

Why Should the State Recognize Non-conjugal Unions? An Analysis of the Debate around their Legal Recognition

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7.1. Introduction

Non-conjugal unions among friends, relatives and other non-sexual relationships are a fascinating subject for study in relation to the questions posed by this book project. The chapter¹ borrows the term ‘non-conjugal’ from a strand of legal scholarship in North America that uses it to identify committed relationships between people (usually friends or relatives) that are non-conjugal.² While this may seem like a circular definition, it is the

¹ The chapter was written for the nEUfam project (Jean Monnet Module in EU Family Law, ref. no. 101085117), funded by the European Commission.

² N Cahn, C Huntington and E Scott, ‘Family Law for the One-Hundred-Year Life’ (2023) 132 *Yale Law Journal* 2023; E Scott and R Scott, ‘From Contract to Status: Collaboration and the Evolution of Novel Family Relationships’ (2015) 115(2) *Columbia Law Review* 293; JG Culhane, ‘After Marriage Equality, What’s Next for Relationship Recognition?’ (2015) 60(3) *South Dakota Law Review* 383; ND Polikoff, *Beyond (Straight and Gay) Marriage: Valuing All Families under the Law* (Beacon Press 2009). As to Europe, see N Palazzo, *Legal Recognition of Non-conjugal Couples: New Frontiers in Family Law in the US, Canada and Europe* (Hart 2021); A Gross, ‘The Burden of Conjuality’ in E Brems (ed), *Diversity and European Human Rights: Rewriting Judgments of the ECHR* (Cambridge University Press 2013) 265–292; N Barker, ‘After the Wedding, What Next? Conservatism and Conjuality’ in N Barker and D Monk (eds), *From Civil Partnership to Same-Sex Marriage: Interdisciplinary Reflections* (Routledge 2015) 220–236; N Barker, ‘Rethinking Conjuality as the Basis for Family Recognition: A Feminist Rewriting of the Judgment in *Burden v. United Kingdom*’ (2016) 6(6) *Oñati Socio-Legal Series* 1249.

product of the continuing lack of definition of what ‘non-conjugality’ means in practice and law, which in turn stems from the lack of a clear definition of ‘conjugality’.³ At times, it stands for situations where the relationship does not have a sexual component, a legally defining feature of conjugal relationships.⁴ In the present work, we adopt this definition.

The academic debate introduces alternative terms to identify such unions, including ‘non-couple relationships’, ‘caring relationships’, ‘non-intimate relationships’ and ‘domestic relationships’.⁵ US media streamlined some non-conjugal relationships as platonic relationships or marriages.⁶ The variety of terms often reflects a variety of arrangements, with ‘non-conjugal unions’ acting as an umbrella term to capture these different relationship types. In fact, we are talking about a complex and multifaceted concept that encompasses different relationships: it can include platonic/romantic partnerships and non-romantic ones (like two cohabiting siblings), relationships in which people are related by blood and others in which they are not, and so on.

As one of us previously explored with respect to a similar topic,⁷ creating ‘umbrella terms’ (hypernyms) is a conceptual move imbued with power:⁸ negative terms (here, *non*-conjugal) create a circular-definition problem and risk erasing or downplaying the specificities of the things they encompass. However, this is exactly why our study is relevant – the only thing that binds the relationships encompassed by the literature we cover is their non-conjugality, and therefore we cannot truly escape this definition by

³ See generally K Brook, ‘Comeos from the Margins of Conjugality’ in R Leckey (ed), *After Legal Equality: Family, Sex, Kinship* (Routledge 2014) 99–114.

⁴ Cambridge Dictionary ‘conjugality’ (2020) <https://dictionary.cambridge.org/dictionary/english/conjugal> (‘connected with marriage or the relationship between two married people, especially their sexual relationship’) accessed 27 November 2025; B Cossman and B Ryder, ‘What Is Marriage-Like Like? The Irrelevance of Conjugality’ (2001) 18(2) *Canadian Journal of Family* 270 (‘while debates have raged over the question of who the law should consider to be a spouse, the definition of conjugality remains elusive’); L Harder, ‘The State and the Friendships of the Nation: The Case of Nonconjugal Relationships in the United States and Canada’ (2009) 34 *Signs: Journal of Women in Culture and Society* 633.

⁵ As to the latter, see Domestic Relationships Act (ACT) 1994 [AUS]; The Law Commission | Te Aka Matua o te Ture, *Review of the Property (Relationships) Act 1976* (Report 143 2019) at [7.88]–[7.89] (NZ).

⁶ See e.g. E Pearson, ‘Platonic Marriages: Why Women Are Getting Hitched to Their Besties’ (Forbes, 14 June 2024) <https://www.forbes.com/sites/elizabethpearson/2024/06/14/platonic-marriage-why-women-are-getting-hitched-to-their-besties/> accessed 27 November 2025.

⁷ D Cardoso, ‘Reframing the Role of Communication in Consensual and/or Ethical (Non)Monogamies: A Proposal for a Change in Academic Terminology’ (2024) 4 *Open Research Europe* <https://open-research-europe.ec.europa.eu/articles/4-167/v1> accessed 27 November 2025.

⁸ V Alia, ‘The Politics of Naming: A Personal Reflection’ (2007) 55 *Names* 457.

negation, only be aware of its implications. With this aim in mind, our work will reflect on the impact of onomastic politics underlying these proposals.

Family law scholars, and other strands of academia, have critiqued the ongoing centrality of the sexual family in law, as well as the idea that unions must have some form of sexual attachment to deserve legal recognition, from a variety of angles. Michel Foucault addresses the role of sex (and sexuality) in the establishment of the bourgeois family in Europe as a hegemonic template of family.⁹ Foucault explored the way certain sociocultural transformations¹⁰ have resulted in the centrality of sex as a way of keeping ‘family’ alive¹¹ (with family understood as a set of ties of blood and property) but also as a way of constituting contemporary forms of identity and subjectivity.¹² More recently, Martha Albertson Fineman’s scholarship discussing the ‘sexual family’ is one of the most impactful contributions to the field. Fineman boldly argues that the replacement of sex with care would entail moving beyond family law altogether to enter the realm of contract law.¹³ Jonathan Herring also wishes to replace sex as the omnibus referent in family law, in order to replace it with care¹⁴ – or at least to create an additional framework that protects caring relationships in addition to conjugal ones.¹⁵ In 2001, the landmark report of the Law Commission of Canada ‘Beyond Conjuality’ marked a pivotal shift toward recognizing interdependent relationships beyond the boundaries of sexual involvement.¹⁶

Non-conjugal unions raise fundamental questions in family law regarding the recognition of adult–adult relationships. The debate unpacks certain

⁹ M Foucault, *História Da Sexualidade 1: A Vontade de Saber* (Relógio d’Água 1994).

