CHAPTER 1  Introduction

The subject of nontraditional families promises to be an important social and legal issue on the national agenda during the coming decades. This book describes and analyzes the current state of the law in the United States regarding one type of nontraditional family, the stepfamily.

What makes a family nontraditional? The label is usually attached to any family group that does not consist of a married couple and their biologic or adopted children, the so-called nuclear family. Traditionally, wife-husband and parent-child relationships have received wide recognition in our society; hence, the term “nontraditional” has been used to describe other types of family units. The stepfamily is nontraditional in this sense because there is no biologic or adoptive connection between the stepparent and stepchild.

The preference for the nuclear family finds expression in the legal system through laws that create distinct protections, entitlements, and responsibilities for spouses, parents, and children. These laws govern the family in areas as diverse as child custody, support, inheritance, taxation, child protective services, social benefit programs, tort law, and criminal law. A major purpose of many family-related doctrines is to safeguard the interests of individual family members, especially children, and also to protect the family unit. The traditional emphasis on the nuclear family has effectively prevented many individuals, who live in other family situations, from enjoying the same type of legal recognition and protection.

Many Americans today do not reside in traditional nuclear families. Indeed, the 1990 Census revealed that just twenty-one percent of households consisted of a married couple residing with their own children.

Selected materials from chapter 1 appear in an article by the author entitled A Legal Definition of the Stepfamily: The Example of Incest Regulation, which appears in Volume 7 of the Brigham Young University Journal of Public Law.

1. See 1991 Statistical Abstract of the United States, Bureau of the Census, U.S. Dept of Commerce [hereinafter 1991 Statistical Abstract], No. 61, Households—States: 1980 and 1990, at 48 (reporting a total of 91,947,000 households in 1990); Bureau of the Census, U.S. Dept of Commerce, Current Population Reports, Special Studies Series P23–180, Marriage, Divorce and

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Other common household arrangements included married couples without children (twenty-nine percent), unmarried adult partners who reside together with or without children (three percent), single parent families (eleven percent), stepfamilies (six percent), and individuals living alone (twenty-five percent). These figures represented a significant increase in the number of nontraditional family households; for example, the number of single parent households increased forty-one percent between 1980 and 1990, and the number of stepfamily households increased thirty-six percent during the same decade.7

According to the 1990 Census, approximately 5.5 million married-couple households contained at least one stepchild under age eighteen. This number constituted twenty-nine percent of all married-couple households with children. The total number of stepchildren residing in these families was 7,208,000. Indeed, demographers predict that a high proportion of children, perhaps one in three, can be expected to spend some childhood years residing in a stepfamily. In an earlier era, when divorce and the birth of children outside of marriage were less common, most stepfamilies were formed upon the remarriage of a widow or widower, who was the parent of minor children. Today, many stepfamilies are still formed under these circumstances, but most come into being when

Remarriage in the 1990’s (October 1992) [hereinafter Current Population Reports], 10 (Table L) (reporting 19,598,000 married couple households with biologic and adopted children in 1990).

2. See 1991 Statistical Abstract, supra note 1, No. 62, Households, 1980 and 1989, and Persons in Households, 1989, by Type of Household and Presence of Children 48 (reporting 27,855,000 married-couple households without children in 1989).

3. Id., No. 53, Unmarried Couples, by Selected Characteristics, 1970 to 1989, and by Marital Status of Partners, 1989, at 44 (reporting 2,764,000 unmarried-couple households in 1989).

4. Current Population Reports, supra note 1, at 10 (Table K) (reporting 9,700,000 single parent families in 1990).

5. Id. at 10 (Table L) (reporting 5,578,000 stepfamily households in 1990).

6. 1991 Statistical Abstract, supra note 1, No. 62, Households, 1980 and 1989, and Persons in Households, 1989, by Type of Household and Presence of Children 48 (reporting 22,708,000 householders living alone in 1989).

