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# The Changing American Family: Can the Courts Catch Up?

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That the nature of the American family is changing has now become well established. In the period from 1960 to 1976 the percentage of families having five or more members declined from 12.8% to 11.0%. In addition, for the same period, the number of two person families increased from 32.7% to 37.8%. There was also growth in the number of households headed by women, from 9.3% to 13.3%, and in the number of divorced persons, from 2.6% to 5.2% of all females and from 1.9% to 3.6% of all males.<sup>1</sup>

Many experts view these and similar statistics with alarm citing them to support their observations that the American family, nuclear and extended, is breaking down. And inasmuch as the family has traditionally served as the backbone of our social order, there is great concern that American society is entering its decline.

This reasoning is reminiscent of that which surfaced briefly in the 1960's predicting the end of rural American life. The family farm was declared an endangered species, and the call went forth

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1. S. Roberts, *The Family Fascinates A Host of Students*, N.Y. Times, April 23, 1978, § 4, at 20E, col. 3-5 [chart], citing U.S. Bureau of the Census data.

for vast sums of money to bring the amenities of the city to the countryside to keep Johnny and his folks down on the farm. However, this attempt to preserve the status quo has had little discernible effect upon trends in farming practices and population migration. The lesson became clear that a better job might be done by planning for a new way of life in the rural areas and adapting to the major changes and trends rather than by trying to preserve a way of life that the indigenous population continually declared obsolete.<sup>2</sup>

Analogously, it must be learned that we cannot turn back the clock in response to the changing American family. In coping with massive social and economic upheavals, our enduring values about family life, much like our enduring values about the rural way of life, are being tested for their adequacy. It is in reaching an accommodation between our values and current changes that we will achieve an understanding of how the legal and social service professions can assist the American family in today's society.

It is not the purpose of this paper to trace and document the social and economic trends that are remolding the American family, but rather, to survey the changes in family structure and function that are taking place.

A brief historical review may be made from two perspectives. First, the role of the father will be examined. Since the father has historically been the central figure in the American family unit, one can gauge the changes affecting all family roles by those occurring in the father's role. Second, the role of the family as a unit in our social and economic system will be briefly examined in terms of its current utility and value.

## I. THE FATHER: FROM SOVEREIGN TO MACHO TO PARTNER

One constant among the varieties of American family life from the colonial period until well into the 19th century was that the father was the sovereign of the family unit. This view was treated with the utmost sobriety, an eternal truth as it were, the common man's equivalent of the divine right of monarchs. The family was the cornerstone of colonial society, and the father was the absolute ruler of the family. Importantly, this role was firmly reinforced within the community, thus providing the father with the necessary support to carry out his role with little conflict or chal-

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2. G. Thomas, *The Enduring Problems of the Rural South: The Case for Repopulation Rather than Redevelopment* (Sept. 15, 1973) (paper presented at the National Science Foundation - Rann Conference on Rural Blacks, Mary Holmes College, West Point, Mississippi).

lenge.<sup>3</sup>

Well beyond the colonial period the father continued to fulfill the role of strong provider and authoritarian, as families relied upon their fathers to stake out a new future for them in the national march westward. And even in the absence of a well defined social structure, *pater familias* filled the void. However, the closing of the western frontier had a profound psychological impact upon the nation. Without a frontier to escape to, family problems and failures became far more visible within established communities.

By the turn of the century the colonial concept of father as king had been only slightly modified in its Victorian terms to that of father as benevolent dictator. Increasingly, from pulpit to newsstand, an accusatory finger was pointed at the failure of the father to exercise authority as the underlying cause of an apparent explosion in family related problems. It is no accident that at about this point in history courts and state legislatures began in earnest to overturn the English common law principle that accorded the father "absolute right to custody regardless," and to replace it with the principle of "maternal preference" in child custody proceedings.<sup>4</sup>

The intense pressures upon fathers to fulfill a role that has been gradually eroded by a changing society may very well be the root of modern "macho-ism" in America.

Machoism may be best understood as descriptive of a male still struggling to be sovereign over women, in a society that sanctions his role only as an equal partner. Indeed, the mainstream of American society has now entered an age of partnership in male-female and family relationships.

Major events occurring in the 20th century have contributed to the movement toward an intellectual rapprochement between the sexes. For example, the Great Depression made a significant impact upon our notion of the role of the father. We were, literally, a nation of families without breadwinners. In many subtle ways this may have led us to justify fatherhood as being more than, and often wholly other than, just bringing home the bacon. In addition, World War II created a whole generation of families en-

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3. 1 R. BREMNER, CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY [1600-1865] 27-42 (1970) [hereinafter cited as BREMNER].

