



*International  
Journal of*  
**Private  
Law**

Volume 5, No. 1, 2012

Publisher's website: [www.inderscience.com](http://www.inderscience.com)

Email: [editorial@inderscience.com](mailto:editorial@inderscience.com)

ISSN (Online) 1753-6243  
ISSN (Print) 1753-6235

Copyright© Inderscience Enterprises Ltd

No part of this publication may be reproduced stored or transmitted in any material form or by any means (including electronic, mechanical, photocopying, recording or otherwise) without the prior written permission of the publisher, except in accordance with the provisions of the Copyright Designs and Patents Act 1988 or under the terms of a licence issued by the Copyright Licensing Agency Ltd or the Copyright Clearance Center Inc.

Published and typeset in the UK by Inderscience Enterprises Ltd

*IJPL* fosters discussions and provides a forum on all aspects of private law including audio-visual, media, communication and space law, which have not been covered by any journals so far. Thus the need for an international medium through which the efforts of the international community will be disseminated is self-evident. *IJPL* explores the legal issues facing individuals, entrepreneurs, and business owners. It discusses provocative and timely issues facing both the national and international community.

The articles are written by professionals, lawyers, judges, academics and law students using a concise, journalistic style. *IJPL* explores the whole range of topics related to private law and is an essential resource for both students and professors. It is dedicated to providing comprehensive, practical, and current information for practising attorneys, judges, students, and academics. To this end, *IJPL* strives to provide accurate, reliable, and contemporary information regarding the practice of private law worldwide.

Problems of international dimension require international efforts. The objectives of *IJPL* are to establish an effective channel of communication between policy makers, government agencies, academic, research, legal practitioners, universities and businesses concerned with practical legal issues prevalent in private law. The aim is to attract the highest level of research results, to provide valuable insight into matters of broad intellectual and practical concern to the legal and business communities and to meet the quality standards.

**Subject coverage**

- Commercial law and bankruptcy
- Employment and labour
- Finance, corporate governance, banking and investment
- Legislative and regulatory affairs
- International law
- Intellectual property
- E-commerce
- Property ownership, and real estate
- Restitution
- Family law
- Torts
- Contract law
- Trade and commerce
- International judicial assistance
- Wills and estates
- Conflict of law
- Trade law
- Jurisdiction of the courts
- Choice of law and recognition of foreign judgments
- International judicial assistance
- Jurisdiction and judgments
- Offshore outsourcing
- Space and aviation law

- Communication law
- Sales of goods
- Product liability
- Consumer protection and marketing
- Case law and policy developments
- Environmental law
- Human rights
- Competition law
- Arbitration and ADR
- Media, entertainment and communication law
- Equity and trust
- Sports law

**Submission of papers**

Papers, case studies, etc. in the areas covered by *IJPL* are invited for submission. Authors may wish to send an abstract of proposed papers in advance. Papers must not exceed 25 pages (Times New Roman, "10" and single space). Papers must contain the email addresses of author(s), keywords, a 50-100 word abstract and a short biographical note (consisting of not more than four sentences).

**Authors of accepted papers will receive a PDF file of their published paper. Hard copies of journal issues may be purchased at a special price for authors from [subs@interscience.com](mailto:subs@interscience.com)**

Authors are invited to submit their papers to:  
**Editor in Chief**  
Professor Sylvia Mercado Kierkegaard  
President, International Association of IT Lawyers  
Tuborgvej 106, DK-2900 Hellerup, Denmark  
Email: [sylvia.kierkegaard@itil.org](mailto:sylvia.kierkegaard@itil.org)

Neither the editor nor the publisher can accept responsibility for opinions expressed in the *International Journal of Private Law* nor in any of its special publications.

**Subscription orders**

*IJPL* is published in four issues per volume. A Subscription Order Form is provided in this issue.

Payment with order should be made to:  
InterScience Enterprises Ltd. (Order Dept.),  
World Trade Centre Building II,  
29 Route de Pre-Blon, Case Postale 456,  
CH-1215 Geneva 15, Switzerland.  
You may also FAX to:  
(UK) +44 1234 240 515  
or Email to [subs@interscience.com](mailto:subs@interscience.com)

**Electronic PDF files**

*IJPL* papers are available to download from the website: [www.interscience.com](http://www.interscience.com)

Online payment is available by credit card.

