

THE METAMORPHOSIS OF THE FAMILY

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Taking a long view of the twentieth century leads to the obvious and inevitable conclusion that cataclysmic social and behavioral changes have characterized the era. The beginning of the century was marked by a bright-line definition of the family. It was a state-approved unit usually sanctioned by the church in which a man and woman married in order to bear and raise children.¹ The notion of children as property still had viability. Children born out of wedlock were shunned socially and disadvantaged legally.² These children were referred to as illegitimate, and the law described them in Latin as "*filius nillius*" or nobody's child.

Homosexuality was viewed as a disease to be hidden from public acknowledgment. It was to be dealt with by the criminal law,³ as exemplified by the famous case of Oscar Wilde in the latter part of the nineteenth century. Reproductive rights were unheard of. Even the public discussion of birth control was viewed as a threat to the stability and health of moral America.⁴

Woman's place was subservient to man's. Women were commanded that no satisfaction existed outside the family—that is husband, home and children.

In social and behavioral terms, traditional social structure was rigid and unshakable. Individual yearning for self-satisfaction and self-actualization was suppressed in favor of the welfare of the family, the community and indeed the nation.

Looking at the American terrain at the close of the twentieth century creates a vivid picture, very different from the earlier time. American society has undergone a fundamental shift in values and an accompanying change of

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1. See Raymond C. O'Brien, *Single-gender Marriage: A Religious Perspective*, 7 TEMP. POL. & CIV. RTS. L. REV. 429, 444-45 (Spring 1998) (discussing role of religion in covenant of marriage and definition of family).

2. See Theresa Glennon, *Binding the Family Ties: A Child Advocacy Perspective on Second-Parent Adoptions*, 7 TEMP. POL. & CIV. RTS. L. REV. 255, 281 (Spring 1998) (discussing various manifestations of societal disapproval suffered historically by children of unwed parents).

3. "Sodomy was a criminal offense at common law and was forbidden by the laws of the original 13 states . . ." *Bowers v. Hardwick*, 478 U.S. 186, 192 (1986). "In fact, until 1961, all 50 States outlawed sodomy . . ." *Id.* at 193.

4. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 442 (1972) (quoting *Sturgis v. Attorney Gen.*, 260 N.E.2d 687, 690 (Mass. 1970) and explaining that one interpretation of purpose of involved Massachusetts statute was to "protect morals through 'regulating the private lives of single persons'").

attitudes. The new cultural imperative has made self-actualization the paramount value and the commonwealth of society a subservient goal.

Family structure is no longer limited to the traditional man, woman and child. Any number of arrangements, while perhaps not fully recognized legally, are socially acceptable.⁵ Lesbian and homosexual commitments with or without children are lived openly. Single-parent households are on the rise.⁶ The legal imprimatur of a state-endorsed union—i.e. marriage—has become less important. The belief has emerged that achieving personal and family satisfaction is not tied to a formalistic family structure.

While formal marriage is still dominant, *de facto* marriage has become more and more prominent. In *de facto* union, parties agree to live together for an indefinite period of time, to act as a unit, perhaps to rear children, to meet each other's social, economic, psychological and sexual needs and to hold themselves out to the world as a defined entity. When the union no longer satisfies the individual's needs, it is abandoned. Unlike *de jure* marriage, the *de facto* union is entered without the sanction of the state and it is dissolved without the consent of the state.

I know of no statistics which address the sustainability of these *de facto* unions. I do know that the statistics about sustainability of *de jure* unions—legal marriages—show that nearly one in two marriages end in divorce.⁷ There is fluidity and fragility in the picture. The late twentieth century shows a variety of possible unions with a high degree of change likely for both children and adults whether in a *de facto* relationship or *de jure* marriage.

This fluidity raises problems for the children of today. They cannot be certain the same adults will sustain them psychologically or economically as they grow. They cannot be certain that both a female and male will be available to them. They cannot be certain that they will lead geographically stable lives. They cannot easily identify or know their grandparents, uncles, aunts and cousins. The children, like their adult counterparts, face greater uncertainty.