4. MARYLAND COURT OVERTURNS MATERNAL CUSTODY RULE, C.C.V. FOCUS, 14 (April 1978).

tirely without fathers. It taught us an important lesson about family self-sufficiency as millions of mothers assumed authority and decision-making responsibility that had traditionally been part of the father's role.

## II. THE CONSUMER ORIENTED FAMILY

The family unit has always been considered the building block of American social order, and so it remains today. Society looks to the family unit as the primary agent of social control and socialization. Although credited with the social and economic well-being of the nation, the family was also blamed for its social and economic failures. This was particularly true in the raising of children where both success and failure were traced to the family.<sup>5</sup>

All of this fitted nicely with our cherished values of self-sufficiency and individual accountability, and worked well in the colonial social order composed of family units and little else. The early family provided, in large part, all the goods to meet its basic needs and most of the services necessary to the raising of its children. The extended family incorporated intergenerational wisdom and resources in services ranging from midwifery to tutoring and foster care.

But the family unit has undergone massive changes. Today the average family no longer lives off the land, it is without an extended family upon which to rely, and does not produce the goods and services necessary to its survival and well-being. The family of today is a consumer, not a producer.

Technological change and the "knowledge explosion" not only moved the father off the land, out of the house, and across the country in search of employment, it also stripped the family unit of its extended family resources. This has made the tasks surrounding child development and education even more difficult in a time of increasing social complexity and divergence. The breakdown of internal family resources gave rise to the demand for public education and to the emergence of professionalized human services. Today the family unit has become heavily dependent upon these outside services and a conflict has arisen between the reality of this dependence and the lingering expectations of a prior age.

In sum, the role of the family unit in the social order and that of the father within the family unit have been radically altered. Yet we continue to judge the family unit according to old values.

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5. BREMNER, *supra* note 3 at 27.

As a society we perpetuate the myth of the father as sovereign. Fathers attempting to meet this impossible standard judge themselves and are judged harshly by others for the apparent failure to adequately "rule the family." Further, the vigor with which many males strive to meet this standard, oblivious to the changing social realities, contributes to marital conflict as their mates push toward equality and partnership.

As a society we also perpetuate the myth of the self-sufficient family unit. Society imposes expectations that the contemporary family unit should continue to perform in the independent manner of its historical predecessors. When problems arise out of the conflict between expectations and reality, society tends to overlook those causes which are external to the family unit. It is even probable that a family as idyllic as television's Walton family would have difficulties functioning in contemporary American society. Americans cling so tenaciously to those values and expectations regarding family unit structure and its inherent roles that deviations are viewed as pathological. However, many of these deviations are caused by external factors rather than factors within the family's control. Far from pathological, these deviations are merely responses to external pressures.

Kenneth Kenniston pointed out that it would be a mistake to assume that family change means family collapse.<sup>6</sup> Society must reexamine this traditional assumption in order to adopt a broad range of human services responsive to the changing American family.

### III. COPING AND CHILD REARING CAPACITIES OF CONTEMPORARY AND EMERGING FAMILY FORMS

#### *A. The Traditional Family*

The traditional model for American family life is that of the two-parent, housewife and working husband household. This model is widely accepted among families across all income levels. The continued existence of the traditional model arose more out of the nature of husband-wife interaction than from economic or social concerns. This is to say that some wives will refrain from formally entering the labor market because they feel that their

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6. K. KENNISTON, *ALL OUR CHILDREN*, 3-23, 121-130, 133-152 (1977).

rightful place is in the home, because they succumb to their husband's demands that they not seek employment, and because they have few marketable skills. Families with wives capable of earning a living but which accept a lower standard of living as a trade-off for maintaining a traditional structure are likely to have substantial coping powers relative to child rearing.

The executive family is, by contrast, a more vulnerable traditional form. This family typically enjoys sufficient income from the father's employment to adequately meet all its consumer needs for goods or services. The wife is "encouraged" not to work and to engage only in voluntary activities symbolic of the family's status. Problems arise in such families when wives come to feel a sense of near or utter uselessness, a recognition of what appears to be the purely symbolic status of their extra-familial efforts. This often occurs when the husband becomes consumed with his work<sup>7</sup> beyond that justified by even the inflated needs of the modern family. The wife interprets this as a lack of appreciation for the worth of her extra-familial, and ultimately, of her intra-familial efforts.