**Advertisements**

Please address enquiries to the above-mentioned Geneva address or  
Email: [adverts@interscience.com](mailto:adverts@interscience.com)

**Contents**

|     |   |
|-----|---|
| 1   | <b>Bad eggs and oil slicks: a defendant's wealth is an important factor in properly assessing punitive damages</b><br><i>Judy Feuer Zimet</i> |
| 22  | <b>Non-state law in party autonomy – a European perspective</b><br><i>Zheng Sophia Tang</i>   |
| 40  | <b>Accommodating employees with mental impairments: an empirical study of employer practices</b><br><i>Karen Patterson</i>                    |
| 61  | <b>The protection of a celebrity parody: <i>Paris Hilton v. Hallmark Cards</i></b><br><i>Erica Klazner</i>                                    |
| 79  | <b>Land reform and investment protection after the Campbell litigation: can SADC learn from NAFTA?</b><br><i>Loniast Ndlovu</i>               |
| 101 | <b>Reform of the marriage law in Argentina</b><br><i>Alejandro Laje</i>   |

## IJPL SUBSCRIPTION ORDER FORM

Volume 5, 2012

(THIS FORM MAY BE PHOTOCOPIED)

**Subscription price and ordering information:**  
The *International Journal of Private Law* is published four times a year (in one volume of four issues), in English.

Subscription for hard copy OR online format (one simultaneous user only) € 494 per annum (including postage and handling).

Subscription for hard copy AND online format (one simultaneous user only) € 672. Airmail option € 40 per volume extra.

Prices for multi-simultaneous users are available on request.

Subscription orders should be addressed to the publishers:

Inderscience Enterprises Ltd (Order Dept.), World Trade Centre Building II, 29 route de Pre-Bois, Case Postale 856, CH-1215 Genève 15, Switzerland.

**Payment with order:**

Cheques or bankers drafts should be sent with order, made payable to:

**Inderscience Enterprises Ltd.**

Credit card payments will be accepted and will be converted to £ Sterling at the prevailing rates.

**For rush orders, contact:**

Fax: (UK) +44 1234 240 515

Website: [www.inderscience.com](http://www.inderscience.com) or Email to [subs@inderscience.com](mailto:subs@inderscience.com)

Please enter my subscription to the *International Journal of Private Law*

subscriptions to Volume 5, 2012. €

Please dispatch my order by air mail (add € 40 per Volume): €

I enclose total payment of €

Name of Subscriber

Position

Company/Institution

Address

Fax Email

Date Signature

I wish to pay by credit card

I authorise you to debit my account with the amount in GBP sterling equivalent to €

Three digit security number (on reverse of card)

Card No. Expiry Date

Signature Date

Please tick if you would like details of other Inderscience publications

## International Journal of Private Law (IJPL)

**Editor-in-Chief**  
Sylvia Mercedes Kirkgaard  
President, International Association of IT Lawyers, Tuborgvej 166  
DK-2900 Hellerup, Denmark  
Email: [sylvia.kirkgaard@iaitl.org](mailto:sylvia.kirkgaard@iaitl.org)

### Members of the Editorial Board

**Roger Baker**  
Chaucer Consulting, 67-68 Preston Street  
Faversham, Kent ME13, UK  
Email: [roger.k.baker@btinternet.com](mailto:roger.k.baker@btinternet.com)

**Michael D. Birback**  
Professor of Law  
Head of the Legal Committee of the Israeli  
Public Council for the Protection of Privacy  
Tel-Aviv University, Faculty of Law  
Ramat Aviv, Tel-Aviv 6972, Israel  
Email: [mbirback@post.tau.ac.il](mailto:mbirback@post.tau.ac.il)

**Martin J. Doris**  
Assistant Professor  
Chinese University of Hong Kong  
Faculty of Law  
Sha Tin NT, Hong Kong  
Email: [m.doris@cuhk.edu.hk](mailto:m.doris@cuhk.edu.hk)

**Hans Henrik Edlund**  
Director, Doctoral Studies Program  
Aarhus University  
Aarhus School of Business  
Fuglesangs Allé 4  
8210 Aarhus V, Denmark  
Email: [hbe@jsh.dk](mailto:hbe@jsh.dk)

