

Uldaho Law

## Digital Commons @ Uldaho Law

---

Articles

Faculty Works

---

1994

### Family Law and the Pursuit of Intimacy

Monique C. Lillard

*University of Idaho College of Law*, [lillard@uidaho.edu](mailto:lillard@uidaho.edu)

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/faculty\\_scholarship](https://digitalcommons.law.uidaho.edu/faculty_scholarship)



Part of the [Family Law Commons](#)

---

#### Recommended Citation

7 W. Legal Hist. 324 (1994)

This Book Review is brought to you for free and open access by the Faculty Works at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Articles by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

Clawson had an eye for detail, and the diary and memoirs—one of the few in published form for any territory or state from this period—offer valuable glimpses of daily life in a rough-and-tumble western territorial prison. Readers sense the monotony of the diet, the harsh disciplinary techniques (including the notorious sweat box), and the different prison hierarchies that developed. Clawson's bias against "gentiles" (non-Mormons) and African Americans, in particular, are especially revealing of the Mormon mentality, and, as Larson regretfully admits, "were probably shared by a majority of his fellow church members" (p. 23). It is difficult to determine whether these attitudes were a cause or an effect of decades of persecution—perhaps something of both. It should be remembered that Clawson viewed his imprisonment as a spiritual journey and trial by adversity, and embellished certain key events during later revisions; Larson notes that "Clawson is the hero throughout" and that his revisions demonstrate consistently his view of "the rightness of [his] position" (p. 23).

*Prisoner for Polygamy* represents much painstaking work by Larson. It will interest scholars in many fields—the history of polygamy, of the Mormon church, of the Utah Territory, and of imprisonment in the West. It also will appeal to those interested in autobiography as a literary genre, and the fashioning of a self-image over time.

Keith Edgerton  
Washington State University

*Family Law and the Pursuit of Intimacy*, by Milton C. Regan, Jr. New York: New York University Press, 1993; 275 pp., notes, bibliography, index; \$40.00, cloth.

Social mores, psychology, philosophy, and the community's sense of morality all coalesce when rules of law are created; the rules of law, in turn, affect our behavior and self-definition. In an interdisciplinary effort, Milton C. Regan, Jr., in his book *Family Law and the Pursuit of Intimacy*, suggests that we in American society revise our approach to family law.

In order to support his suggestions, the author devotes the first half of his book to explaining how Americans have come to hold the beliefs that we do about familial obligations, and provides us with a fascinating history of American thought. Legal opinions play a minor role as he traces popular psychological and philosophical analyses of familial relationships and individual roles. The chapter on Victorian domestic rules—legal, social, moral, and religious—shows us how far we have

come, yet how close we remain to our great-grandparents. Proceeding through the book, readers may experience their own evolution of thought: in view of today's statistics on divorce and single mothers in poverty, the idea of societal intervention to prevent divorce seems oddly compelling, even if troublingly rigid. Why *not* have a waiting period before an adulterer or an abandoner can remarry?

The chapter on our current beliefs is written with disconcerting and illuminating distance. Regan's description of our pop-psych gospel reads like a history, and casts an uncomfortably bright light on the ramifications of our religions in this decade of self-actualization and self-determination.

Those of us who went through law school in the last fifteen years or so were raised on the Chicago school of freedom of contract. I found myself refreshed by the author's refusal to genuflect to the sanctity of contract as the prime directive in family law. While he advocates what Henry Maine would term a "return to status" in the governance of domestic relations, he does not call for a return to gender-bound Victoriana. But, like our ancestors, he refuses to shy away from words like duty, obligation, commitment, and trust.

*Family Law and the Pursuit of Intimacy* is highly readable. Regan uses a chatty, modern style, often interjecting the first person singular. He writes with caution, occasionally bordering on the apologetic, but is effective in forcing the reader to understand that he is seeking to create a new era, not return to an old one. The book is carefully researched, although I would have liked more detail in the notes. (I deplore the book's adoption of the anti-scholarly and mightily annoying practice of providing endnotes, rather than footnotes.)

This book jolts a reader into thought: What have we wrought, in the latter twentieth century, with our emphasis on freedom and our denigration of moral obligation? Regan provides a series of suggestions to improve on the future by borrowing from the past.

Monique C. Lillard  
University of Idaho College of Law

*Petticoats and Prejudice: Women and Law in Nineteenth Century Canada*, by Constance Backhouse. Toronto: Women's Press, 1991; 480 pp., illustrations, index; \$24.95, paper.

Canadian legal history has come alive in the past twenty years. From a field sown with anecdotal and antiquarian descriptions of judges, lawyers, and courts, it has yielded a crop of