In sum, coping powers in the traditional family are more frequently determined by the nature of the agreement between the marital partners than by the family income level.

#### *B. The Two Working Parent Family*

In contrast to the traditional family, the factors affecting the coping ability of a two working parent family are more frequently determined by economic concerns. This is primarily so because the two working parent family has maximized its earning capacity in an effort to realize articulated goals, and has as a result little or no income elasticity with which to meet any sort of family crisis. Families with two working parents have made an *economic* decision to which they are forced *socially* to adjust, rather than vice versa.

The capacity of such families for dealing with adversity rests largely upon preparation. For example, when all family members understand that both parents are forced to work to meet basic needs it is more likely that the family will be able and willing to help one another when faced with an income crisis. On the other hand, when it is clear that the second parent is working essentially to acquire luxuries, to maintain a standard of living not supportable by a single working parent, an income crisis can result in a significant reduction in the family living standard and larger

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7. *The Supreme Executive Challenge: Coping with Your Children*, BEHAVIOR TODAY (December 26, 1977).

problems beyond its capacity to meet.<sup>8</sup>

*C. Remarried Partners: The Four Parent Family*

Both divorce and remarriage have increased greatly in recent decades. Many families today are composed of one natural parent and one step-parent. The children in such a remarriage face the confusion of residing with a parent and a step-parent while often visiting another parent who may have married another partner who also has children. It may be speculated that a stronger second marriage provides a better vehicle for child-rearing. However, there is no current data to support this contention.

The moral, social and economic rights and responsibilities of all parents involved in this type of family are still in a state of transition and definition.

*D. Single Parent Families: Pre- and Post- Marriage*

Single parent families are less likely to enjoy high income, economic security or high social status than two parent families. However, these factors alone do not determine the family's capacity to adapt and function normally. Similarly, whether or not the single parent is employed is less important than the family's perception of the necessity of, or its desire to have the single parent work or stay at home.

The factors crucial to the determination of the adaptability of single parent families are the personal flexibility of the parent and the relation of the absent parent to the family unit. It is worth considering, for example, whether a child needs the physical presence of a father in order to have an adequate role model. During World War II, many children were raised in the absence of their fathers to a productive and normal adulthood. That the father's absence had no negative effect is due, in part, to the availability of other supportive resources (day care, extended family involvement, etc.) and to the mother's cultivation of a positive image of the absent parent.

In general, the resilience and viability of post-marriage and single parent families must be assessed from this historical perspective. Premarriage single parent families frequently present

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8. R. Coleman, *Income Levels and Income Packages of Married Couples: Observations and Propositions*. (An unpublished draft located at the Joint Center for Urban Studies of M.I.T. and Harvard).



different concerns. Often, such families involve a less than stable teenage mother who may lack the education, experience and maturity to raise children.

In many ways, these families exist within and are shaped by a very confusing set of rules. While this country does not afford to children rights essential to adequate child rearing, society allows child mothers to raise their own children. State law and policy actually encourage the independence of such families well before the single parent is capable of handling such a responsibility. In most states child parents are eligible for Aid to Families with Dependant Children (AFDC), and their own relatives have no statutory obligations to contribute to the welfare of the child of the child's offspring. This burden on society is increased by the fact that the young parent has a difficult time obtaining employment, housing, loans, credit and other essentials to a functioning family.

The coping capacity of the single parent family—or lack of it—is as much a consequence of society's pathological response to it as it is a consequence of any inherent pathology.

### *E. The Artificial Family*

No listing of contemporary family forms would be complete without a comment on the artificial family, characterized as foster or substitute care. Although the foster family concept has been utilized for a long time, it has been only in very recent times that foster parents have been able to force the courts and social agencies to recognize their role and relationship to the natural family. Foster parents have begun to receive court approval legitimizing the emotional and psychological bonds between themselves and their foster children.

Ironically, social service agencies are rapidly moving towards restructuring foster care into short term or temporary care. While it would seem inconsistent to recognize a psychological bond developed under temporary circumstances, perhaps the resolution lies in the direction of altering the foster parent's role away from that of substitute parent and toward that of artificial aunt or uncle.

The legal movement in this direction undercuts competitive claims of two parties asserting parental status. The foster parent, no longer able to assert a role as a parent can now assert a right based on the psychological bond created.

