

New book studies friction between religion, family law

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A new book edited by a University of Illinois scholar who studies the intersection of family law and religion examines the clashes between religious liberty and the personal realm of the family – from birth,

marriage and child-rearing to end-of-life decisions.

The space where people's religious identities matter the most to them isn't in their actual, physical place of worship. It's typically in their own homes and with their families, said Robin Fretwell Wilson, the Roger and Stephany Joslin Professor of Law at Illinois and editor of the book "The Contested Place of Religion in Family Law."

"For [religious people](#) in the U.S., there are strange crosscurrents in the country right now. We have cases from the Supreme Court that decide – correctly I believe – that institutions where religious values have traditionally had tremendous influence, like marriage, don't belong to religious people to decide for the rest of the country," she said. "At the same time, a decision like Hobby Lobby – the 2014 Supreme Court decision that allows businesses to cite [religious beliefs](#) to exclude contraceptives from insurance plans – has left some in the faith community believing they have an unfettered right for their religious beliefs not to be burdened.

"Together, those decisions have sparked a sense among religious people that they've lost control over much that is deeply important to them."

The book, published by Cambridge University Press, features original scholarship by Wilson, University of Illinois law professors Richard Kaplan and Robin Kar, and national and international scholars on the tension between [religious freedom](#) and the state's protective function. It also features an introduction by U.S. Senator Orrin Hatch.

"It brings together scholars to talk about the post-Hobby Lobby landscape in the U.S., in which religious claims can come up across the entire lifecycle of the family, from birth to death," Wilson said. "In America, we've mostly focused on the birth side, with the battle over contraception and abortion rights. We haven't focused as much on things

in the course of a person's life, like what happens when an inter-faith marriage breaks up and each parent wants to raise their children in their respective religion. How does the law resolve that problem?"

After the 5-4 decision in *Burwell v. Hobby Lobby*, it was thought that "this cultural moment had passed or waned in intensity," Wilson said.

"But it hasn't. You still have people who don't want to prescribe contraceptives for others, for instance, and who believe the court is going to back them up on that by using the Religious Freedom and Restoration Act," she said. "That law does not reach many actions in the states. And in Mississippi, Missouri, Indiana and other state legislatures, lawmakers have introduced legislation that tries to push the envelope of religious exemptions even further."

The collection explores the idea of the family as "a buffer" against the state – "a shield or a bubble that people can seek to erect around religious practices and say 'Stay out' to the government, a notion that ripples through our Constitutional jurisprudence," Wilson said.

The latitude to follow one's faith in one's [family](#) is an existential question for faith communities because, for them, religion and religious tradition is how they transmit values across generations, Wilson said.

"They have a legitimate concern about whether they're going to be able to do certain things, provided it doesn't harm other people," she said. "Families that wish to homeschool, for example, because they have religious values and they feel as though the culture at large taints them, would be a good example. Faith communities like the Islamic and Jewish orthodox communities that circumcise male children for religious reasons fear the kind of regulation that New York and Germany have both explored to different degrees."

"But are faith healers allowed to claim the same exemption from laws designed to protect vulnerable people? And what about the potential harms surrounding the practices of polygamy and corporal punishment? A lot of those issues have threads that run through the Hobby Lobby decision, and these are all issues we explore in the book," Wilson said.

The volume doesn't strive to reach any grand conclusions, but functions more as a dialogue, said Wilson, who also is the director of the Epstein Health Law and Policy Program at the College of Law.

"It's the first significant piece of scholarship to come out of the combined efforts of the Epstein and Family Law programs, and if you care about these issues, it's a good place to begin to understand how the law implicates questions that are really central to members of a faith community or to those who don't really like where the culture wars have led us."

More information: Robin Fretwell Wilson. *The Contested Place of Religion in Family Law*, (2018). [DOI: 10.1017/9781108277976](https://doi.org/10.1017/9781108277976)

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