

[Back to Spring 2020 issue](#)

Judge Riff wrote this article in 2019 for inclusion in the Court's inhouse magazine "Gavel to Gavel". It is reprinted here.

Family Court in 2069

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What will family court look like in 50 years? In 2069 the state will still need a mechanism to resolve disputes arising out of those social relationships categorized as "family". A human will continue to be involved. That person will bear the archaic honorific "judge" largely for sentimental reasons. But the days of black-robed, forehead-furrowed parsing of witness-supplied information will have long passed. A judge's mere human experience, training and intuition will be recognized as far too crude, limited and unpredictable to decide social disputes. Fact finding for family dispute resolution will be supplied by algorithms applied to genetic and social data. The decision maker will require neither courtroom nor courthouse.

The notion of "family" will have become wholly untethered from today's dominant two-person sexual reproduction model. "Parenthood" will consist of a wide collection of rights and obligations related to the genetic and social inputs involved in the creation and upbringing of new humans. Typically, five to eight persons will have a parental stake recognized by law. Gestational rights and obligations, which so embroiled society between the mid-1970s and the mid-2030s, will have withered away because "traditional" conception, pregnancy and child birth will be a rarity, and seen as reckless and cringe-worthy.

Two or more adults intertwined by specified social relationships will have certain rights and obligations to one another which the state will enforce in the family court. The term "marriage" will no longer be utilized to describe those rights and obligations. Indeed, the categorical distinction between married and unmarried persons will have been retired by 2032. It will be taught in law school, much as The Rule in Shelley's Case, as an interesting but socially useless historic antecedent. Instead, expectations arising from adult human emotional attachment will be supplied by the Uniform Social Relationship Act of 2038 which will have been adopted in all five Administrative Units of the North American Federation.

O brave new world that has such people in it. (Shakespeare, *The Tempest*, 1623.)

The family in 2069

In 2019 the family is the basic social unit of our society. Not so in 2069—there will be many relationships competing for the title of “basic social unit”. Let us trace the trajectory of this change in our own times. Robert Frost wrote, “home is the place where, when you have to go there, they have to take you in” (*The Death of the Hired Man*, 1915). In 1915, home = family and family = home. By 1959, an American family was exemplified by Ward and June Cleaver living with their genetic offspring, Wally and the Beaver—the nuclear family. Even by 1969, in the Age of Aquarius, this model was already seeming shopworn.

What about today: what’s a family? Don’t look to Sacramento for help: the term has not been defined by the Legislature in the California Family Code. My tautological but utilitarian definition of family is a relationship among persons whose rights and obligations toward one another are prescribed by the California Family Code. Some examples. Let’s say in 2019 two people go out on a couple of dates and then one threatens violence on the other. The victim can obtain a domestic violence restraining order under our Family Code in family court. Why? Persons in a “dating relationship” are a species of “family” in 2019. A dating relationship means “frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.” Family Code Section 6210. But what if instead they are neighbors who like each other a lot, are not having sex, but spend time together, say, at Dodger games or the bowling alley. Now one threatens violence. Their relationship is not a species of family; the victim’s remedy is a civil harassment restraining order under our Code of Civil Procedure.

How about this: two people live together for 11 years having made mutual promises to support one another and to share food and shelter, and from time to time they enjoy sexual relations. Now they wish to go their separate ways but one seeks to hold the other to her promise to provide future support. In 2019, a family? A dispute for family court? If they followed Joni Mitchell’s dictum, “we don’t need no piece of paper from city hall keeping us tied and true” (*My Old Man*, 1971), the answer is no. Please go to a civil department for your breach of contract case. But if they made it down to City Hall and got that piece of paper, then, yes, a family. Moreover, the petitioner in that family law case has a darn good shot at long term spousal support, pre-existing promises or not. Now imagine that this unmarried couple created a biological child, then they break up and are now in a dispute about where the child will live and go to school. A family? *Vis a vis* the child, yes. The family court will welcome them to obtain a parentage judgment and a child support order. *Vis a vis* financial support for each other, no; still not a family. Please go to a civil department.