It is possible that, in years to come, similar treatment may be necessary to determine the rights of remarried parents in order to grant greater authority to the parent assuming the child rearing role.

In the alternative, some proponents of foster family care advocate longer term placements. Since longer term foster family care more closely approximates adoptive care, the rights and responsibilities of the artificial family must be further reassessed. Among the important considerations in this regard are matters of physical custody and legal guardianship.

One of the most apparent weaknesses in the system of artificial family services is the court's practice of retaining custody or guardianship, or of awarding it to a welfare agency. This practice undermines the accountability of the entire system inasmuch as no individual can affirmatively exercise a right in the child's best interest.

Looking ahead, the interaction of the artificial family with the natural family will be a major legal issue. It may be necessary to consider the artificial family as a branch of the extended family and thus to define its legal role in the child's development.

#### IV. EMERGING FAMILY FORMS

The intent of this article is not to provide a comprehensive overview of the forms of contemporary American life. A discussion of the communal style of living has been omitted primarily because it is widely regarded as a temporary and aberrational response to periodic social pressures. However the variety of American family life forms seems to be increasing. Listed below is a summary of four of the important changes currently taking place within the American family.

##### *A. Shifting Balance of Family Power*

The legislature and the courts are now attempting to resolve a number of fundamental issues involving parental rights, including:

1. The right of parents to refrain from sending their children to school;<sup>9</sup>
2. The rights of the parents involved in custody fights, including the issue of pre and post custody child snatching;<sup>10</sup>
3. The right of parents to voluntarily institutionalize their children;<sup>11</sup>
4. The right of parents to withhold recommended medical treatment

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9. *Massachusetts Draws a Line (of Sorts) on Not Sending Children to School*, BEHAVIOR TODAY, April 17, 1978, at 3.

10. *The Senate/Current Legislation*, 4 RESOURCE 1 (Winter 1978).

11. J. Seaberry, *Children Asserting Rights*, The Washington Post, Feb. 26, 1978, at A1, col. 1-2 [hereinafter cited as Seaberry].

from their children.<sup>12</sup>

Conversely, a generation of assertive and often outspoken children is expressing its thought, directly and through the legal system, on a variety of children's rights matters. In recent court cases, children and their advocates have sought to lay the foundation for broadened rights for self care and have sought legal relief for matters ranging from misappropriation of savings accounts to negligence and parental malpractice.<sup>13</sup>

The courts have yet to reach a clear determination on a variety of related children's rights issues. Recent changes in status offender legislation have increased the confusion surrounding authority and responsibility for the serving of child offenders. On other matters, the adolescent may receive information on birth control and venereal disease without parental consent, but the courts are uncertain whether the sexually abused or troubled adolescent can receive counseling from a social service agency without parental consent.

The conflict between parental, child and agency rights and responsibilities relative to the runaway provides another source of confusion. Finally, it is unclear why an adolescent parent can apply for and receive welfare while an unattached adolescent is prohibited from doing so.

The above examples illustrate the degree of ambiguity found in the area of adolescent rights. The resolution of the many conflicts will likely have a monumental effect on the balance of power between the state and the family, and between parents and children. It is, however, less easy to tell how such resolutions will shape the future of the American family.

### *B. The Illegitimate Family*

The label, illegitimate family, is used rather than illegitimate child to illustrate the impact of legislative action governing this type of family in legislating it out of existence. Its effects have been to punish children born out of wedlock by limiting their rights to benefits, inheritance and equal social status.

Congress and the courts have acted haltingly to close the gaps between 'legitimate' and 'illegitimate' families relative to the receipt of Social Security benefits by recognizing the existence of

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12. *A Court Orders Chemotherapy for a Child Against His Parent's Wishes*, BEHAVIOR TODAY, April 17, 1978, at 2.

13. *The Assertive Child as a New Social Norm - and the Resulting Ambivalence*, BEHAVIOR TODAY, Feb. 6, 1978, at 5; see also Seaberry, *supra* note 11; *Son Says Parents Failed Him - So He Sues Them for \$350,000*, L.A. Times, April 28, 1978, part 1, at 7, col. 5-6.

the common law marriage, and, under certain circumstances, child entitlement to a father's disability and retirement benefits.