¹⁰ These sociocultural transformations are encapsulated in the partial transition from the alliance *dispositif* to the sexuality *dispositif*. According to Foucault, familial and conjugal relationships started being framed more and more through the lens of sexuality (and hence the pathologizing of same-sex acts and relationships, for instance), rather than just through the lens of blood ties and alliances between families. See generally Foucault (ibid).

¹¹ Ibid. Although a detailed exploration of this is out of scope for this chapter, the emergence of sexual orientation as a prime organizer of conservative political discourse about ‘the family’ is a prime example of this. In sum, while the up-and-coming bourgeoisie was fiercely against the established nobility’s blood ties as a way to monopolize political and economic power, the bourgeois family itself kept and reinforced the role of inheritances and wealth accumulation as part of its distinct social and moral self-identification.

¹² Foucault (n 9).

¹³ M Albertson Fineman, *The Autonomy Myth: Lies We Tell Ourselves about Dependency and Self-Sufficiency* (The New Press 2004).

¹⁴ J Herring, ‘Sexless Family Law’ (2009) 11(3) *Lex Familiae, Revista Portuguesa de Direito da Família* 20. See also Jonathan Herring, Chapter 13, this volume.

¹⁵ J Herring, ‘Making Family Law More Careful’ in J Wallbank and J Herring (eds), *Vulnerabilities, Care and Family Law* (Routledge 2013) 43–58.

¹⁶ Law Commission of Canada, *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships* (2001).

assumptions in family law by asking crucial questions spanning ‘What is the state trying to achieve when regulating personal relationships?’ and the corollary question of ‘Why does it prioritize one family form over other family forms?’. It then moves to advance different arguments regarding why a state should recognize non-conjugal unions. Ultimately, if the idea that non-conjugal should also be protected in law is put forward, what are the underlying motives sustaining such a groundbreaking idea?

This chapter conducts a content analysis of seminal scholarly reflections on the legal recognition of non-conjugal unions. Scholarship has advanced distinct arguments to support the cause of their legal recognition. The work identifies the following arguments:

1. One pivoting on the promotion and defence of individual *autonomy*.
2. An argument pivoting on seeking *equality through comparison* (between conjugal and non-conjugal unions).
3. One pivoting on the *utility* of recognizing non-conjugal relationships.
4. An *empirical* argument pointing to the gap between the reality of families and the law and the need to fix it.
5. A *historicising* argument that aims to put into perspective the contingent nature of contemporary modes of legal recognition.
6. An argument about fundamental *sociolegal values* that cannot be attained without, or are better attained through, the recognition of non-conjugal relationships.

Interestingly, these different strands of literature tend to focus on non-conjugal relationships as holding either or both normative and non-normative potential – that is to say, arguments for recognition are not all in agreement about whether such an act would be disruptive, or even if it should be. Regardless, these relationships operate on the margins of the non-normative (such as two committed friends), the anti-normative (such as platonic partners who challenge the heteronormative paradigm of family) but also normative (the extended family of relatives grounded in tradition). Overall, because they encompass such a variety of relationships and potentially involve a range of governmental, social, and political objectives, non-conjugal relationships are instructive about the various reasons why societies should move beyond the ‘nuclear family’ model, or, as Gayle Rubin aptly put it, outside the ‘Charmed Circle’ of sexuality.¹⁷

¹⁷ G Rubin, ‘Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality’ in R Parker and P Aggleton (eds), *Culture, Society and Sexuality: A Reader* (2nd ed, Routledge 2007) 160.

7.2. Methodology

The chapter offers a content analysis of some leading works in family law on non-conjugal unions and the law. The study focuses on prominent voices in the field of family law and stems from around five years of doctoral research on the topic. These are, we argue, the authors that have promoted the view that family law should expand its reach to protect unions that, by and large, exist without a sexual component, or where that sexual component is not germane to the relationship, or where it exists in a way that might not be perceived as such.¹⁸ Thus our research question can be phrased as: *What arguments are used in the relevant legal literature in the Global North to support the recognition of non-conjugal relationships?*¹⁹

Content analysis is a research method that is especially suited to the objectives of the chapter, as a flexible method for analysing text data.²⁰ In recent years, both quantitative and qualitative content analysis have come into wide use in several disciplines, including family law.²¹

Unlike quantitative content analysis, which adopts a deductive approach, qualitative content analysis adopts an inductive approach to the analysis of text data.²² This chapter looks at three types of academic outputs – scholarly articles, books and book chapters. Our research has looked at the scholarship produced around relevant clusters identified in the course of five years of research, mostly focusing on Global North legislation and academic debate. These clusters are connected to either (1) a major event that has triggered a scholarly debate around these families' legal recognition or (2) recurring conceptual categories within legal scholarship, which prompted a debate on non-conjugal unions' recognition. Examples of conceptual categories that are catalysing attention towards the issue of non-conjugal unions' recognition are friendship and siblings. Examples of major events are the *Burden* case litigated in the UK and before the European Court of Human Rights, the publication of the seminar report 'Beyond Conjugality' in Canada, and the passage of laws recognizing caring relationships in Australia.

¹⁸ R Bauer, 'BDSM Relationships' in BL Simula (ed), *Expanding the Rainbow: Exploring the Relationships of Bi+, Polyamorous, Kinky, Ace, Intersex, and Trans People* (Brill | Sense 2019) 135–148.

¹⁹ Royal Geographical Society, 'A 60 Second Guide to ... The Global North/South Divide' <https://www.rgs.org/schools/resources-for-schools/global-north-south-divide> accessed 26 November 2025.

²⁰ S Cavanagh, 'Content Analysis: Concepts, Methods and Applications' (1997) 4 *Nurse Researcher* 5.

²¹ L Kessler, 'Family Law by the Numbers: The Story That Casebooks Tell' (2020) 62(4) *Arizona Law Review* 921.

²² BL Berg, *Qualitative Research Methods for the Social Sciences* (3rd ed, Pearson 1998) 233–252.

Data collection was done between 12 March and 17 October 2023 and involved the first author and the collaboration of five law students.²³ In total, we collected 39 scholarly works.

Geographically, the selected authors are based in jurisdictions situated in the Global North,²⁴ namely in the Euro-American context and Oceania. Within this geographical space frame we have sought to feature the work of leading voices with affiliations from different countries spanning Canada,²⁵ the United States,²⁶ the UK,²⁷ continental Europe,²⁸ Australia and New Zealand.²⁹ While the geographical scope is narrow and only covers the Euro-Anglo sphere, this methodological choice allowed for an analytically tighter comparison.

