

## FOREWORD

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The field of Family Law is bursting at the seams. It is stretching outwards into new areas, and it experiences radical growth and change within its traditional core. In addition, there is increasing realization that Family Law cannot exist in isolation, but must reach over into fields concerned with human problems, such as psychiatry, family counseling and psychology. Perhaps the most striking development in Family Law in the last decade is the increasing momentum with which traditional legal notions are not only questioned but in fact shed and eradicated as the law struggles to keep pace with the transformations in society and to come to grips with the forces that are engulfing and embattling the institutions of marriage and the family.

One thing seems clear: enduring or life-long marriage and the rearing of children in the relative security of a single family is not the only mode of living in present society. A second, less structured or intermittently structured way of life is gaining in importance. There is no telling whether the onslaught against the fortress of the family will succeed in toppling this venerable stronghold altogether, or whether, as has happened before in the annals of mankind, the forces now at work will eventually turn toward transforming and revitalizing a deteriorating, perhaps decaying, but by no means dead institution. Be that as it may, Family Law today is attempting to make accommodation for the various modes of domestic arrangements which now exist side by side, the traditional ways and the new ways of life which individuals, alone or with partners or in groups, are seeking to carve out for themselves in society.

This volume, whose overall topic and specific subjects were selected by the student writers, reflects all of the named developments and the continuing ferment in Family Law. The newer areas of Family Law are represented by discussions of welfare influence in family life, birth control tort liability, legal problems of physically ill

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and of retarded members of a family, and equality between the sexes in property law, consumer credit, married persons' surnames, and in the criminal law. Another set of articles deals with the quest for recognition of unorthodox domestic arrangements, including property and support rights of de facto spouses, same sex marriage, and the legal status of unmarried fathers and their children.

It is interesting to note that there is no article on the law of marriage dissolution as such. This is clearly due to the fact that non-fault divorce, three years after its formal advent in California, appears to be fully accepted if not taken for granted. The effects of marriage dissolution, however, its impact on the life of children and its community property consequences involve serious, unsolved questions, which in fact account for a considerable portion of this volume's coverage.

The interdependence of Family Law and human psychology is brought out in a number of contexts. One article points up the new problems faced by the family law practitioner who is increasingly called upon to deal with the human conflicts and emotions which non-fault divorce has largely banned from surfacing in the proceedings.

It is no accident, I think, that a fair number of articles relate to child custody and other legal problems of children. One article deals with the custody decision on marriage dissolution and the voice the child himself has or should have in this regard; another recounts the harm done to children through the continuing chaos in interstate custody law; a third article is concerned with a child's visits with the non-custodial parent when they conflict with the custodial parent's right to move or travel; another deals with children unwanted by their unmarried mothers, and the natural father's possible right to take over and rear them; and finally, there are discussions of child neglect and abuse proceedings, and of inheritance rights of children born out of wedlock.

The rearing of children of dismembered or inadequate families is indeed a Number One Problem of our day. There are several million children of divorced or separated parents who are subject to the uncertainties of court-ordered custody arrangements; in addition, there are thousands of children in temporary foster care, and countless others living with parents or others under precarious circumstances not conducive to healthy growth who remain in these surroundings for want of alternative places to serve as their homes.

Almost thirty years ago the sociologist Kingsley Davis remarked that the United States may "eventually have a divorce rate that will seem astounding by present standards," but, he continued, "it is safe to assume that the present chaos concerning the children will not then prevail. Some social mechanism will have been evolved for taking care of them . . . some means of neutralizing the effects of

divorce on the child may be found by the creation of new institutional relationships that will replace the kinship bonds of primitive and archaic societies." 10 LAW AND CONTEMP. PROB. 700, 720 (1944). The first part of this prognosis has come true. As to the second, no solutions are in sight: we have not developed "clan"-like community units which would permit a child to make an almost automatic adjustment after the loss of one or both parents by remaining in the accustomed environment with familiar adults and children. We have not devised other means of protecting children who are much more vulnerable than adults in crisis situations. It is true that many children of separated or divorced parents, as far as we know, adjust well to life with one parent or to life with a parent and stepparent, but others are not so fortunate. We must intensify our search for ways to give all these children a better chance.

Generally speaking, we live in an adult-centered world. Both men and women today tend to give priority to a realization of their own potential and their own goals and desires as individuals. This includes freedom of entering and ending associations, especially in the personal sphere. Children often take second place. This, of course, is an oversimplified generalization which disregards many notable exceptions. It is general knowledge, however, that many parents, rich or poor, are indifferent to the needs of their infants and very young children, and that some are outright cruel. Community agencies, the schools and the courts, often do not come to the aid of these children until a great deal of damage has been done. Many of these children when old enough take the only way out they can see: they leave their families and are labelled "runaways" or become embroiled in criminal activities. "Delinquency prevention" is on all of our tongues, but seemingly simple solutions like the resolve of one community to have its schools, welfare, and other agencies cut the red tape and pool their efforts to bring immediate help to the kindergarten or first grade child who is obviously troubled become a new item of outstanding importance. See Troy, *Children Needing Help*, DELINQUENCY PREVENTION REPORTER, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, May 1973.

Under these circumstances it is a hopeful sign that children are beginning to be looked upon as a new "minority," an oppressed group in need of special consideration by the law. This unique disadvantaged group cannot assert its own demands and fight its own battles, except in the adolescent years. Thus we see "children's lobbies" springing up which plead the group's cause in the legislatures; we find "children's advocates" or Youth Law Centers which speak for minors in the courts and before administrative agencies; and "A Bill of Rights for Children" has recently been drafted (by Foster & Freed, 6 FAMILY L. Q. 343 (1972)). Naturally, the problems will not be solved by the stroke of a legislative pen enacting a

children's bill of rights. Nor will law review articles help children fulfill the basic needs that now go unfulfilled in thousands of instances. But law review articles can serve children in a different manner: there are some old encrusted rules and legal notions, some based on misconceptions and some on prejudice, which add to rather than alleviate the present predicament of children. Where law itself is thus causing or aggravating children's troubles, legislative or judicial change can rectify the situation. Research and thinking is required to uncover the areas in need of such revision. A number of articles in this volume do just that. The articles on child custody and illegitimacy, for example, point to various situations in which the law can and should remove obstacles to children's welfare that the legal system of another day has created. Obvious examples are the remaining distinctions between children born in or outside of formal marriage, and the condoning of extra-legal practices to obtain custody of children. Other needed changes are procedural or concern court organization and court personnel, particularly the addition of legal and non-legal court services for children. The student writers, by devoting much thought and study to the legal problems of children, manifest their concern for and desire to come to the aid of this disadvantaged "minority."