Family Dynamics
How the Law Interacts with Everyday Life

What the law doesn’t say about marriage, childrearing, sex, and death often helps shape our daily lives as much as what it prescribes or proscribes, according to Law Professor Laura Rosenbury. That fact drives her to examine how the law influences seemingly private relationships and conduct in ways we don’t often realize.

Professor Laura Rosenbury’s family law research breaks new ground with its practical implications—such as her discovery that pursuant to most states’ default marital property distribution rules, women generally fare better financially as divorcees than as widows. It also raises new issues with its theoretical analysis of the law’s role in the most fundamental of human relationships.

“I’m very interested in the subtle ways in which law can influence everyday behavior, especially those areas thought to be outside the law, such as parent–child relationships, friendships, and even child–child relationships,” says Rosenbury, who recently was awarded tenure and was named the 2006 Professor of the Year.

But that influence often comes as much from what the law doesn’t say—and thus tacitly supports—as what it explicitly dictates, what she calls “the expressive power of various silences within family law.” Such as its ignoring authority figures other than the state or family in childrearing, which she examined in “Between Home and School,” published in the April 2007 University of Pennsylvania Law Review and selected for presentation at the 2006 Stanford Yale Junior Faculty Forum.
A New Theory of Childrearing

In the article she posits that while the law acknowledges parental authority and that of the school over children under its care, it ignores a fundamental reality: Much of childhood takes place in spaces between home and school—in playgrounds, childcare centers, churches, community gyms, clubs, cyberspace, and more. Yet family law remains virtually silent about “what happens or what should happen in these spaces,” Rosenbury says.

She then goes on to provide the first family-law reading of the pivotal decision Boy Scouts of America v. Dale, where the Scouts sought to exclude homosexual scoutmasters, and sets forth a new theory of childrearing designed to acknowledge the socializing force of people and institutions between home and school.

However, her interest in such areas where the law has been hushed up to now does not necessarily reflect a desire to extend state regulation or control there.

“I want to expand the field of legal analysis and thought,” says Rosenbury, “although I’m very conflicted about expanding state regulation. I’m more interested in small ‘l’ law—social norms and conventions—rather than big ‘L’ Law. The decision not to regulate is as important as to regulate—it shapes the field. The law’s attention does not necessarily mean increased state regulation.”

Divorce or Death?

Rosenbury’s 50-state analysis of default inheritance statutes, outlined in “Two Ways to End a Marriage: Divorce or Death,” published in the 2005 Utah Law Review, exposes another area where family law scholars have been largely quiet: marriages that end by death. Her study produced the perhaps counterintuitive finding that, in most states—thanks to laws embracing the partnership theory of marriage at divorce—spouses are guaranteed to receive more property via divorce than by inheritance, where other family members may profit.

“Family law scholars are ignoring the phenomenon that many women do better in a divorce settlement molded by state divorce laws, rather than inheriting as a widow pursuant to state intestacy or elective share laws,” says Rosenbury. She theorizes that the schism expresses “a continued expectation of wifely sacrifices within marriages that do not end in divorce, despite the rhetoric of spousal equality that pervades family law scholarship” and sees this expectation of sacrifice “lurking within the partnership theory itself.”

Says Rosenbury: “The partnership theory was a good interim strategy but not as useful as it once was. We now need to change it.”

Seemingly, she would also change the perception of family law among legal scholars.

“Family law has a low status in academia for its dealing with mundane realities. But I just disagree,” says Rosenbury. “This is what shapes people’s everyday lives.”

And while Rosenbury is happy to be in academia and working in the theoretical realms of family law, she came to it circuitously.