However, the courts continue to adhere to the doctrine that states have the right to legislate class differences affecting their own citizens. Thus, while the differences between 'legitimate' and 'illegitimate' families are gradually eroding, state laws continue to deny inheritance and certain other benefits to children born out of wedlock.<sup>14</sup>

A positive note for the future is that it is likely that actions will continue to appear on the docket to force parity for 'illegitimate families,' in part because as the number of single-parent families increases, the differences between legitimate and illegitimate single parent families become more difficult to assert.

### *C. Cohabitation*

The Bureau of Census estimated that in 1978 approximately 1,500,000 unmarried men and women were living together. This figure represents a massive increase over estimates made less than a decade ago.<sup>15</sup> The 1970 census determined that there were eight times as many unwed couples cohabitating as there were 10 years before. More recent data collected by the Census bureau indicated that the number of unmarried men and women living together had increased from 644,000 to 1.3 million in the preceding eight year period.<sup>16</sup> Such couples have seemingly discarded the notion that a union need be formalized for reasons of economic necessity, convenience, or even in pursuit of "trial marriage." No doubt, in some cases children are being born to such unions. Thus one can anticipate that the courts will soon face a growing number of cases involving these family units concerning custody of children and related thorny issues.

Of related importance, litigation is beginning to appear in courts involving tests of the rights of cohabitators to property and other possessions held in common. A prominent case on point is

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14. See, e.g., *Labine v. Vincent*, 401 U.S. 532 (1971) (no invidious discrimination in barring illegitimate children from sharing in intestate father's estate); *Stanley v. Secretary of H.E.W.*, 356 F. Supp. 793 (W.D. Mo. 1973) (denial of inheritance to illegitimate children); See also, Pascal, *Louisiana Succession and Related Laws and the Illegitimate: Thoughts Prompted by Labine v. Vincent*, 46 TUL. L. REV. 167 (1972).

15. Comment, *In re Cary: A Judicial Recognition of Illicit Cohabitation*, 25 HASTINGS L. J. 1226 (1974).

16. NEWSWEEK, August 1, 1977, at 46.

*Marvin v. Marvin* wherein the court recognized the property claims of a meretricious spouse.<sup>17</sup>

That persons are living together outside a legally recognized marriage is not a new phenomenon. But because this type of living arrangement is now being openly adopted by wealthier and more prominent persons, legislation may be anticipated further legitimizing the 'illegitimate family.'

#### *D. Exotic Family Forms*

Finally, there is a raft of developments in family life forms that might be considered, by today's standards, exotic. Such developments include family formation by partners of the same sex and their claims to adequacy as child rearing units; family formation via the test tube or cloning; the rights and responsibilities of existing family units under conditions of post vasectomy pregnancy, and so on. The purposes of this paper do not permit exploration of the issues surrounding these emerging family life forms; however, it is certain that their evolution and the response of courts regarding their legitimacy will contribute to redefining our notions of the meaning of "the American family."

#### *E. Summary*

Thus far change in the American family has been traced *within* the unit by following the progression of the father's role from sovereign to macho to partner, and *between* the units by tracing the progression of the family from producer to consumer. A number of prevalent forms of American family life have been briefly reviewed and emerging family life patterns have been identified and examined in terms of some of the issues they pose regarding definition of the American family of the future.

The final section will examine the role that the social services and courts play in serving and defining the American family unit, and will conclude with some observations about how these agencies and the American family will influence and change one another.

### V. LOOKING AHEAD: THE FUTURE OF THE PROFESSIONAL SUBSTITUTE

If a goal of the social services and the courts in dealing with the

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17. *Marvin v. Marvin*, 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815 (1976); See also M. Mitchelson and W. Glucksman, *Equal Protection for Unmarried Cohabitants: An Insider's Look at Marvin v. Marvin*, 5 PEPPERDINE L. REV. 282 (1978).

American family is the preservation of this unit, then a wealth of statistics and this analysis suggest that we have progressed little during the better part of this century.

Some voices claim that our limited resources have been spread too thinly, and that the best we can hope to do is order our priorities in favor of children unlucky enough to have been born to striking adversity.<sup>18</sup> Others, who have examined the impact of social services from a quasi-economic viewpoint, suggest that social services cannot hope to achieve their goals until the nation adopts an adequate family income policy. They suggest that until a family income policy is adopted that adequately meets the survival needs of families, social service efforts cannot meet their habilitative and rehabilitative goals.<sup>19</sup>

The author suggests the rejection of these explanations for they too easily conclude that problems would be solved solely with new appropriations or new armies of professionals. It is difficult to ascertain just 'how much' and 'how many' will be enough to eradicate existing problems. And "more of the same" approaches will fail, for they allow for no flexibility to deal with the changing demands, problems and needs of the American family. Instead, we must radically alter our approaches to fit the changes in American family life.