**Peter Gillies**  
Professor of Law, Macquarie University  
Department of Business Law  
Division of Law  
Sydney, NSW, 2109, Australia  
Email: [peter.gillies@mq.edu.au](mailto:peter.gillies@mq.edu.au)

**Willem Grabbe**  
Chairman, Centre of Intellectual Property  
Law, University of Utrecht  
Molengraaff Institute  
3512 EN Utrecht, Netherlands  
Email: [F.Grabbe@lel.uu.nl](mailto:F.Grabbe@lel.uu.nl)

**Gregory C. Mosier**  
Dean of College  
University of Nevada, Reno  
College of Business Administration  
Reno, NV 89557, USA  
Email: [greg.mosier@unr.edu](mailto:greg.mosier@unr.edu)

**Saurette Nel**  
Professor of Law, University of South Africa  
Department of Procedural and Criminal Law,  
Cas van Vuuren Bldg, 8-92  
Pretorius Street, Makhosonk Ridge  
Pretoria, South Africa  
Email: [sanette@knetipi.co.za](mailto:sanette@knetipi.co.za)

**Igor Nenec**  
President, Office for Personal Data Protection  
of the Czech Republic, Pplk. Sochora 27 170 00  
Praha 7, Czech Republic  
Email: [igor.nenec@puou.cz](mailto:igor.nenec@puou.cz)

**Dennis Patterson**  
Board of Governors Professor of Law and  
Philosophy  
Co-Director, Institute for Law and Philosophy  
Rutgers University, School of Law  
217 North 5th Street, Camden, NJ 08102, USA  
Email: [dpatterson@camden.rutgers.edu](mailto:dpatterson@camden.rutgers.edu)

**Dragoljub Popovic**  
Judge, European Court of Human Rights  
Council of Europe  
67075 Strasbourg Cedex, France  
Email: [Dragoljub.Popovic@ecshr.coe.int](mailto:Dragoljub.Popovic@ecshr.coe.int)

**Stephen Saxby**  
Professor & Deputy Head of Research  
University of Southampton  
School of Law  
Highfield, Southampton SO17 1BJ, UK  
Email: [S.J.Saxby@soton.ac.uk](mailto:S.J.Saxby@soton.ac.uk)

**Gary Shaw**  
Vice Dean and Professor of Law  
Touss College Jacob D. Fuchsberg Law Center  
225 Eastview Drive  
Central Islip, NY 11722, USA  
Email: [CSHaw@Touss.edu](mailto:CSHaw@Touss.edu)

**Rolf H. Weber**  
Chair, Private, Economic and European Law  
University of Zurich, Department of Law  
Rechtswissenschaftliche Fakultät  
Käminstrasse 74/78  
CH-8001 Zurich, Switzerland  
Email: [rolf.weber@wiw.unizh.ch](mailto:rolf.weber@wiw.unizh.ch)

## CALL FOR PAPERS

### International Journal of Intellectual Property Management (IJIPM)

Website: [www.inderscience.com](http://www.inderscience.com)  
ISSN (Print) 1478-9647  
ISSN (Online) 1478-9655

The *IJIPM* welcomes research papers across a wide range of topics embracing the studies of intellectual property from the perspectives of business management, organisational principles, and government policies. The purpose is to enhance the critical understanding of intellectual property in theory and practice, to appreciate the strategic importance of intellectual property to corporate and organisational success, and to disseminate knowledge on the management of intellectual property and commercialisation of different forms of intellectual property.

#### Objectives

The objectives of the *IJIPM* are two-fold: firstly, to enhance communications between policy makers, organisational agents, academics, and managers on the critical understanding and research on intellectual property; secondly, to promote the development of the newly-cultivated research field. A truly international perspective to the studies of intellectual property is applied, with a great emphasis on issues in management, economics, politics, and international business.

#### Readership

The *IJIPM* builds up linkages between professionals and academics to exchange ideas and information in research and practice, and stimulates knowledge dissemination in this interdisciplinary field.