Last one to make the point. In 2019 a woman married to another person undergoes invitro fertilization of one of her eggs using sperm from a third person donor and then contracts with fourth person, a “surrogate”, to carry the implanted embryo in her uterus until term. Post-birth, the couple breaks up and one begins living with a fifth person who takes that child into her home and holds the child out to the world as her own. Who are the members of this “family” when a dispute concerning parentage or custody of the child arises? The married couple? The male sperm donor? The surrogate? The new partner in the relationship? In 2019 how many parents might this child have? (The answer is not “for sure only two”.) All are “family” in that their rights and obligations will be decided by the California Family Code. And if that seems complicated, we ain’t seen nothing yet—wait until 2069!

By 2069, reproductive technology will have long ago separated conception from sexual intercourse and gestation from uteruses. Cloning and genetic trait selection will be the principal method of human creation. Fetal development will be accomplished in a laboratory. “Birth” no longer occurs. Gender is a vestigial characteristic of no social and little biological import. The good news is that genetic trait inequality, a red-hot social controversy in the 2030s, will have been addressed by Section Four of the North American Federation’s Declaration of the Rights of Personhood, finally giving some content to the Movement’s demands that all persons ought to be created equal. A family will be those persons whose genetic materials and traits resulted in a zygote along with those others who will have undertaken to participate in the physical support and socialization of the resulting child. Because the median life expectancy will be 130 years, this collection of people will commonly include four or five generations. Thus, a child will usually have between five and eight parents. Human nature, however, will not have much changed and controversy among family members will be rife. The state will supply a referee and a virtual venue to sort it out—a person called a judge in a venue called a family court.

Marriage in 2069

In 2019, marriage is a legal conclusion: it is that relationship between two (so far) people whom the state will recognize as subject to certain social rights and obligations. The California Supreme Court explained in 2008:

. . . the legal issue we must resolve is . . . whether our state Constitution prohibits the state from establishing a statutory scheme in which both opposite-sex and same-sex couples are granted the right to enter into an officially recognized family relationship that affords all of the significant legal rights and obligations traditionally associated under state law with the institution of marriage, but under which the union of an opposite-sex couple is officially designated a “marriage”. In *In re Marriage Cases* (2008) 43 Cal.4th 757, 779.

The institution of marriage exists in service to “the basic social unit of our society”, namely, the family. A common scenario today recognized by Family Code Section 4320 is a spouse who sacrifices her (it is still usually a her) career opportunities to raise the couple’s children. At breakup, a financial reckoning must account for this social division of labor—and the wage earner must provide prospective support to the stayed-at-home parent. By so protecting that spouse, marriage likewise serves to protect children born into and raised by the participants in the marriage. But what happens in 2069 when the family is no longer that basic social unit, children are no longer born, have five to eight parents, and only about 15% of the adult population is employed? Why will marriage be important? The answer: it won’t be important. Marriage, like dower and curtesy, will have outlived its utility. A comprehensive statute, the Uniform Social Relationship Act of 2038 as supplemented by the law of contract will fill the void.

The Courthouse in 2069

By 2028 the concept of “place” lost its dominance in human consciousness because so much human activity

had occurred in a virtual locale, that is, everywhere and nowhere. Legal historians recall the days in the early 2000s when courts no longer used paper files but instead utilized electronic dockets. Judges recoiled but eventually acclimated to the idea that “the file” was everywhere and nowhere. They realized they could work on a matter anywhere and at any time, and they eagerly embraced the change. Formerly critical file rooms emptied and became surplus space. By the mid-2030s the elimination of “place” subsumed all information sorting service activities including the legal sphere. (Juries, still required solely for some criminal matters, are assembled, receive information and deliberate electronically.) Judges deciding family disputes in 2069 do so without ever sharing the same four dimensions with a witness or an advocate, and without ever touching an exhibit. They will do so from everywhere and nowhere.

There is no courthouse or court room in 2069. Judges effortlessly “click through” artificial intelligence-generated outcomes based on all but unlimited points of information. (Click through is a hold-over term from the late 20th century relating to a tool—a “mouse”—used to access primitive information retrieval devices.) The information is perfectly sorted into a hierarchy of validity and reliability based on artificial intelligence. There is no judges’ lunchroom; no judges’ book groups; no judges’ morning coffee klatches. In fact, judges do not know one another. There are no elevators to fix; no parking lots to secure.

Family law dispute resolution in 2069 is incredibly efficient. There are no delays. The judicial officers long ago achieved Six Sigma quality (3.4 defects per million opportunities). But the job is sterile, cold and lonely. Job satisfaction is low. Judges in 2069, learning of family law judging in 2019 think, “those were the good old days!”.

[Back to Spring 2020 issue](#)