The social service establishment has frequently interpreted recent changes in family structure and functions of family units to mean declining capacity to operate in modern society. The rise of the single parent family has generally not been viewed as an adaptation but rather as a breakdown. In validating only the traditional model for American family life, the working husband and home-bound wife, the social services establishment has identified new developments as pathological deviation.

This theoretical approach fits well with the drive toward professionalization of the social services since it helped justify the transformation of family functions into professional activities. Thus a *family substitutive* system of professional services was formed. A great number of parents have now been convinced that they cannot be "effective" without outside advice and expertise. The substitutive services system has produced family depen-

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18. G. STEINER, *THE CHILDREN'S CAUSE* (1976), see especially 1-13, 240-255.

19. J. Turem, *Social Services and Welfare Reform* (draft paper, Urban Institute, Wash. D.C.) (June 13, 1977).

dence upon the system, which has, in turn, nourished a professional elite.

The social services establishment has not been alone in effecting this dependence. There has been plenty of help, if not conscious collaboration, from the courts. The courts, not unlike their social service counterpart, have been tied to the concept of the traditional American family unit. This concept has shaped their decisions in a number of ways, of which the following list is illustrative.

1. The Courts have effectively reduced the role of the father by routinely awarding child custody according to the principle of "maternal preference," overtly stressing the economic role and dismissing the social role of the father in such circumstances.
2. They have failed to challenge the concept of illegitimacy within their own state laws thereby perpetuating inequities among a particular class of families.
3. They have commonly expressed a preference for an impersonal approach to the award of physical custody and legal guardianship in cases involving wards of the state, thereby effectively leaving numbers of children in limbo.
4. They have frequently worked against the legitimization of the concept of "psychological bond" in decisions involved artificial families; and, even when nominally supporting it, have erroneously interpreted the concept to mean a substitute parental bond rather than one analogous to a secondary relative bond. This later misunderstanding has contributed to conflict between natural parents and the artificial family, thereby thwarting service goals.
5. They have failed to recognize that teenage mothers are legally still children, and that children are not accorded the rights necessary to adequate child rearing. Lack of legislative and judicial movement in this area has left many children and their minor parents, without protection and supervision.
6. They have frequently supported family breakups by prematurely removing children from the home. Even when the placement has been appropriate, they have failed to facilitate parental visitation, so crucial to the child's ultimate return to the home.
7. They have terminated parental rights in spite of evidence that adoption processes are exceedingly slow and unlikely to serve the best interests of many children.
8. They have responded to the abusive parent in a punitive rather than a rehabilitative fashion.
9. Too often they have sided with the professional services establishment in "right to treatment" cases, reinforcing the right of professionals to provide treatment rather than the right of the individual to receive or refuse treatment.
10. They have failed to direct the social service establishment to develop and fund needed services not presently provided.<sup>20</sup>

Thus courts have acted in many ways which have undercut the

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20. There are many useful articles describing the court's role in several of these matters. See, e.g., J. Areen, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases*, 63 GEO. L.J. 887 (1975); D. Siegal and S. Harley, *The Role of the Child's Preference in Custody Proceedings*, 11 FAM. L.Q. 1 (1977); S. Katz, L. Ambrosino, M. McGrath and K. Sawt-sky, *Legal Research on Child Abuse and Neglect: Past and Future*, 11 FAM. L.Q. 151 (1977).

family and abetted the process of social service encroachment into its once exclusive domain. This encroachment is far from salutary. The vital issue before the courts today can no longer be how best to marshal the personal and financial resources of society to further the demonstrated goal of the professional social services establishment. This goal, the full realization of a substitutionary extra-familial social service system, can only fail, judging from its current performance, to serve the needs of our society. Rather, the courts must focus their efforts on the development of a family-supportive system, one which has the flexibility to adapt to the dynamic nature of the American family.

Many courts have signaled their receptiveness to a new approach. They have begun to accept the concept of a psychological bond, to give greater deliberation to child placement proceedings, and in some cases, to abandon the traditional maternal preference in custody proceedings. In cases involving juvenile offenders, the concept of restitution is receiving more support.<sup>21</sup> Such actions aim, whether intentionally or not, at the restoration of family functions, and tend to reinforce family members' responsibility for their own behavior. The movement to restore such responsibility must, of course, be accompanied by a collateral movement to grant equal rights to each of the family members. Regarding juvenile offenders, much of the current rash of status offender legislation may prove to be the initial step in this direction.