I've painted a picture—a line drawing—of social changes. It's interesting to reflect on the forces that have operated in this century that sculpted those changes. The interpreters of Sigmund Freud prepared the ground for change. They warned against repression of any kind. The intellectual seeds were sown which devalued personal discipline and especially socially imposed sexual restraints. The Freudian principles were reinforced by the popularity in the 1960's of the birth control pill, which permitted sexual

5. See SAM ROBERTS, *WHO WE ARE: A PORTRAIT OF AMERICA BASED ON THE LATEST U.S. CENSUS 34* (1st paperback ed. 1995) (explaining that three-fourths of people surveyed define family as "a group of people who love and care for each other" and that fewer than twenty-five percent of those surveyed limited the term "family" to persons related by blood, marriage, or adoption).

6. See Scott Burtis, *Gay Marriage and Public Health*, 7 *TEMP. POL. & CIV. RTS. L. REV.* 417, 425 (Spring 1998) (citing U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 105, 108 (117th ed. 1997)).

7. See *id.*

inhibition to be attenuated without the fear of pregnancy. Onto this field which was already uprooting traditional behavior came the woman's movement. In 1963 Betty Friedan published *The Feminine Mystique*.⁸

Perhaps, most importantly and most profoundly was the Civil Rights Movement. The demand for racial equality was long overdue. The rightness of the claim for racial equality caused America to take a closer look at gender equality and with it came recognition that justice required change not only as to racial matters but also as to gender matters. The stability of our social structure was eroding.

Along with these massive social upheavals—and perhaps because of them—individuals whose lifestyles were different from those in the mainstream were demanding tolerance for behavior once considered unacceptable. America was being forced to examine the massive social upheavals and accept resultant individual differences in lifestyles.

Social change—flowering in the 1960's—has continued on an upward trajectory. Except for certain revolutionary and violent uprisings in the 1960's, connected with the Vietnam War and racial injustice, the changes have proceeded fairly peacefully and incrementally. I recognize that my observations do not necessarily track or reflect the racial conflict in this country, and my observations are not meant to cover this broad and complicated topic.

The challenge of the future—whether to lawyers, judges, academics, social activists, policy makers, governmental officials—is to recognize the inevitability of change. I do not think change is lineal or straightforward. I am from the pendulum school, but I do think that change will happen and that it will be central. The imperative is for law and public policy to accommodate change in such a way that the social fabric of America, although altered, will remain strong.

Perhaps the most interesting book about change is Philip Roth's novel, *American Pastoral*, published in 1997.⁹ It describes in chilling terms the deadly repercussions of the senseless American civilian bombings in the sixties, the grave consequences to individuals, and to America as a society. It is about a New Jersey family which on the surface appeared to be perfect. The teenage daughter in the family jumped the line and went on a rampage. For the sake of social justice, she randomly threw bombs leading to the death of four innocent victims, none of whom she knew, none of whom she specifically targeted.

The book raises the question of how a society controls its underlying desperation so that change can be made constructively and peaceably. It unsentimentally notes the passing of "[t]he old intergenerational give-and-take . . . when everyone knew his role and took the rules dead seriously, the acculturating back-and-forth . . . the ritual postimmigration struggle for success

8. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963).

9. PHILIP ROTH, *AMERICAN PASTORAL* (1997).

. . . ."¹⁰ While Philip Roth does not provide a formula or road map for peaceable change, he does describe the tragic personal and social upheaval of attempted change through revolution.

In society change is inherent, and is serious business. Make no mistake; change is not always progress. Change which does not support healthy families, of all stripes, is dangerous, unacceptable. Change which produces too much individual autonomy at the expense of family solidity and integrity is unacceptable. To foster constructive change, it is essential to realize the family serves the central role in our social structure. There is no substitute organization to care for, to educate and to pass on moral values to the next generation. This does not mean that only traditional unions are supportable. What it does mean is that family or family-like arrangements must provide protection, nurturing and education for children.

In conclusion, change has and will continue to occur. We've seen monumental change in the twentieth century. Change must continue to be incremental and not revolutionary, and it must encompass protection for children. To do otherwise will undermine and weaken America's social fabric and with it the stability of our society.

10. *Id.* at 86.