The selection of works was, as mentioned, limited to those in favour of the legalization of non-conjugal relationships. However, this is not to say that we have limited our analysis to those documents that have that as the central objective. While some works are explicitly focusing on recalibrating the target of family law to include non-conjugal unions, others are pursuing different research goals.³⁰ In the latter case, the recognition of non-conjugal unions may emerge as an ancillary topic, as something, for example, worth contemplating in the future.³¹ From these works it is, however, still possible to identify passages that contribute to the objective of mapping the arguments that support the legal recognition of non-conjugal unions. The dividing line between relevant and non-relevant scholarly works is therefore drawn not based on whether the recognition of such unions is the central topic addressed by the work but whether the arguments in favour of the legal recognition of non-conjugal unions are sufficiently clear as to allow for coding and analysis.

When conducting qualitative content analysis, researchers develop codes from the text through an inductive process and then interpret the codes into

²³ We would like to thank the following students for their work and commitment to this research: Constança Mota, Filipe Gama, Maria Ribeiro, Ana Reis and Madalena Lima (who contributed until 16 May). The data collection and analysis was carried out within the project nEUfam – 101085117 (Jean Monnet Module in EU family law), funded by the European Commission.

²⁴ Royal Geographical Society (n 19).

²⁵ E.g. Law Commission of Canada (n 16); Cossman and Ryder (n 4).

²⁶ E.g. Cahn, Huntington and Scott (n 2).

²⁷ E.g. Barker (n 2); Herring (n 14); Herring (n 15).

²⁸ E.g. Palazzo (n 2).

²⁹ E.g. M Briggs, 'Rethinking Relationships' (2015) 46 *Victoria University of Wellington Law Review* 669.

³⁰ As an example of the former, see Law Commission of Canada (n 16); LA Rosenbury, 'Friends with Benefits?' (2007) 106 *Michigan Law* 189; Palazzo (n 2).

³¹ See e.g. Cahn, Huntington and Scott (n 2).

overarching analytically relevant categories that allow for novel insights.³² In our approach to coding, we took care to minimize inferred meanings, choosing to base our coding on the manifest content articulated by the authors. For the same reason, we chose not to code arguments that are presented as adversarial or attributed to other sources and authors. Under the same guiding principle, we have at times created different subargument codes to reflect the rhetorical and linguistic emphasis given to certain aspects of an argument, even in situations where those different aspects can be said to implicate each other logically, empirically, or legally.

The paper then adopts a qualitatively focused content analysis, known as framework analysis.³³ The method is especially apt, considering that the arguments are frameworks of meaning-making deployed by legal scholars. We undertook the following post-collection steps:

1. With the supervision of the first author, the student group collected the most relevant passages from the selected works, which serve as coding units or data units.
2. Following a first read-through of the material, the first author identified a series of broad-scope initial frameworks (i.e. types of arguments).
3. The student group connected each passage to one or more of those initial frameworks (i.e. data units could be multicoded), all the while receiving feedback and guidance from the first author.
4. The second author received the coded material, and critically analysed it to check for the internal consistence of the frameworks and their distinctiveness.
5. The second author proposed minor changes to the categorization and naming of the frameworks originally identified, and proposed a series of subcategories, used to identify specific facets of each argument.
6. The proposed changes were discussed between both authors, until consensus was reached that the current coding scheme reliably represented the source material, while still providing new empirical and critical insights on it.

While we acknowledge the ongoing methodological debate about issues of quality and reliability in qualitative analysis, especially the idea of ‘data saturation’,³⁴ we maintain that this coding scheme constitutes an

³² BM Lindgren, B Lundman, UH Graneheim, ‘Abstraction and Interpretation during the Qualitative Content Analysis Process’ (2020) 108 *International Journal of Nursing Studies* 2.

³³ MD Kiernan and M Hill, ‘Framework Analysis: A Whole Paradigm Approach’ (2018) 18 *Qualitative Research Journal* 248.

³⁴ V Braun and V Clarke, ‘To Saturate or Not to Saturate? Questioning Data Saturation as a Useful Concept for Thematic Analysis and Sample-Size Rationales’ (2021) 13 *Qualitative Research in Sport, Exercise and Health* 201; U Flick (ed), *The Sage Handbook of Qualitative*

encompassing, fair, independently reproducible and academically useful systematization of the arguments present in the surveyed literature.

The legal recognition of non-conjugal unions, while becoming more popular in Western academia in the last two decades, continues to be a relatively ‘niche’ topic. By niche, we refer to the fact that the contours of the debate themselves are more easily drawn compared to other topics (e.g. the legal recognition of same-sex couples, or cohabitating couples). This is not to say that few people have participated in the debate. The contention is that the selected voices – while not representing a systematic literature review – are exemplary of the principal strains of debate on the legal recognition of non-conjugal unions due to their varied origin, number, academic salience and overall impact on the state of the debate.

As to the variety of structures of relationship that we collected as falling under the hypernym of ‘non-conjugal’, the authors of the works analysed have focused either on the notion of friendship,³⁵ extended families,³⁶ siblings,³⁷ caring unions,³⁸ or personal adult relationships beyond conjugality.³⁹ The variety of labels also reflect a partially different focus, as well as variety in our dataset. Notwithstanding that, the selected authors have all advocated for an understanding of family as a union in law that moves beyond the sexual element. These proposals and arguments are not mutually exclusive.

Hence, although we make no claim to systematic comprehensiveness, we are still able to provide a sufficiently reliable snapshot of the debate over the legal recognition of non-conjugal unions and the motives behind their legal recognition.

Data Collection (Sage Reference 2018); V Braun and V Clarke, ‘One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?’ (2021) 18 *Qualitative Research in Psychology* 328.

³⁵ Rosenbury (n 30).

³⁶ C Draghici, ‘Adult Children and Elderly Parents in Strasbourg Proceedings: A Misconstrued Approach to ‘Family Life.’ (2018) 32 *International Journal of Law, Policy and the Family* 42.

³⁷ JE Hasday, ‘Siblings in Law’ (2012) 65 *Vanderbilt Law Review* 897; R Zafran, ‘Reconceiving Legal Siblinghood’ (2020) 71 *Hastings Law Journal* 749.

³⁸ Barker (n 2); Herring (n 14); Herring (n 15).

³⁹ F Swennen, ‘Un-coupling Family Law: The Legal Recognition and Protection of Adult Unions outside of Conjugal Coupledness’ (2020) 28(1) *Feminist Legal Studies* 39; Law Commission of Canada (n 16) 35.