#### Contents

The *IJIPM* welcomes theoretical and empirical papers with original contributions to advance the research in the field of intellectual property. It is pluralistic in methodology, i.e. conceptual papers, case studies, theoretical development, hypothetical test papers, and book reviews are all welcome. Comparative studies across countries and firms are encouraged. Special Issues devoted to important topics in intellectual property will occasionally be published.

#### Subject Coverage

- The national development history of intellectual property
- International harmonisation of intellectual property
- Culture, ideologies and intellectual property
- Valuation methods of intellectual property - disparities and economic significance
- External corporate and organisational strategies; licensing in and out, strategic alliances, cooperative research and development, technology transfer, and intellectual property litigation
- Internal corporate and organisational strategies: stimulating inventions, managing intellectual property information, competitive analysis and intellectual property exploitation, and decision-making on intellectual property commercialisation
- Global piracy and corporate and organisational strategies
- The impacts of intellectual property on mergers and acquisitions
- The impacts of intellectual property on firm internationalisation
- Intellectual property and its effects on international organisation

All papers are refereed through a double blind process. A guide for authors, sample copies and other relevant information for submitting papers are available at [www.inderscience.com/papers](http://www.inderscience.com/papers)

#### Specific Notes for Authors

All papers must be submitted online.  
To submit a paper, please go to [Online Submission of Papers](#).

Editor-in-Chief: Dr. M.A. Dargham

133 SUNS op cit note 95.

134 Ibid. Federal laws such as the US 'Buy America' procurement law and a variety of measures taken by state, provincial and municipal governments have been challenged under NAFTA Chapter 11.

135 Supra note 66.

## Reform of the marriage law in Argentina

Alejandro Laje

Universidad Abierta Interamericana Law School,  
Chacabuco 90 (C1069AAB), Buenos Aires, Argentina  
E-mail: alexlaje@yahoo.com

**Abstract:** The reform of marriage law in Argentina including same sex couples brought a great deal of equality to the system but it has some elements inconsistent with other aspects of Family Law that remain unmodified. The modification of the marriage regime addressed the issues related to the equality principle and solidarity as the aim of the law. This article argues that the reform is not in full harmony with the Argentine legal system.

**Keywords:** marriage equality family solidarity reform rule; Argentina.

**Reference** in this paper should be made as follows Laje, A. (2012) 'Reform of the marriage law in Argentina', *Int. J. Private Law*, Vol. 5, No. 1, pp.101-106.

**Biographical notes:** Alejandro Laje is a Professor of Jurisprudence and Vice-Dean of Universidad Abierta Interamericana Law School, Buenos Aires, Argentina.

### 1 Introduction

Political changes have endangered the legal culture of the nation. During the 20th century, Argentina was not able to establish a dependable democratic political system. It alternated between democratically elected governments and authoritarian regimes.

Argentine laws suffer from deficiencies that undermine their reputation among the general public and the wider legal community. This is particularly true in Family Law, where groups holding opposing views impose their own view of what constitutes a proper family unit. Each new law (particularly in Family Law) was followed by street demonstrations supporting and rejecting a particular initiative.<sup>1</sup>

Argentina was one of the last countries in the world to enact a divorce law; yet it was one of the first countries to legalise same-sex marriage nationwide. Both changes were mostly political and were not the result of careful legal reasoning. Indeed, divorce was made possible in Argentina in 1987,<sup>2</sup> supported by the then recently established democratic government. Before 1987, efforts were undertaken to legalise divorce in Argentina, but, on the general political criteria at that time considered that marriage was a lifetime strictly monogamous practice, those efforts did not yield any positive results. Likewise, in 2010, the general political criteria considered that it was convenient to rid sex and gender differences from the list of legal requirements for civil marriages. Without much concern for legal technicalities, the Argentine Congress passed Act 26.618 including same-sex couples in the existing marriage law. This modification of the law gave equal rights to same-sex and heterosexual couples. However, Act 26.618 has some

elements inconsistent with other aspects of Family Law that remain unmodified, thus affecting privacy and information issues. This article aims to show that the marriage reform is not full harmony with the Argentine legal system.

## 2 Inconsistencies with other law

Article 172 of the Argentine Civil Code currently does not require that people be of different gender to get married. Together with Article 172, Congress modified an additional 42 articles of the Civil Code and other important federal laws.

