

Preface

It is often said that the law is a seamless web. This Symposium focuses on how changing social definitions of "family" affect various areas of the law and how legal consequences of the definitions often affect individual conduct in these close relationships.

Sociological evolution has redefined men's, women's, and children's social and legal positions. Despite these changes, many substantive areas of the law that affect the family remain static. Moreover, as Professor Dobris suggests in the introductory comments to this Symposium, the practice of the legal profession has not adapted to new social definitions of men and women as family members and professionals.

Professor Homer Clark describes the changing relationships between courts and legislatures as they attempt to address rapidly developing social conditions. Professor Clark finds that the joint effort between courts and legislatures has generally been toward allowing individuals greater control over their domestic relations. In resolving issues he notes that courts often render decisions that make workable solutions virtually impossible. In those instances, he believes legislatures often must render their own independent judgment.

Professor Bruch traces judicial and legislative development in the law involving unmarried cohabitants. She suggests that courts and legislatures favor traditional family forms. As she and Dean Mahoney contend, judicial and legislative action must recognize and fashion reasoned approaches for dealing with these and other nontraditional families. Professor Korngold suggests one such approach in the context of single family use real property covenants. Professor Korngold asserts that the traditional concept of the family as it reflects on the law of covenants unnecessarily limits personal choices in the home.

Dean Hafen observes that some recent literature has recognized that legal reforms should concentrate on restoring a sense of caring commitment to relationships within the family. He contends that the contribution of family life to conditions that develop and sustain personal fulfillment and autonomy over the long term depends in part on maintaining the family as a legally defined and structurally significant entity.

Professor Weisbrod argues that focusing on the formal content of rules has led to a divergence between law as rules of culture and the ongoing process of culture. She examines what she terms "expressive or

symbolic aspects of law” and the suggestion that these aspects should be used in family law to guide people to better behavior. Dean Teitelbaum suggests that, unlike other fields of law, family law developed more from legal and social changes than from specific theories or sets of governing principles. However, he observes that family law has recently begun to develop its own set of governing principles.

Professor Fineman cautions that these principles as they relate to a court’s decision of what is in the best interests of the child should not include culturally imposed gender stereotypes. Rather, clear standards must facilitate gender neutral decisions and determine which parent is the more nurturing. Professor Fineman notes that this approach may affect parental conduct. Of such custody disputes, Professor Parnas evaluates the current acceptance of traditional approaches to child support. He suggests that reasons other than cultural assumptions about a father’s unwillingness to pay child support may motivate fathers who choose not to pay.

This Symposium also features three student Comments focusing on children in the law. One Comment argues that courts should consider a natural or adoptive parent’s sexual orientation as only one of several factors affecting the best interests of a child. Another Comment explores the state role in ensuring children’s best interests. This Comment argues that legislatures must redefine proper parental care to ensure children’s valuable place in society by including emotional neglect as child abuse. Another Comment on child abuse examines pro se defendants in criminal sexual abuse trials. It argues that statutes protecting children from potentially adverse effects of confrontation may conflict with defendants’ right to defend themselves.

The scope of many of the Articles in this Symposium is necessarily small. However, they provide a powerful cumulative message: the family remains the focal point of the ongoing social structure and key questions revolve around the qualitative nature of the family unit. Perhaps redefinitions of the family and roles within the family and evolving relationships between the family and “outside” entities should not be seen as an expansion or contraction of the family role but simply as the clarification of the family function within the dynamic social structure.

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