7.3. Results

7.3.1. *Overall structure of arguments*

Following the iterative and reflexive coding process just outlined, we arrived at six major types of arguments, with varied numbers of subtypes. These results are summarily outlined in Table 7.1.

As mentioned in the Methodology section, the coding units were multiple-coded, meaning that any given excerpt could belong to one or more of the lower-level codes (herein, subarguments). This methodological choice is, in the face of the results obtained, productive: many of the arguments used exist at the intersection of various subarguments, which are combined in different ways and even (as is more evident in the Equality through Comparison argument) sometimes antithetical ways.

It is also possible to see that, while some arguments are more directly related to evidence-based approaches (namely those under the Empirical argument), others are also indirectly so (e.g. some of those under the Historicizing argument); on the other hand, others are more abstract and values-based (e.g. Human Dignity).

Below, we provide a critical summary and analysis of these six arguments, using examples and explicating methodological-analytical choices that underpin these results.

7.3.2. *Autonomy*

The first argument we have identified is that of Autonomy. This argument stems from a contemporary understanding of the state as being in service to its constituent citizens and on private (and privatized) forms of self-determination. We are reminded here of the work of Ken Plummer, who talked about intimate citizenship as a contemporary aspect of the evolution of politics.⁴⁰ According to his view, intimate citizenship was a sign that ‘a radical, pluralistic, democratic, contingent, participatory politics of human life choices and difference is in the making’.⁴¹

Under this argument, we have selected three main sub-components: well-being, choice and self-determination. While one could argue that they are overly similar to one another, we observe that they point towards different social dynamics and, as we will see in the Discussion section, these differences carry weight.

The excerpts we coded under ‘well-being’ emphasize the results that would come out of the recognition of non-conjugal relationships: they

⁴⁰ K Plummer, *Telling Sexual Stories: Power, Change and Social Worlds* (Routledge 1995).

⁴¹ Ibid, 147 (emphasis in the original).

Table 7.1: Typology of arguments and subarguments in favour of the legal recognition of non-conjugal relationships

Main argument	Subarguments	Short definition
Autonomy	Self-fulfilment/well-being	Promoting the well-being of citizens
	Choice	Defending individuals' right to make choices about their private lives
	Self-determination	Asserting individuals' rights to self-determine their life objectives
Equality through comparison	Differentiation from coupledness/marriage	NCUs' differences from marriage as necessitating legal specification
	Functional similarity with coupledness/marriage	NCUs' similitude with marriage as a basis for legal recognition
Utility	Fostering care	Facilitating care relationships
	Recognizing interdependence	Legislating around existing interdependent relationships
	Promoting social stability and order	NCU legislation creates the conditions for more social stability and order
	State self-interest in privatized care	The state has self-interest in regulating NCUs to foster individual-based care
	Increased nuance/coherence of the legal regime	Regulating NCUs as a way to create a more self-coherent legal system
Empirical	Existing social complexity	The law must address existing social complexity in how people create bonds
	Evolution of socioeconomic structures	The law must keep up with fast-paced changes pertaining to intimate dynamics
Historicizing	Global North traditions	Historical evidence from Global North contexts as precedent for legislating NCUs
	Othered traditions	Subordinated cultures and countries as a basis for the relevance of NCU legislation
	Evolutionary psychology/essentialism	The 'nature' of human psychology or evolution as a basis for regulating NCUs
	Changing legal role of consummation	Critique on the overemphasis on sexual intercourse in legislating relationships

Table 7.1: Typology of arguments and subarguments in favour of the legal recognition of non-conjugal relationships (continued)

Main argument	Subarguments	Short definition
Sociolegal values	Protection from discrimination for some marginalized groups	Legislating NCU as anti-discriminatory for some minorities
	Undoing marriage's hierarchical supremacy	Marriage is unjustly prioritized, and this could be corrected via legislating NCUs
	Gender equality	Legislating NCUs is a necessary step for gender equality
	Advancing labour rights	Legislating NCUs would advance labour rights
	Democratization	Legislating NCUs is necessary for furthering the values underpinning democracy
	Human dignity	Legislating NCUs is necessary for upholding human dignity

are more connected to autonomy as a means to an end, and see in Autonomy a net good only if it results in that self-fulfilment and well-being. In this sense, the role of the state is one of procuring the conditions to allow for, or to encourage, the attainment of well-being for as many people as possible. This is connected to, as we will see, a comparative perspective towards marriage; one that usually leads to a valuing of non-conjugal relationships. For instance, Beatrice Gusmano echoes the words of a research participant identified as Edoardo, a gay cisman: ‘I feel more satisfied by my friends [...]. Friendships are much more reliable’.⁴² Various other authors also noted that many non-conjugal relationships are conducive to various forms of well-being – be it psychological or material – and that this alone makes those relationships valuable and worthy of recognition.

Choice and self-determination, however, operate somewhat differently. The first one pertains to the ability to make choices:

The value of autonomy requires that governments put in place the conditions in which people can freely choose their personal relationships. The state must also avoid direct or indirect forms of

⁴² B Gusmano, ‘Ohana as a Way of Life: Queer Friendship in the Mediterranean Regime’ in JA Redding and N Palazzo (eds), *Queer and Religious Alliances in Family Law Politics and Beyond* (Anthem Press 2022) 100.

coercive interference with adults' freedom to choose whether or not to form, or remain in, close personal relationships.⁴³

By contrast, the second one pertains to the various contexts under which those choices occur (which, in turn, is also different from self-fulfilment, where the focus is on the results of those choices).

However, these two subarguments also converge in emphasizing a right to the exercise of liberty by individuals and in asserting that the multiple choices (either voluntary or created by circumstances) should be a main driver of how the law adapts to contemporary circumstances.

We have gathered under this overall topic all the references that treat the idea of autonomy as self-evident, or as an end in itself, or something that is a cornerstone of contemporary legal systems. While autonomy can still factor in the arguments presented next, it comes across as an assumption or as subtext, not as the argument itself.

7.3.3. *Equality through comparison*

William Eskridge argues that utilitarianism led to a shift from rigid family law rules to individual choice, creating an 'unprecedented baseline of nondiscrimination'.⁴⁴ The state can still differentiate relationships but only with reasonable and objective justification. Courts across the Global North increasingly reject moral bias as a basis for discrimination.⁴⁵

The principle of equality and nondiscrimination can hence act as a force behind the legal recognition of non-conjugal unions. However, it can take two different directions: it can support their legal recognition in that these unions share the same characteristics and/or functions of marital-like unions (already recognized in law) or because they are different and hence equality would require a tailored approach to ensure that they are not assimilated into the prevailing family model, marriage.

