families and family rights, Congress has sought to assure such protections when family law issues arise internationally. As only the federal government has the power to make international treaties and agreements, the following Hague Conventions further reflect the federalization of family law.

***Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters***

***Convention on the Civil Aspects of International Child Abduction***

***Convention on Protection of Children and Cooperation in Respect of International Adoption***

***Convention on the International Recovery of Child Support and Other Forms of Family Maintenance***

#### V. THE NATIONALIZING IMPACT OF THE FEDERALIZATION FAMILY LAW

The federal government's entrance into family law is marked by the increasing nationalization of family law. As the Supreme Court has handed down decisions concerning family and as Congress has dabbled in the family law arena, states as well as legal organizations have embraced more common approaches to family law, which in turn has resulted in a nationalization as well as federalization of family law. This nationalization is evidenced by select state cases, uniform state laws, interstate compacts, the national acceptance of alternative dispute resolution, and a number of national family law organizations.

##### A. SELECT STATE CASES

Nationalization of family law is evidenced by state cases adjudicating issues debated throughout the United States. The following cases are representative of some such cases.

*Clevenger v. Clevenger*, 189 Cal.App 2d (1961): Recognized the doctrine of paternity by estoppel.

*Posner v. Posner*, 237 So.2d 186 (Fla.App. 1970): Extended premarital agreements to divisions of property in divorces, not only probate cases.

*Marvin v. Marvin*, 122 Cal.App. 3d 871 (1976): Recognized the rights of non-marital cohabitants.

*In re Marriage of Brown*, 15 Cal. 3d 838 (1976): Held unvested pension benefits to be divisible upon divorce.

*In re GM*, 596 S.W.2d 846 (Tex. 1980): Required clear and convincing evidence for termination of parental rights.

*In re Marriage of Buzzanca*, 61 Cal.App.4<sup>th</sup> 1410 (1998): Recognized and upheld a gestational agreement.

*Baehr v. Lewin*, 74 Haw. 650 (1993): Voided a statute restricting marriage to heterosexual couples.

## B. UNIFORM STATE LAWS

The Uniform Law Commission has created uniform laws and model acts reflective of national family law issues of importance and concern. States have the opportunity to adopt the acts and in doing so create protections for their citizens throughout other states also adopting the acts without relying on full faith and credit or relying on the federal government. The acceptance of the following acts by the Uniform Law Commission and the state adoption of the acts reflect the movement towards nationalization of family law.

***Uniform Child Abduction and Prevention Act of 2006***: Enacted by 7 states.

***Uniform Child Custody Jurisdiction and Enforcement Act of 1997***: Enacted by 46 states.

***Uniform Interstate Enforcement of Domestic Violence Protection Orders Act of 2002***: Enacted by 19 states.

***Uniform Interstate Family Support Act of 1996***: Enacted by all 50 states.

***Uniform Parentage Act of 2002***: Enacted by 8 states; the earlier UPA of 1973 was enacted by 13 states.

***Uniform Premarital Agreement Act***: Enacted by 27 states.

Although not yet being drafted, there is interest in uniform acts dealing with *Troxel*

implications, rights of unmarried, co-habiting couples, and marital property agreements.

## C. INTERSTATE COMPACTS

As do uniform laws, state compact are another tool of nationalization of family law and means for a state to protect its citizens in a highly mobile and dynamic society. Two examples of such compacts are:

***Interstate Compact on Placement of Children of 2008***: eight states have enacted this compact, and all states have some version of the ICPC.

***Interstate Compact on Educational Opportunity for Military Children***: 11 states have enacted this compact.

## D. NATIONAL ACCEPTANCE OF ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) has become nationally accepted. Likewise, it an important tool throughout the nation in resolution of family law matters. The national acceptance of has particular significance in family law as it can serve to ameliorate the tension and animosity involved in dissolution of marriages and custody disputes. The national acceptance of ADR began with the Roscoe Pound Conference of 1976 during which the “courthouse of many doors” concept was first developed. In 1993, the American Bar Association established a Section of Dispute Resolution. This was followed in 2001 by the Uniform Law Commission’s approval of the Uniform Mediation Act. Currently, NCCUSL has been drafting a Uniform Collaborative Law Act schedule for final approval from the Uniform Law Commission later this year.

## E. NATIONAL FAMILY LAW ORGANIZATIONS

Finally, the emergence of national family law organizations not only reflect the federalization and nationalization of family law, but also evidence a nation wide interest in achieving common approaches to family law. These national organizations include:

- **National Council of Juvenile and Family Court Judges**, established 1937
- **American Bar Association, Family Law Section**, established 1958
- **Association of Family and Conciliation Courts**, established 1963
- **American Academy of Matrimonial Lawyers**, established 1983

- **National Association of Counsel for Children**, established 1977
- **Joint Editorial Board for Uniform Family Law**, established 1997
- **International Academy of Collaborative Professionals**, established 2000

## **VI. CONCLUSION: FEDERALIZATION & THE FUTURE**

For 86 years now, family law has been increasingly federalized. The impact of this federalization is not only to recognize and protect valuable rights with the family setting, but to influence the treatment of family law by the states and thereby, promote nationalization of family law. As the preceding survey sets forth, the federal government has become increasingly involved in family law as our society has recognized the need to protect private familial rights and as the norm of our society has continued to diversify from a “traditional” family. As our society continues to change, as we grow in tolerance for one another, and as we recognize new ways to assure protection of familial rights, federalization as well as nationalization of family law is likely to continue.