The core of the reform was simply to remove the words 'man' and 'woman' from every legal text, replacing them with 'contracting parties'. Thus, sex is no longer an issue in marriage law and it is clear that the union is between two persons regardless of their sex or gender. The law still keeps the requirement of monogamy as an essential element of marriage.<sup>7</sup> The law now adds that "marriage will have the same legal effects and requirements, regardless of the sex of the contracting parties."

This simple change of words implies a major modification to the concept of marriage, revises national and international law enforcement criteria, and alters the purpose of marriage and the concept of family. In the realm of Family Law, it has specific implications in the custody rules for minors, and rules governing property held jointly by both spouses.<sup>8</sup>

Notwithstanding, this reform circumvents important legal aspects that were neglected due to the political context in which the law was passed. The current administration established the issue in its own political agenda and having the law enacted or not was considered a sign of the strength or weakness of the party's leadership. The debate brought widespread civil unrest, with opposing voices claiming that the legalisation of gay marriage implied either the end of historical discrimination or the beginning of social collapse in Argentina.

The debate was mainly approached from the equality perspective. For once, it was discussed if it was possible or even reasonable that a civil institution that provides legal protections to families would distinguish between persons based on their sexual orientation. One group rejected the fact that same sex couples could not have the same legal rights and protection granted to heterosexual couples. The issue was established as one of inequality. The opposing view argued that there's a natural difference between men and women with regard to the institution of marriage, and demanded that the law remain unchanged.

The work of Luis María López del Carril broadly explains arguments in favour and against the new marriage law. In his article 'Gay Marriage and Marriage Annulment',<sup>9</sup> he organises those arguments as non-legal and legal. The non-legal arguments are centred on views of a divine plan or on the nature of things, by which homosexual relationships would be banned. The legal arguments, a lot more interesting for legal debates, presented same-sex unions as inconsistent legal acts, as they lack one element essential to the institution: sexual diversity of the parties. To this argument, he added the lack of factual status (*in facto esse*) which inhibits the goals of matrimony.<sup>10</sup> Other legal objections based on International Law are also interesting. These objections underline the fact that Human Rights Treaties, which in Argentina have Constitutional rank, specifically establish that the right to marriage belongs to "man" and "women" and not to "every person" as the state for other rights.

López del Carril adds another argument regarding the validity of the legal act. Allegedly, same-sex marriages are null and void due to the parties' inability to conceive between them. In such cases, he opines that according to Art. 223 of the Civil Code, if the spouses act in bad faith because they are fully aware of their physical condition preventing them to procreate:

Advocates of same-sex marriage have a pragmatist view of society and of the law. For them, words do not mean any natural reality of things. On the contrary, they name what is culturally forged as the meaning of a concept. The legal arguments that support this view rely on Art. 19 of the Argentine Constitution that grants the right of every person to conceive and undertake his or her own life plan, preventing the State from imposing ideals through the system of laws.<sup>11</sup>

They also find support for their views on the Supreme Court doctrine that states the right of every person to get married<sup>12</sup> and as such the law that regulates that right cannot deny the said right to a segment of the population.

The new law, even though it addresses issues that required an urgent solution, has created some problems that are of importance. The new marriage law is strongly opposed by an important segment of society that still considers marriage to be a heterosexual union. It seems here that the law does not address an issue important to the majority of society, but rather was conceived as an orientation to lead to an intended objective. This being the case not only in Argentina but also in the larger international community which, by large, still upholds the traditional concept of marriage.

The new marriage law in Argentina has created inconsistencies between the national and the international system of law. In fact, it has created marriages that are valid only in Argentina thus isolating itself from the broader international legal community. It is important to underline here that since 1994, after the last Constitutional reform, Argentina has subscribed to a monist conception of law with pre-eminence of international law.

Further, the new legal system also carries objections regarding another important international trend – the legal aspects of identity. Same-sex couples inevitably convey issues that affect identity, more so than other couples. This aspect of the problem was not addressed properly in the new law.

On the other hand, the Argentine marriage system which now offers legal protection to all couples and which was presented as a great opportunity for same-sex couples has many elements that scarcely can be thought of as advantageous. It does not admit spouse autonomy to regulate either property nor personal effects of matrimony and carries a close State interference regarding divorce.