7.3.3.1. *Functional similarity with coupledness/marriage*

At times, the reason for recognizing non-conjugal unions simply lies in the fact that they possess the same characteristics of the 'benchmark family' or perform similar functions.⁴⁶ This functional equivalence test has been pivotal

⁴³ Law Commission of Canada (n 16) 18.

⁴⁴ WN Eskridge, 'Family Law Pluralism: The Guided-Choice Regime of Menus, Default Rules, and Override Rules' (2012) 100 *Georgetown Law Journal* 1973.

⁴⁵ Palazzo (n 2) 194.

⁴⁶ N Palazzo, 'Non-conjugal Couples and Legislated Cohabitation' in M Briggs and A Hayward (eds), *Family Property and the Law* (Research Handbooks in Family Law Series,

in law across jurisdictions in expanding legal protections for unions outside of marriage. Especially, it has been important for de facto unions, which have obtained, for example, the same property protections as married couples precisely because they were ‘substantially’ the same as married couples.⁴⁷ It has also been critical in the legal recognition of same-sex unions, who except for their sexual orientation shared all the functional characters of heterosexual unions.⁴⁸

The argument has also been employed before the European Court of Human Rights when contemplating the possibility to recognize two cohabiting sisters. The sisters argued they were in a similar situation to married and civil partners because they were also able to be emotionally and economically committed to each other.⁴⁹ While the lower court did not consider this issue in its judgment, the Grand Chamber found that the sisters were not in a functionally equivalent relationship: their relationship was held to be fundamentally different due to consanguinity, which is explicitly a disqualifying condition for marriage and civil partnerships.⁵⁰

The works under review capture a variety of qualifying features that attest to this functional similarity. For example, the Law Commission of Canada mentions how some non-conjugal relationships show an inherent ability for ‘long-term commitment’.⁵¹ The authors of the report, Brenda Cossman and Bruce Ryder, critically assessing the work carried out by the Commission, highlighted a host of features such as ‘shared residential relationship, a close emotional relationship, and an economically intertwined relationship’.⁵²

7.3.3.2. *Differentiation from coupledness/marriage*

The argument pivoting on equality seems to also support the recognition of non-conjugal unions precisely because they share only some of the

Edward Elgar 2023) 176–195; K Griffiths, ‘From ‘Form’ to Function and Back Again: a New Conceptual Basis for Developing Frameworks for the Legal Recognition of Adult Relationships’ (2019) 31(3) *Child and Family Law Quarterly* 227; VE Hamilton, ‘Mistaking Marriage for Social Policy’ (2004) 11 *Virginia Journal of Social Policy & the Law* 307.

⁴⁷ See e.g. B Atkin, ‘The Legal World of Unmarried Couples: Reflections on “De Facto Relationships” in Recent New Zealand Legislation’ (2008) 39 *Victoria University of Wellington Law Review* 793.

⁴⁸ See e.g. *Obergefell v Hodges*, 576 US 644 (2015).

⁴⁹ *Burden v United Kingdom* (Application No. 13378/05) Judgment of 29 April 2008 (GC).

⁵⁰ *Ibid*, [62].

⁵¹ Law Commission of Canada (n 16) 35.

⁵² Cossman and Ryder (n 4), cited in K Spensieri, ‘Revitalizing the Spousal Support Regime for Non-conjugal Adult Personal Relationships and the Case of Caregiving’ (2016) 36(1) *Canadian Family Law Quarterly* 123.

same characteristics or functions of marital-like couples. For example, Laura Rosenbury, in her leading work *Friends with Benefits*, notes that '[g]iven that friendship increasingly serves many of the functions traditionally reserved for family, friendship could easily fall within family law's domain'.⁵³

These authors argue that non-conjugal relationships have unique features that law must recognize instead of merging them with marital or marital-like relationships. The goal is not to compare them negatively but to ensure their distinct roles are respected. Some authors do note that this might create some disruption:

[P]articularly in its cross-household form, the concept [of non-conjugal relationships] carried a disruptive potential for the legal regulation of close relationships [...] because it created some space for relationships that are not ordinarily accorded much legal recognition, such as friendships.⁵⁴

Shakargy also highlights the potential for these unions to rethink family and personal relationships: 'A plus one relationship does not carry the traditional significance of marriage. Instead, it is a reflection of free will, self-determination and autonomy.'⁵⁵ Seen under this light, we can understand the connection between the Autonomy and the Equality arguments (as well as Utility), in that they both operate under the assumption that certain values – self-determination, protection from discrimination – should be maximized whenever possible.

7.3.4. Utility

The Utility argument is the one that foregrounds the perspective of the state as an actor that is pursuing its own distinctive objectives through state policy. The Utility argument is perhaps the most straightforward one we have identified. Under this argument, the state has a legitimate self-interest in legislating non-conjugal unions. This self-interest has two sides: first, recognizing these relationships supports social roles like caregiving; second, the state benefits by reducing welfare costs and minimizing social tensions caused by inequality or discrimination.

⁵³ Rosenbury (n 30) 212.

⁵⁴ S Trotter, 'Ways of Being Together during the COVID-19 Pandemic: Support Bubbles and the Legal Construction of Relationships' (2021) 6 *Frontiers in Sociology* 7–8.

⁵⁵ S Shakargy, 'Plus One: Who Decides Who is One's Significant Other?' (2021) 35 *International Journal of Law, Policy and The Family* 27.

However, again, this preliminary explanation is a thin common denominator that unites under the umbrella of ‘utility’ a variety of different arguments. We have divided the materials under five different subarguments: Fostering Care; Recognizing Interdependence; Promoting Social Stability and Order; State Self-interest in Privatized Care; and Increased Nuance/Coherence of the Legal System. While some of these may appear overly similar, we have divided them according to the emphasis given by the authors to certain objectives.

Care and Interdependence are contiguous concepts. Their difference lies on whether authors emphasize situational asymmetries or not. Scenarios involving the care of children or the elderly, whether provided by family members or friends, are two situations in which care relationships are seen as having utilitarian value and thus need to be nurtured: ‘That other persons also have duties toward children can alleviate the burdens on the primary caregiver(s) and promote all children’s well-being.’⁵⁶ On the other hand, the focus on interdependence is more closely aligned with the first argument (‘Autonomy’), as it emphasizes the ability that individuals should have when it comes to deciding how to organize their private lives.

In both cases, it is also suggested, perhaps sometimes tongue-in-cheek, that the state itself should promote the legalization of non-conjugal relationships, as this would be a quick way to reduce the economic costs of having to provide social services to those who are in vulnerable situations and have no caregivers.⁵⁷ Be it care-centred or more focused on the state’s own financial interests, the subargument operates at the conjunction of citizens’ self-determination and the state’s interest in protecting the public purse.

