

Contracts and Deals in Families and Family Law
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The state should and often does encourage connection. A child heading to school, an adult performing at work, and a heart attack victim all fare better if they have deep social connections. The child's backpack more likely contains a good lunch and completed homework, the adult likely has help paying for groceries and making that lunch, and the heart attack victim comes out ahead with a spouse's insurance coverage and a ride home from the hospital. Those benefits and many others lead most people to seek out connections with high levels of social, emotional, and financial enmeshment. Those relationships last longer, in part because it's hard to untangle all that "us-ness."

In parent-child relationships, legal parenthood protects social, emotional, and financial connections between adults and children. Contrary to conventional wisdom that condemns parenthood-by-contract through baby-selling statutes and other legal rules, people make enforceable legal agreements – contracts -- to terminate parental relationships and to become parents. Both adoption and alternative insemination arrangements involve these contracts. In addition, people make not-binding agreements – which I call "deals" in my book *Love's Promises: How Formal and Informal Contracts Shape All Kinds of Families* (2015) – about topics like post-adoption visitation between birth families and adopted children. Rather than continue to mask the many contracts and deals in families, family law ought to more openly acknowledge the often-positive role of contracts in family life and family law. A contractual framework justifies the trend of states enforcing post-adoption contact agreements. More controversially, it could help family law move beyond the rules that allow a child to have only two legal parents and the all-or-nothing assumptions that prevent partial parenthood. In short, doctrine may develop rules that recognize a range of parent-child relationships, including, say, a man who provides sperm and plays an avuncular role with a child being raised by a married lesbian couple.

Among adults, marriage is shorthand for a high level of interdependence. Though marriage rates are declining and cohabitation rates are on the rise, the 2010 Census indicates that there are five married-couple households for every cohabiting-couple household. Opening up marriage to same-sex couples in much of the country has led marriage rates in that population to triple. Because marriage is the most common form of family, I call it Plan A in *Love's Promises*. Yet lots of people opt for Plan B when law, luck, inertia, or preferences lead people to a road less travelled. A contractual view of family accommodates both Plan A and Plan B. It justifies both

the current rule that treats marriage as the relationship with the most rights and duties and could protect a cohabiting couple's reasonable expectations regarding of property sharing.

Adopting a contractual lens can help both law and society craft a regime of options in family life and family law. As a normative matter, a contract/deal framework situates Plan B as a morally neutral variation of Plan A. Neutrality, however, is not an end point. Removing the clutter of moral judgment makes space for noticing the way that honoring family variety supports more people—especially children and vulnerable adults—as well as communities.