7. Current Population Reports, supra note 1, at 10 (Table K).

8. Current Population Reports, supra note 1, at 10 (Table L).

9. See Paul C. Glick, Remarried Families, Stepfamilies and Stepchildren: A Brief Demographic Profile, 38 Fam. Rel. 24, 26 (1989) (basing projection about future number of stepchildren on statistics regarding the likelihood of parenthood, divorce, and remarriage among young married persons); see also Frank F. Furstenberg, Jr., The New Extended Family: The Experience of Parents and Children after Remarriage, in Remarriage and Stepparenting 42, 44 (Kay Pasley & Marilyn Thinger-Tallman eds., 1987) (placing estimate at one in four children).
the custodial parent marries for the first time or remarries following a divorce.\textsuperscript{10}

The demographic information provided by the Census Bureau further classifies stepfamilies according to the gender of the stepparent. Not surprisingly, the large majority (ninety-one percent) of stepparents are men; this statistic mirrors the fact that most single custodial parents are women. Still, more than a half million children resided in the home of a father and stepmother in 1990.\textsuperscript{11}

In counting the number of stepfamily households in America, the Census Bureau defines a stepfamily as the household unit created when an individual marries and resides with the custodial parent of minor children. Notably, the Census Bureau's definition of stepfamily does not include the situation where an adult marries the noncustodial parent of minor children. Furthermore, the person who cohabits with a custodial parent, outside a formal marriage, does not create a stepfamily under this definition. The same definitional limitations have, for the most part, been invoked in discussions about stepfamilies in the legal context.\textsuperscript{12}

To date, lawmakers have been slow to recognize many nontraditional family relationships, including the relationships created between residential stepparents and their stepchildren.\textsuperscript{13} Most of the important legal

\textsuperscript{10} See Marilyn Ihinger-Tallman & Kay Pasley, Divorce and Remarriage in the American Family: A Historical Review, in REMARRIAGE AND STEPPARENTING, supra note 9, at 3, 4-11 (describing the substantial decrease in the number of stepfamilies formed upon the remarriage of a widowed parent, and the corresponding increase in the number of stepfamilies formed by the marriage of a custodial parent who is divorced or never before married).

\textsuperscript{11} See, e.g., Rosenberg v. Silver, 762 F.2d 255 (2d Cir. 1985) (recognizing defense of parent-child tort immunity for the husband of an injured child’s noncustodial mother, who did not reside with the child). Furthermore, the definitions can become blurred in families where unmarried parents share the joint legal and physical custody of their children. Arguably, upon the marriage of either parent in this situation, the new spouse would be regarded as a stepparent even under the limited definition of that term.

\textsuperscript{12} There are exceptions to the general rule that legal issues involving stepfamilies arise only in situations where the stepparent marries the custodial parent and resides with the children. See, e.g., Rosenberg v. Silver, 762 F.2d 255 (2d Cir. 1985) (recognizing defense of parent-child tort immunity for the husband of an injured child’s noncustodial mother, who did not reside with the child). Furthermore, the definitions can become blurred in families where unmarried parents share the joint legal and physical custody of their children. Arguably, upon the marriage of either parent in this situation, the new spouse would be regarded as a stepparent even under the limited definition of that term.

\textsuperscript{13} See, e.g., Katharine T. Bartlett, Rethinking Parenthood as an Exclusive Status: The Need For Legal Alternatives When the Premise of the Nuclear Family Has Failed, 70 VA. L. REV. 879 (1984); Jennifer Jaff, Wedding Bell Blues: The Position of Unmarried People in American Law, 30 ARIZ. L. REV. 207 (1988); Nancy D.
issues that affect family members, in the areas of support, custody, inheritance, torts, workers’ compensation, and criminal law, are regulated at the state level. Here, the starting premise is that stepparents and their stepchildren are legal strangers to each other. The current “law of stepfamilies” consists of a series of limited exceptions to this principle. Furthermore, with respect to many important issues, there is no uniform treatment of the stepparent-child relationship from one state to another. Thus, a comprehensive definition of the stepfamily in American law has yet to be formulated.

The protection of the law is typically invoked by stepfamily members, who have established relationships of economic and emotional interdependence, at times of crisis or transition within the family. Frequently, the failure to recognize the stepparent-child relationship in these circumstances results in direct hardship for individual family members. For example, the associational interests of a residential stepfather and his preschool-age stepdaughter were placed in jeopardy when their family was disrupted by the custodial mother’s sudden death. At that time, the biologic father, who had not contacted nor supported his child during the preceding two-year period, sought and obtained custody. Although the stepfather had served as the child’s psychological father during the same period, no legal recognition was extended to the stepfather-child relationship in this situation.