Parallel to this, another utilitarian subargument made is that the recognition of non-conjugal unions will lead to more social cohesion or order. The rationale here is that the law has a stabilizing effect, by allowing citizens to rationally organize their lives according to legitimate expectations about how their future will look like. This subargument emerges from the following quote by Jane Cross: ‘[A]llowing persons to share in rights afforded to married partners provides security and stability for non-traditional family arrangements’.⁵⁸

To that end, some authors also note that the reduction in socioeconomic vulnerability stemming from the mentioned reallocation of public resources would, in itself, contribute to more social cohesion and order. As Lorraine

⁵⁶ N Bakht and L Collins, ‘Are You My Mother? Parentage in a Nonconjugal Family’ (2018) 31 *Canadian Journal of Family Law* 105, 140.

⁵⁷ Courts routinely recognize this interest, that is the privatization of care, as a legitimate state interest. E.g. *State v Oakley*, 629 NW 2d 200 (Wis 2001), cert denied, 123 S Ct 74 (2002). Palazzo (n 2) 70.

⁵⁸ JE Cross, ‘Families Redefined: Kinship Groups That Deserve Benefits’ (2009) 78 *Mississippi Law Journal* 791, 823.

Johns put it: ‘First, the state must maintain social order. Individual well-being affects social order and personal relationships have a significant impact on well-being.’⁵⁹

Ultimately, whether by creating distinctions from conjugal unions or by making those distinctions unimportant, the legalization of non-conjugal unions would, it has been argued, prevent the political tension and polarization that have marred so many debates on intimate citizenship.⁶⁰

7.3.5. *Empirical*

The Empirical argument differs from the previous arguments, which were primarily concerned with projective, or idealized, ways of constructing the connective aspects of the social fabric.⁶¹ The Empirical argument comes across as more ‘self-evident’. Yet the apparent rhetorical simplicity hides a composite argument that relies on different facets of contemporary societies. Law needs to be responsive to the challenges and features of the societies it applies to, the argument goes. However, the supporting evidence for policy change is drawn from very different sources and with vastly different connotations.

We divided this argument into two main subarguments: one pivoting on ‘Existing Social Complexity’ and the other on the ‘Evolution of Socioeconomic Structures’. At a first glance, this might make little sense – after all, any manifestation of social complexity (e.g. family diversity) is, by definition, the result of ever-evolving socioeconomic structures. The first one, however, places emphasis on statistics, landmark decisions, or hypotheticals/examples on unrecognized unions (such as mentioning unspecific adopted children or friend groups).

The argument here is not that the law should or could foster change, but rather that it is failing to align with existing social configurations (to catch up with the reality of family life).

Under ‘social complexity’, friendship and blood-based familial ties (e.g. siblings) are seen as essential to modern life, requiring legal consideration.

⁵⁹ L Johns, ‘Recognising Non-Conjugal Relationships in New Zealand: Should We Extend the Rights and Responsibilities of Marriage and Marriage-like Relationships to Other Caring Relationships?’ (MA Thesis, Te Herenga Waka-Victoria University of Wellington 2010) 60.

⁶⁰ Plummer (n 40). E Scott and R Scott, ‘From Contract to Status: Collaboration and the Evolution of Novel Family Relationships’ (2015) 115 *Columbia Law Review* 369 (arguing that the absence of the sexual component creates the conditions for the legal recognition to be ‘smoother’ compared to that of sexual relationships, such as same-sex couples).

⁶¹ For further on empirical arguments on what is a family, see the chapters in Part III, ‘Empirical Approaches to Defining Families’ of this volume.

Examples also include blended families and child-rearing networks beyond couples or single parents. Jonathan Herring mentions '[s]tep-parents; same-sex partners; grandparents and others might be fully regarded by the child as a parent'.⁶² The author is not commenting on any one specific case but rather making an argument that this is something that can, and does, happen, and so the law should have a way to address it, regardless of the concrete configurations of the relationships at stake.

The other subset of arguments focuses on the changes brought about by modernity. These changes, the logic goes, have been profound and, from a historical perspective, often quite sudden. It is therefore natural that the law should change in response to these changes. While it is true that both versions of this argument rely on the idea that the law is out of step with contemporary reality, this second subset seems to imply that current laws are meant for a world that no longer exists. A telling example is the following:

The functional families I have just described are but two among millions of de facto contemporary families generated from intimate affiliations outside of marriage. They represent unusually creative and successful responses to the heightened challenges, risks, and opportunities of what I have described elsewhere as the postmodern family condition. Family diversity is an irreversible feature of the postmodern family landscape.⁶³

The examples given are often organized around the need for/of care, given and received. In this sense, the empirical argument builds on the Autonomy and Utility arguments just outlined, since it reinforces (and often sits alongside) the facticity of the (more abstract) values of (personal) self-fulfilment and (interpersonal) care. This facticity in itself is taken as self-evident and therefore objective and unassailable – in a sense, asserting epistemic privilege by resorting to positivism and objectivity.⁶⁴

7.3.6. *Historicizing*

The Empirical argument emphasizes the uniqueness of the present, while the historicization argument asserts that historical patterns justify recognizing non-conjugal relationships in law. Unlike empirical arguments based on statistical data, this argument relies on broad anthropological and

⁶² J Herring, *Caring and the Law* (Hart Publishing 2013) 201.

⁶³ J Stacey, 'Toward Equal Regard for Marriages and Other Imperfect Intimate Affiliations' (2003) 32 *Hofstra Law Review* 331, 338 (emphasis added).

⁶⁴ D Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective' (1988) 14 *Feminist Studies* 575.

historiographic insights. These historical facts gain relevance not just for their accuracy but as part of a *longue durée* of social organization that legitimizes legal changes.

As with other arguments, tensions exist regarding its political positioning, especially within post-/de-/anti-colonial and feminist perspectives.⁶⁵ As shown in Table 7.1, it references both Anglo-Eurocentric and Othered traditions. Tradition, typically a conservative hallmark, is used differently here: rather than advocating a return to an imagined past, these authors argue that the nuclear family was never a historical reality, even in the Global North.⁶⁶ Instead, it became a norm post-WWII, alongside middle-class expansion, reinforcing the heterosexual reproductive family.⁶⁷ By questioning this constructed norm, these scholars challenge the assumption that heterosexual monogamy is natural. Rather than critiquing the nuclear family's supposed historical role, they refute its factuality. If non-conjugal familial arrangements have long existed in the Global North and persist today, then legal recognition is justified.⁶⁸ However, by employing strategies used by conservative legal scholars, these authors risk reactionary counterarguments.