The topic is not an easy one but it is in these circumstances that the role of academia becomes crucial. Universities must provide space for the wider and deeper analysis of the problems that affect our societies. It is my opinion that the pivotal element of the discussion is the content of the equality principle.

## 3 Principle of equality

The equality principle requires that each one counts as one, and that no one counts for more than one.<sup>13</sup> This line, as many others found in political philosophy, is vague, and changes its meaning with each person and society. It is not self-evident, neither for



rationalist nor for empiricists. It is not universally accepted, but it is present in many philosophical and legal systems: legal natural law theory, positivism, conventionalism, all ask for some level of equality for rational beings. Deists and rationalists refer to a shared human nature. Some think it is evident and said so in important documents such as the American Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are Life, Liberty and the pursuit of Happiness."

The differences between human beings are self-evident. However arguable the evidence of the equality principle is, there is no doubt of its universal and enduring attractiveness. Its application in practice requires that it is balanced with evident human differences. We can do that by establishing equality as the starting rule. As there is only one class of human beings, it follows that each member of the class (that of human beings) has to be treated in every way in the same and identical way, unless there is enough reason, not to do so. It is not easy to act in accordance with this rule because reasonable people have different opinions as to what those reasons are and why they are so. Values, view points, and social ends affect their opinions.

There is some agreement in considering that reasons based on birth, looks, and aesthetics are irrational and that those based on merit, outcomes, and efficiency are not. However, it is rather easy to get people to agree that equality is the default principle and that different treatments require reasons that justify them.

There is an interesting relationship between inequality and rules. The reasons for inequality generate rules and at the same time, all rules have some degree of equality. As long as rules are general instruction to act or to prevent action, they require equal conducts for identical cases.

Given the fact that a minimum of rules are necessary in human societies (this law is almost universal but yet still an empirical statement), the equality principle is present in the Concept of Law. In this respect, a plea for a society based on rules is a plea for a society based on equality.

Notwithstanding there are other ideals that co-exist with the equality principle. Most of ethical and political concepts of justice combine these ideals in different ways. Of course, none of these ideals can exist if taken in its extreme version.

The most frequent and maybe the most important of competing principles are freedom and equality.

In his 'Taking Rights Seriously', Ronald Dworkin is particularly clever when he states that Western societies do not grant a general right to freedom, but rather a general right to equality.<sup>10</sup> Equality is the rule, inequality an exception which has to be justified.

To deal with the problems of subjectivity on what are rational justifications of inequality the key element is to realise that it is not what each one of us thinks those reasons are. We must interpret the law trying to draw the reasoning present in it. I will do so for the case of the Argentine law.

#### 4 Interpreting the Argentinean law

Article 16 in the Argentine Constitution states that "there shall not be blood nor birth privileges. There are neither personal charters nor nobility titles. All residents of the

Nation are equal before the law. Equality is the rule for taxation and for public duty." Article 20 adds "foreigners have all along the territory the same civil rights as citizens." Finally, Article 73, 19, reads "Congress must pass laws that organize the country and education in such manner that equal chances are granted to all without any discrimination."

Since 1875, the Supreme Court has considered that equality under the law means that the State must treat equally those persons that are in the same circumstances. In 1928, in a famous case called *Castillo*, the Court stated that

"the equality under the law established by the Constitution is not but the right that there are no exceptions or privileges that may exclude some, who, under the same circumstances apply to others. Thus, equal treatment is to apply the law in concurrent cases, according to their specific differences, and any other understanding of this right is against its own nature and of common good."

In this topic, as in many others, the US Supreme Court had great influence on the Argentine Supreme Court. Particularly important were two leading cases: *E.S. Royster Guano Co. v. Virginia*, and *Reed v. Reed* by which the US Supreme Court stated:

"It is unnecessary to say that the 'equal protection of the laws' required by the Fourteenth Amendment does not prevent the states from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this court establish that they have a wide range of discretion in that regard. But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

However, the Argentine Court is developing its own doctrine in which some differences are, *prima facie*, unreasonable, therefore are unconstitutional until they are proved reasonable. (Repetto, Inés María *et Provincia de Buenos Aires v. Inconstitucionalidad de normas legales y González de Delgado, Cristina y otros v. Universidad Nacional de Córdoba*). So far, nationality and sex are dubious categories and if they must be applied, there must be an urgent State interest.<sup>11</sup>