Similarly, there are promising developments occurring in the field of youth services. Massachusetts, in the forefront of this movement, has attempted to deinstitutionalize its youth services. Commenting on the efforts of that state, Coates has observed that deinstitutionalization and the concurrent development of community based services do not necessarily guarantee better services to youth.<sup>22</sup> He has stressed that the resulting difference must be in the substance of the services rather than in their form. In his view, the outstanding feature of Massachusetts' community based approach is in the training of service workers to emphasize the

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21. NEW 30 MILLION DOLLAR PROGRAM OF LEAA ANNOUNCED, 7 LEAA Newsletter 4 (1978).

22. Robert B. Coates, *Community-Based Corrections: Concept, Impact, Dangers*, in JUVENILE CORRECTIONAL REFORM IN MASSACHUSETTS, 23-24 (Lloyd E. Ohlin, Alden D. Miller & Robert B. Coates, Washington D.C., U.S. Government Printing Office, no date), see especially 29-34.



maintenance of useful reintegrating links between the offender and the community.

The Massachusetts initiative is distinctive in its attempt to realign the efforts of the social service establishment. Unfortunately, Massachusetts remains alone in its attempt. Social services continue to be characterized by the image of the well meaning but rarely helpful bureaucrat. If the social services establishment is to be successfully redirected, the roles of social service employees will have to be refocused in the manner suggested by Coates. The goal of social service agencies must be to assist in the restoration of the family as the basic, integral component of society.

The primary ailment of many families is the loss of the responsibilities necessary to the fulfillment of this role. As the family unit changes and diversifies, the task of the courts and governmental agencies will be to maintain the family's comprehensive integration within community life while accepting and addressing various societal changes. The role of the social service agency, as outlined below, will be to help the family achieve this goal in a concrete manner.

Initially, there must be a detailed reexamination of the general concept of an extended family. For example, the extended family has traditionally had many ties to the community through its numerous members. In the present age, marked by the general demise of the extended family, the number of linkages between family and community has been substantially reduced. Further, services formerly provided by such a family have now been transferred to the social services establishment.

Another basic step would be to review the vast array of services now offered by the social services establishment and to determine how many of these services could be restored to various types of family units that have been fitted with artificially created extended family supports.

These are two of the many steps that could be taken to create an artificial extended family system for each type of family unit. It is possible, from this perspective, to begin reorienting foster family care from the substitute parenting to the extended family approach. In this construct, the foster family would be encouraged to develop psychological ties to the natural family on the order of aunt and uncle relationships. The artificial family would be available to offer help on a temporary or crisis basis. This type of open-ended relationship would obviate the need for present bureaucratic application and release procedures. Such relationships would offer more personalized service based on a

mutual trust foundation and would also form an additional tie to the community at large.

Institutional services for children could also be reoriented to family-supportive services of a type useful to normal as well as disturbed or handicapped children. Such services would include summer camps, boarding schools, and live-in crisis care centers. These concepts have been accepted and successfully utilized by the rich, and are somewhat analogous to the settlement houses used in the past by the poor. Institutional services of this type have been widely accepted by communities and serve to act as links between the natural family and community processes. One such institution, day care, should return to the aegis of the family, from its current professional management.

In the broad area of in-home child services, the role of the social services employee would be focused upon building and assisting in the maintenance of individually tailored, artificial, extended family systems and their linkage to community processes.

Within this movement, the state would not provide direct social services except in the narrow domain of adult and child protective services. Most services would be purchased by the consumer with funding provided by the state on a contract basis. The role of the state would center primarily on the provision of funding and on monitoring the delivery of services. The fundamental advantage of this reorientation of the state's role would be that it could effectively monitor and control the quality of services delivered. One of the major failings of the current service delivery system is that services are provided and evaluated by the same agency or by another agency having essentially the same interest.

It is recognized that these observations merely outline one concept of the proper future direction for the social services establishment. Whatever direction the social services take will depend in part on the initiative of the courts. By their decisions, they may take a leadership role in the redirection of the social services establishment. In the future the courts should be aware that, as quasi-social service agencies, they share responsibility for effective innovation in the social services field.

