

Family law and national culture Arguing against the cultural constraints argument

Masha Antokolskaia, Professor of Private Law, Faculty of Law, VU University, Amsterdam (The Netherlands)

Abstract

The 'cultural constraints argument', submits that family laws are embedded in unique national cultures, that this cultural and historical diversity is unbridgeable and therefore family laws are not spontaneously converging and cannot be deliberately harmonised. This article argues against the core assumption of the cultural constraints argument – the alleged embedment of family laws in unique and unchangeable national cultures. History shows that in the field of family ideology and law one cannot really talk of unique national cultures, but rather of a pan-European culture, which is not homogeneous but an amalgamation of pan-European 'conservative' and pan-European 'progressive' cultures. The relative influence of these two opposing family 'cultures' varies from country to country and from time to time. Examinations of history of family law suggest that there are the differences in the balance of political power between 'progressive' and 'conservative' forces, rather than national culture that determines the differences in the pertinent national family laws.

Keywords

family law; family culture; family ideology; cultural constraints argument

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