Another stepchild endured economic hardship when his mother’s request for child support was denied, even though the boy had become dependent upon his stepfather over an extended period of time. In this case, the stepfather encouraged the mother to terminate the biologic father’s relationship with the child, promised to adopt the child, served as the child’s father during the parties’ seven-year marriage, and continued to serve as the primary custodian for more than a year following their divorce. Still, no future support payments were required when the stepfather subsequently chose to terminate the relationship with his stepson.

Polikoff, This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families, 78 GEO. L.J. 459 (1990); Rebecca L. Melton, Note, Legal Rights of Unmarried Heterosexual and Homosexual Couples and Evolving Definitions of “Family,” 29 J. Fam. L. 497 (1991).

14. In 1987, the Family Law Section of the American Bar Association began work on the Model Act Establishing Rights and Duties of Stepparents. The Act defines stepparent as “a person who is married to the person who . . . has custody of a minor child.” The Act addresses three key issues relating to stepparent rights and duties: the right to discipline, support duties, and custody and visitation rights. See Joel D. Tenenbaum, Legislation for Stepfamilies—The Family Law Section Standing Committee Report, 25 Fam. L.Q. 137 (1991) (including a tentative draft of the Model Act).

15. See Milam v. Milam, 376 So. 2d 1336 (Miss. 1979), discussed in chapter 7.

16. See Ulrich v. Cornell, 484 N.W.2d 545 (Wis. 1992), discussed in chapter 2.
In a final illustration, the exclusion of stepfamilies from the definition of criminal incest left another important interest of stepchildren unprotected. A stepfather, who had engaged in sexual activity with his stepdaughter, was acquitted of this criminal charge because the relevant statutory definition of incest was restricted to biologic families. The Mississippi Supreme Court, which announced this result, also expressed dissatisfaction with the underlying rule of law.

We regret that a man should go unpunished, if guilty of so gross a violation of moral law, of domestic virtues, of the obligations of a citizen... Although the violator of a most sacred obligation will escape merited justice in this world, through the neglect of the law makers to provide for such a case, he cannot escape the just judgment of that Higher Court, where the sins and the secrets of all will be exposed, and suitably adjudged.17

As illustrated by stepfamily cases in the fields of incest, child support, and custody, the exclusive focus of the law on traditional nuclear families leaves other people unprotected in their personal relationships. In recent years, scholars of the family have criticized this gap between current legal norms and the actual family experiences of many individuals in our society.18 Besides the direct legal burdens imposed on nontraditional families, an additional cost associated with the narrow definition of family is the absence of clear and positive roles for stepfamily members.

Researchers have consistently observed that people entering stepfamilies have no clear expectations about family roles.19 Furthermore, for whatever reasons, many cultural expectations about the stepfamily, reflected in our language and in the popular culture, are negative.20 Notably, Cinderella, who was mistreated by her stepmother, is the stereotypical

17. Chancellor v. State, 47 Miss. 278, 280-81 (1872). The current Mississippi statutes criminalize sexual relationships between stepparents and their stepchildren. See appendix to chapter 11.
18. See Marie Witkin Kargman, Stepchild Support Obligations of Stepparents, 32 Fam. Rel. 231 (1983); Bartlett, supra note 13; Mark A. Fine, A Social Science Perspective on Stepfamily Law: Suggestions for Legal Reform, 38 Fam. Rel. 53 (1988); Margaret M. Mahoney, Stepfamilies in the Law of Intestate Succession and Wills, 22 U.C. Davis L. Rev. 617 (1989); Margaret M. Mahoney, Support and Custody Aspects of the StepParent-Child Relationship, 70 Cornell L. Rev. 38 (1984); Polkoff, supra note 13.
19. See Fine, supra note 18. at 55; David M. Mills, A Model For Stepfamily Development, 33 Fam. Rel. 365 (1984).
20. See Brenda Maddox, The Half-Parent: Living With Other People’s Children 32-37 (1975) (discussing the negative connotations of stepfamily terminology).
Stepchild of fiction. Indeed, the term "stepchild" is used in many contexts as shorthand for "second class," as illustrated by the following titles of two recent law review articles: Secondary Trading: Stepchild of the Securities Law, and Stepchild of the New Lex Mercatoria: Private International Law from the United States Perspective. Of course, these negative portrayals do not necessarily depict or influence the reality of modern stepfamilies. Still, scholars of the family have concluded that the absence of clear and positive role models creates adjustment problems over time within many stepfamilies.21

It is possible that the current state of the law contributes to the problem of ambiguity about stepfamily roles. Clearly, the legal system has failed to recognize, on any consistent basis, that the relationship between stepparent and child entails enforceable rights and duties. The actual impact of the law upon the feelings and behavior of individuals in stepfamilies is, of course, difficult to measure. Nevertheless, Professor of Psychology Mark A. Fine found it "plausible that the lack of legal precision is one among many factors which perpetuates the uncertain status that stepfamilies have in our culture."22 Another scholar, Professor Gary B. Melton, whose work in the field of legal psychology has focused on the relationship between law and human behavior, made the following general observation about the impact of formal legal status on nontraditional families.