Considering the equality principle in marriage law, rationality must be thought of in relation to the aims of marriage. If, on the one hand, its aims are to reproduce (have children) and to provide assistance between the spouses, it seems that it is not unreasonable to distinguish among men and women, as the former Argentine marriage Law did. But if, on the other hand, the purpose of a family has changed, and now it is the centre of mutual aid, company and assistance as it is argued by Dr. Marcos Córdoba,<sup>12</sup> it also seems irrational to limit the protection of the law to the union of two people heterosexual or otherwise matched as a couple. Families are more than just the unions of couples.

#### 5 Conclusions

New forms of families are so different that it is difficult to anticipate. They require a regime that allows a broad protection for all types of domestic partnerships, extended over vast assortments of reciprocal aids, that encourages the protection of elders and minors, allows hereditary rights and other family relationships which the complexity of our society could think of.

Professor Córdoba developed in Argentina the idea of 'Assistance Life Partnership' which does not require romantic love as an element of a family. He argues that love has not been established by law as a requirement for the existence of a union in matrimony.<sup>14</sup> Vilma Vanella adds to this thesis that such 'assistance life partnerships' have their origins in the Roman idea of *patria*, that we now call solidarity.<sup>15</sup>

Passing a law regulating all sorts of 'life partnerships' without limiting its benefits exclusively to couples satisfies both, the requirements of the equality principle and the current claim for moving the law towards more flexible forms of solidarity.

It also satisfies Privacy Rights issues as it is not the State place to ask for the reasons of domestic partnerships: it is not legally relevant the motivation, being it sexual attraction, friendship, assistance or any other.

The Argentine Law is marked alike by the equality principle as by the solidarity principle. The rule is equality within each class, and solidarity firstly with the weak. There is only one class of people, that of human beings. Limiting the benefits of a legal protection to only some kind of domestic partnerships seems to be irrational and it cannot be rightfully admitted.

The right to having a domestic partnership should not be limited to traditional or gay couples, rather to every group of people that consider themselves a family independently of a love relationship. These groups of people could include best friends, distant or close relatives, colleagues, or whoever they believe for them to be their family.

#### Notes

1 Americans have a similar experience (*Roe v Wade*) their own experience with issues that divide their country in such way.

2 Art 23.515, 3 June 1987.

3 Solari, Néstor, E., *Análisis normativo de la Ley 26.618 de matrimonio civil*, La Ley, Buenos Aires, 10/08/2010.

4 Cf. Medina, Graciela, *Ley de matrimonio homosexual. Modificación de paradigmas*, La Ley, Sup. Eip. Matrimonio Civil 2010, Buenos Aires, 01/08/2010, 81.

5 López Del Carril, Luis María, *El matrimonio homosexual y la nulidad matrimonial*, La Ley, Buenos Aires, 07/10/2010.

6 Many classical Argentine professors, such as Liambias, Belluscio, Borda, Zannoni, Sambrizzi, Fassi y Molinaro concur.

7 Durra, Vilma, *Matrimonio igualitario. Aspectos constitucionales*, La Ley, Sup. Eip. Matrimonio Civil 2010, Buenos Aires, 01/08/2010.

8 Fallos: 308.2268, Sejean, Juan Bautista c/ Ana María Zaks de Sejean.

9 Berlin, Isaiah, *Conceptos y Categorías*, Fondo de Cultura Económica, Madrid, 1992, pp.147-178.

10 Dworkin, R. (1978) *Taking Rights Seriously*, Harvard University Press, Cambridge.

11 257 U.S. 412.

12 Cf. Saha, Roberto, *La Corte y los Derechos*, Editorial Siglo XXI, Buenos Aires, 2005.

13 Cf. Córdoba, Marcos, M., *Lecture at Universidad Abierta Interamericana* 28/08/2010.

14 Córdoba, Marcos, M., *Lecture at V Congreso Nacional de Derecho Civil*, Córdoba 23/09/2009.

15 Vanella, Vilma, R. *Convenio de Convivencia Asistencial*, La Ley, Buenos Aires, 23/12/2010.