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Julie Shapiro

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SURVEYING THE LEGAL LANDSCAPE FOR QUEER PARENTS IN THE UNITED STATES

Julie Shapiro

Courting Change: Queer Parents, Judges, and the Transformation of American Family Law

Kimberly D. Richman

New York: New York University Press, 2009. xi + 265 pp.

In her new book, *Courting Change: Queer Parents, Judges, and the Transformation of American Family Law*, Kimberly D. Richman offers a sweeping and original examination of the development of the law governing queer families in the United States. Using tools of analysis forged from the insights of critical legal studies and feminist legal theory, she traces a path that, while neither smooth nor unwavering, has led to better legal protections for more queer parents and their children than at any other time in our history. After examining the reinforcing relationship between legal change and social change, Richman concludes that there is reason to anticipate further improvement.

In researching her book, Richman reviewed every published appellate court opinion involving a lesbian, gay, bisexual, or transgender parent issued between 1954 and 2004—316 in all. Both the dominant law and the nature of the legal subjects before the courts changed over this period.

In the earlier decades the typical queer parent's case involved a lesbian or a gay parent who had children from a previous heterosexual marriage. Ex-spouses faced off in court over custody and visitation of the children. Over time the dominant legal approach in these cases shifted from a per se presumption against custody and in favor of invasive restrictions on visitation to a more flexible (and indeterminate) nexus test. The nexus test turned on whether the particular parent's homosexuality could be shown to cause harm or create a risk of harm to the child. While this ill-defined standard left ample room for hostile judges to curtail the rights of queer parents, it also allowed for decisions affirming the fitness of a lesbian or gay parent where the judge was so inclined.

More recently, the growing acceptance of lesbian and gay couples and the availability of reproductive technologies produced a notable gayby boom. Accord-

ingly, in the last fifteen years, the legal dockets Richman examined have been dominated by cases in which queer people claim access to parenthood, whether by adoption (as a primary or as a second parent) or through assisted reproduction, and cases arising from disputes between queer coparents.

Simply to have cataloged the decisions and traced the evolution of the law would have been an ambitious and admirable task, but Richman's book offers far more than a historical survey. The assembled materials are viewed through a critical lens to provide deeper understanding of how law changes and of the relationship between social change and legal change. This understanding is enhanced by Richman's reliance on interviews she conducted with judges, lawyers, and litigants.

Richman's analysis begins by establishing the frequently observed indeterminacy of family law: the result in family law is not necessarily determined by the facts or the law. Two different judges hearing similar cases can and often do reach starkly different conclusions. While indeterminacy is a feature of law generally, it plays a particularly central role in family law. To appreciate this, one has only to consider that the single most prominent legal test in family law requires a judge to determine "the best interests of the child."

To many this indeterminacy robs law in general, and perhaps family law particularly, of legitimacy. Surely it opens the way for judicial bias to affect a case's outcome. These are central tenets of critical legal studies. Richman adds the insights of feminist legal theory to those of critical legal studies in order to produce a much fuller and more textured consideration of legal indeterminacy. In her view, legal indeterminacy is, as her first chapter title suggests, a double-edged sword. Wielding an analysis forged from critical legal studies and feminism, Richman convincingly demonstrates that family law's indeterminacy can and sometimes has worked to the advantage of queer parents. In explicating how indeterminacy has benefited queer parents, Richman offers lawyers a way forward in the future.

The central chapters of Richman's book analyze closely the operation of family law in three realms. Richman dissects the construction of identity, the deployment of rights discourse, and the role of dissenting opinions. For each topic, Richman critically examines how legal indeterminacy has operated and how it has affected the treatment of lesbian and gay families. Crucially, Richman highlights how indeterminacy has provided opportunities for litigants, lawyers, and judges to develop the law in ways that support and protect queer families.

Courting Change is an important new work in the literature on law and the queer family. While Richman does not shy away from presenting instances in

which the law has wrought cruel injustice on queer parents and their children, she also highlights the ability of advocates to take advantage of law's indeterminacy to advance the rights of these families. When coupled with explication of the mutually constitutive relationship between law and society, Richman leaves her readers with a clear vision of how both law and society can continue to evolve to protect the interests of queer parents and their children.

Julie Shapiro is a professor of law at Seattle University School of Law.

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HOW CAN I IGNORE THE GIRL NEXT DOOR?

Patricia White

Lesbianism, Cinema, Space: The Sexual Life of Apartments

Lee Wallace

New York: Routledge, 2009. xii + 202 pp.

The London flat where June Buckridge, a.k.a. "George" (Beryl Reid), displays her collection of horse brasses and her lover, Childie (Susannah York), her dolls; Petra von Kant (Margit Carstensen)'s work/living space with its immodest Poussin mural; the adjoining wall through which Violet (Jennifer Tilly) and Corky (Gina Gershon) plot theft and other nastiness in *Bound* (dir. Wachowski Brothers; 1996): apartments, Lee Wallace convincingly argues, are a key chronotope of the cinematic representation of lesbianism, post-Production Code era. "The Game of Flatts" was, it is revealed in a footnote whose wonderfully entertaining arcana are typical of this detail-dense book, eighteenth-century slang for lesbian sex (151n3); Wallace's argument is interested in how twentieth-century topographies of cinema and architecture put lesbianism on scene even as female homosexuality defies narrative coherence and the stability of the image. In her careful readings of a half-dozen well-exposed texts, it is the spatialization of cinematic technique that