A parallel argument highlights Othered traditions, where the nuclear family is equally absent as a universal model. We use the term 'Othered traditions' because these authors emphasize how non-Global North cultures have been legally marginalized. A legal system that truly reflects reality must recognize all forms of social organization. Ignoring these traditions perpetuates colonial epistemic violence, the argument goes.⁶⁹

A less prominent but recurring argument considers smaller-scale historical legal developments, such as the declining relevance of consummation in marriage, as signs of a shift laying the groundwork for the recognition of non-conjugal unions. Some works even adopt a quasi-ahistorical approach, suggesting that non-conjugal bonds are intrinsic to human social evolution (considering humanity *qua* biological species). A prime example of this can be found in Bakht and Collins:

⁶⁵ C Martins, *Mulheres, Raça e Etnicidades: Introdução aos Feminismos Decoloniais* (1.^a Edição, Imprensa da Universidade de Coimbra 2024) <http://monographs.uc.pt/iuc/catalog/book/438> accessed 27 November 2025.

⁶⁶ A Giddens, *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies* (Stanford University Press 1993); U Beck and E Beck-Gernsheim, *El Normal Caos Del Amor: Las Nuevas Formas de La Relacion Amorosa* (Ediciones Paidós 2001).

⁶⁷ KM Phillips and H Reay, *Sex before Sexuality: A Premodern History* (Polity Press 2011).

⁶⁸ Royal Geographical Society (n 19).

⁶⁹ M Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press 2007).

The communal caring for children by numerous people [...] may also be seen as evolutionary; the practice dates as far back as the hunter-gatherer period. Anthropologist Sarah Blaffer Hrdy has argued that [...] homo sapiens could never have evolved if human mothers had been required to raise children on their own.⁷⁰

This argument grounds legality in human evolution, showing that non-conjugality is not just a modern issue. It challenges claims that it stems from contemporary movements (such as queer movements or post- or anti-identitarian politics) and instead ties it to fundamental human existence. This weakens opponents' arguments that legal recognition is unnatural or threatening.

7.3.7. *Sociolegal values*

The Sociolegal Values argument draws on legal and political principles to discuss how society should be structured and which values should guide it. Various subarguments highlight how marriage has historically excluded certain groups.⁷¹ They often begin with a historically situated reflection on how marriage has been organized and used as a device for social order or with reflections that link marriage to other historical systems, such as patriarchy.

The first subargument stresses that legalizing non-conjugal relationships will allow for the protection of various marginalized groups. Illustrative examples include older people, those without a wider network of blood relatives, and orphaned children. The second subargument stresses the hierarchy of relationship recognition that has marriage (steadily) on top. According to some authors, the hierarchy itself is undesirable as it violates the principles of equity and fairness, especially when only heterosexual relationships are visible in law.

A key claim is that this legal change would reduce gender inequality. Since unpaid care work – mainly done by women – leads to economic and social disadvantages, recognizing non-conjugal relationships would provide legal support, especially for mothers and caregivers.⁷² Connected to the economic impact of care work and other forms of interpersonal support, an additional subargument notes that recognizing non-conjugal relationships would allow for the advancement of labour rights. Care-related work absences are often only valid when tied to legally recognized family ties. This creates financial risks for carers of partners, elderly people, friends, or distant relatives. Legal

⁷⁰ Bakht and Collins (n 56) 142.

⁷¹ For more on this, see Maynes, Chapter 5, this volume.

⁷² For further reflections on this issue, see Moradi, Chapter 12, this volume.

recognition would improve job security by ensuring protection under law and private policies, e.g. by companies.

Many of these subarguments are used alongside a more general claim about the democratization of society. In these cases, what the authors claim is that the upholding of these socio-legal values, as well as those mentioned in Argument 1, is indicative of a society that is more democratic than our current one and that therefore the legalization of non-conjugal relationships is the pursuit of democracy in action; the underlying and unspoken assumption is that the failure to recognize them is anti-democratic.

The final subargument, Human Dignity, is simple but far-reaching. It builds on other arguments – self-determination, anti-discrimination, and care – to define dignity as essential to a democratic society. These other lines of reasoning are then placed in service of human dignity. Values like self-determination and non-discrimination constitute, for those authors, the necessary conditions or characteristics of a dignified life. This is best exemplified by Nicola Barker's quote – and underlying approval – of a UK Supreme Court finding (*Ghaidan v Godin-Mendoza*): 'Treating some as automatically having less value than others [...] violates his or her dignity as a human being ... such treatment is damaging to society as a whole.'⁷³

7.4. Discussion

Defining non-conjugal relationships is challenging due to their diverse configurations. Legal recognition must account for an unknowable range of familial forms. In focusing on the ability for the law to include an unknowable set of different familial configurations, we are pushed to an ontic politics that operates as a negative image of a hegemonic benchmark.⁷⁴ This benchmark in our case is conjugality – rooted in mononormativity,⁷⁵ the couple norm,⁷⁶ or marriage.⁷⁷ This reinforces its dominance, requiring non-conjugality to be defined in opposition. We do not mean this as criticism – indeed, this is

⁷³ Barker (n 1).

⁷⁴ K Jenkins, *Ontology and Oppression: Race, Gender, and Social Reality* (Oxford University Press 2023).

⁷⁵ M Pieper and R Bauer, 'Polyamory und Mono-Normativität. Ergebnisse einer empirischen Studie über nicht-monogame Lebensformen' in L Méritt (ed), *Mehr als eine Liebe: polyamoureuse Beziehungen* (Orlanda 2005) 59–70.

⁷⁶ S Roseneil, I Crowhurst, T Hellestun, AC Santos and M Stoilova, *The Tenacity of the Couple-Norm: Intimate Citizenship Regimes in a Changing Europe* (University College London 2020) <https://muse.jhu.edu/book/81857> accessed 27 November 2025.

⁷⁷ N Barker, *Not the Marrying Kind: A Feminist Critique of Same-sex Marriage* (Palgrave Macmillan 2013).

how our chapter begins, since it is something required of us by the nature of the ontology of this construct rather than something that we choose to do. However, a comment on the ontic politics of this necessity is itself necessary if we are to understand the results of our study.

As our study shows, various arguments support the legal recognition of non-conjugal relationships, but they do not apply universally. Since non-conjugality implies the absence of sexual and romantic intimacy, different scholars emphasize distinct relationship models. These varying perspectives are not contradictory but highlight tensions in defining which relationships should receive legal recognition.

