

OHIO STATE LAW JOURNAL

Volume 13

Winter 1952

Number 1

Foreword

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The casual reader of this issue of the Journal may well wonder why in an issue supposedly devoted to the field of family law, discussions of problems of divorce and marital discord bulk so large. Can it be that lawyers are professionally interested only in the morbid aspects of our basic societal institution? In a sense this is probably true, as the legal practitioner is only called upon to make his peculiar offering after the marital tie has in fact been shattered, usually beyond repair. There is a more fundamental reason, however, for our present preoccupation with questions of divorce policy. Superficially, I suppose, these questions are at the forefront of our attention because of the alarmingly high post-war divorce rate. To the extent that these divorces reflect the inevitable outcome of ill-considered war-time marriages we may dismiss this phenomenon as transitory. Yet to a large extent the present astonishing rate of family disruptions represents a social ill which is far from simple in its causation. Why is it that in our time marital obligations are taken so lightly and cast off for such slight and transient causes?

Certainly one major reason is the diminution in importance of the family unit. Numerous writers have tediously pointed out that the institutional functions of the family are fast declining. We long ago reconciled ourselves to the loss to the state and factory of the respective functions of education and economic activity. Some say that the growth of restaurants and delicatessens presages that cooking will follow manufacturing out of the home. Family social life has practically disappeared due to the wider range of contacts possible beyond the limits of the family circle. It is doubtful whether the allure of home television will reverse the trend. Certainly the desire to transmit a material inheritance has little relevancy in a society of wage-earners where progressive taxes whittle away the substance of those who could conserve. Thus, the last important function left to the

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family as a unit is the rearing of children and the formation of their character. Even this vestigial function has been put in doubt by sociologist David Riesman, who contends that the child's peer-group has more influence in shaping his personality than any precepts instilled by his parents.

With the family thus stripped of all social utility beyond the mere material provision for offspring, it is small wonder that when love is dead the union tends to fly apart. We are obviously but a short step from a famililess "Brave New World," be it of the benign sort envisioned by Huxley or the grim vista of Orwell. Though we cannot turn back the clock so as to re-vest the family with its ancient functions, we can, if we are willing, salvage many of the marriages currently going on the rocks by an application of the diagnostic and therapeutic techniques suggested by Judge Alexander. To do so we are going to have to scrap our cherished notions of grounds for divorce, allocation of fault, and the adversary nature of the divorce proceedings, among other things. Although these requirements today only conduce to fraud and perjury, Morris Ploscowe in his article shows how difficult the road to reform will be. But if the spectre of the famililess omnipotent state is no mere bogymen, it behooves us to consider hard and long what basic changes in our approach to the marriage institution need be made to keep the family from becoming as extinct as the pterodactyl.