The prime example of this tension emerges in relation to ‘friendship’. As one of the authors of this chapter discussed years ago, a politics of relationship based on the idea of friendship poses a powerful challenge to existing hegemonic ways conceptualizing and regulating of relationships.⁷⁸ Some scholars frame friendship through Aristotle’s notion of virtue-based bonds,⁷⁹ while others, like Gusmano, view it through a Foucauldian lens as a form of queer resistance beyond institutional ties, emphasizing that ‘solidarity, complicity, and reciprocity are promoted as central features of queer friendships as a way of life’.⁸⁰ Foucault’s work only applies to friendships ‘outside of institutional relations, family, profession and obligatory camaraderie’⁸¹ and is defined by ‘the sum of everything through which [the friends] can give each other pleasure’.⁸²

In the works under review, as well as elsewhere,⁸³ friendship is often linked to an ethic of care – and this is why care, caring and interdependence were so prominent in several of the arguments we mapped. Care can, however, be employed in two directions. Under a first view, the decline of traditional social structures,⁸⁴ like marriage, increases individual vulnerability, necessitating new strategies for support.⁸⁵ Alternatively, care is framed as resistance to individualism, emphasizing interdependence and community. Despite their differences, both

⁷⁸ D Cardoso, ‘Del amor a la amistad: la política de las relaciones’ in S Cendal (ed), *(h)amor2*, (M Pérez tr, Continta Me Tienes 2015) 53–66.

⁷⁹ EJ Leib, *Friend v. Friend: The Transformation of Friendship—and What the Law Has to Do with It* (1st ed, Oxford University Press 2011) 33.

⁸⁰ Gusmano (n 42).

⁸¹ M Foucault, ‘Friendship as a Way of Life’ in P Rabinow (ed), *The Essential Works of Michel Foucault, 1954–1984: Ethics* (vol 1, Penguin 2000) 136–140.

⁸² Ibid.

⁸³ S Roseneil and S Budgeon, ‘Cultures of Intimacy and Care beyond “the Family”’: Personal Life and Social Change in the Early 21st Century’ (2004) 52 *Current Sociology* 135.

⁸⁴ U Beck and E Beck-Gernsheim, *Individualization: Institutionalized Individualism and Its Social and Political Consequences* (SAGE 2002) ch 1.

⁸⁵ B Adam, U Beck and J van Loon (eds), *The Risk Society and Beyond: Critical Issues for Social Theory* (SAGE Publications 2000).

views position care as essential for survival, particularly for children, the elderly, minorities, and the infirm. While seemingly contradictory, they both share a common assumption: that care work is survival work.

These arguments are inherently biopolitical, focusing on maintaining social well-being rather than on maximizing individual pleasure.⁸⁶ This emphasis on individual survival through interpersonal cooperation – and the push for state recognition – can be seen less as a turn to a feminist ethics of care than as an desperate attempt to counter the progressive dissolution of the welfare state brought about by the maturing of neoliberal capitalism.⁸⁷ Given neoliberalism's reliance on selective validation and exclusion along gender, class, race, sexuality and mononormativity lines, the rhetoric of 'non-conjugal relations' fits within these power dynamics ('dual extensions of partial validation and devaluation').⁸⁸

The emphasis on stability and longevity is part of a necessary line-drawing exercise. Since the state cannot regulate all interpersonal interactions at every moment and junction, it must define which forms of care warrant legal protection. It must, so to say, draw a line. The intertwining of care, friendship and survival creates an expanded utilitarian framework, balancing welfare state erosion with claims to intimate citizenship rooted in self-determination, autonomy and human dignity.⁸⁹

By aligning themselves with the narrative that contemporary statehood uses to legitimize itself, these lines of argument seek to make themselves inevitable and, in a sense, already-here. This already-here presence of not-here legislation is twofold: already-here as part of the moral order of a minimally interventionist state and already-here as part of the everyday lives of many millions of people who have developed and will continue to develop their own networks of care and support.

7.5. Conclusion

Herring summarizes a fundamental tension behind legal recognition: 'If your parent falls seriously ill, to what extent is it a choice to care for them?

⁸⁶ AF Cascais, 'Ontotecnologias do corpo e biopolítica na era da pós-humanidade e da pós-emancipação' (2024) 26 *Natureza Humana – Revista Internacional de Filosofia e Psicanálise* 125; M Foucault, *The Birth of Biopolitics* (M Senellart ed Palgrave Macmillan UK 2008); T Lemke, 'From State Biology to the Government of Life: Historical Dimensions and Contemporary Perspectives of "Biopolitics"' (2010) 10 *Journal of Classical Sociology* 421.

⁸⁷ C Hermann, 'Neoliberalism in the European Union' (2007) 79 *Studies in Political Economy* 61.

⁸⁸ M Jung, 'Theorizing Sexuality Politics of Neoliberalism: A Queer Sociological Approach' (2024) 18 *Sociology Compass* e70000 1, 5.

⁸⁹ Plummer (n 40).

It often does not feel like a choice.⁹⁰ Inasmuch as we are *obliged to choose* because contemporary biographies are forcefully ‘DIY biographies’,⁹¹ what level of constraint is acceptable before a choice becomes disconnected from autonomy? If choice is a function of power, then the recognition and protection of those who rely on non-sanctioned forms of care and support becomes even more important – as these are arguably the ones who need it most. Any change in legal recognition may well have the unintended consequence of deepening the disenfranchisement of those whose membership to the recognized group is ambiguous, questioned, or impossible. This should not be read as a word of caution *against* such legal recognition but rather as an acknowledgment that such recognition is only one step in addressing social problems, not the end goal.

As the chapter shows, what a family *can be* in a given time and space is always contingent on socio-political imaginaries of what a ‘family’ *is*, and what it should be from the perspective of the state. While the romantic, dyadic, sexually exclusive nuclear family gains support in law, the social practices of kinship do not always fall under the radar of the law.

The lack of recognition of non-conjugal unions has thus been a valuable site of inquiry for asking some of the most important questions that family law scholars grapple with. Should family law privilege form or function? Is the family an end in itself or a means to an end? Is ‘family’ ultimately something – i.e. can we approach it from a phenomenological or an ontological perspective?

The analysis illustrates that, to achieve the same intended result – the legal recognition of non-conjugal relationships – multiple rhetorical paths can be used: some authors seeing family as an end in itself; other instrumentalizing it to achieve certain objectives; some scholars privileging forms, others function, and so on. This corroborates the idea that the family should not be essentialized, renouncing the fateful question ‘What is a “family”?’ if directed towards distilling an ‘essence’. The family is ultimately (also) a place of symbolic and material struggle for existence, a place of power and resistance. The idea of the family has a potency that should not be underestimated, because it can serve to do – or prevent – great harm, and the law will always play an important role in shaping this outcome.

⁹⁰ Herring (n 62) 84.

⁹¹ Beck and Beck-Gernsheim (n 84) 15.