The adoption of a broad definition of family often both brings law into harmony with changing social reality and promotes ends consistent with public policy.

... The degree of legal recognition that various relationships attain is likely to affect their stability and individuals' sense of satisfaction with them.23

The traditional family law system is concerned with the protection of individuals, especially children, who form economic and emotional interdependencies within the family. Another important goal, highlighted in the observations by Professors Fine and Melton, is the enhancement of certainty and stability in family relationships. These purposes deserve the

21. See Marilyn Coleman & Lawrence H. Ganong, The Cultural Stereotyping of Stepfamilies, in REMARRIAGE AND STEPPARENTING, supra note 9, at 19, 19–41 (examining anecdotal and empirical evidence which supports the conclusion that widespread negative stereotyping produces harmful effects in stepfamilies); Judith Grant, The New Family and the Old Ideology, in WOMEN AND STEPFAMILIES 214 (Nan Bauer Maglin & Nancy Schniedewind eds., 1989) (criticizing the social and legal "ideology of biologism," which creates internal family problems by failing to validate nontraditional family models).

22. Fine, supra note 18, at 55.

23. Gary B. Melton. The Significance of Law in the Everyday Lives of Children and Families. 22 GA. L. REV. 851, 854, 856 (1988).
attention of scholars and lawmakers who analyze the legal status of stepfamilies.

Criticism of the status quo is the first and easiest step in evaluating the current laws that regulate stepfamilies. It is more difficult to affirmatively define a legal stepparent-child status, which would recognize and protect stepfamily members while preserving a family law system that is fair, certain, predictable, and not unduly burdensome on those who must enforce the laws. In defining the stepparent-child status, two important questions must be answered. First, what constitutes a legally significant stepparent-child relationship? Second, what rights and responsibilities should be associated with stepfamily membership?

The simplest answer to the first inquiry appears in the Census Bureau's definition of stepfamily: the relationship formed whenever an individual marries the custodial parent of a minor child and thereafter resides with the child. This basic definition is employed in a number of the existing state laws that recognize stepfamilies for specific purposes. For example, the Missouri stepparent support statute provides, in a straightforward manner, that "[a] stepparent shall support his or her stepchild to the same extent that a natural or adoptive parent is required to support his or her child as long as the stepchild is living in the same home as the stepparent."24

However, many scholars and lawmakers have concluded that something more than marriage and a shared residence should be required before legal consequences attach; additional criteria generally relate to de facto relationships established over time in the stepfamily. According to this analysis, legal rights and duties should exist only if the residential stepparent assumes an active custodial role, for example, by participating in the child's education, discipline, and moral training, or by making financial contributions to the child's support.

Indeed, judges have developed a legal standard, called the in loco parentis doctrine, which embodies this approach to identifying legally significant relationships outside the biologic or adoptive family. In loco parentis, which in Latin means "in the place of a parent," applies not only to stepfamilies, but to any situation where an adult informally assumes custodial responsibility for a child. The courts have applied the doctrine, however, only in certain fields of law. For example, stepparents who stand in loco parentis to their stepchildren have frequently been accorded the same treatment as biologic parents in the areas of workers' compensation and parent-child tort immunity. Conversely, the courts have rejected the in loco parentis doctrine as a basis for stepfamily claims in many other important fields, including inheritance and wrongful death.

24. Mo. Ann. Stat. § 453.400 (Vernon 1986); see also N.H. Rev. Stat. Ann. § 546-A:1. -A:2 (1987); Or. Rev. Stat. § 109.053 (1990); S.D. Codified Laws Ann. § 25-7-8 (1992); Utah Code Ann. § 78-15-1. -1.2 (1992); Wash. Rev. Code Ann. § 26.16.205 (West Supp. 1993).
Like the common law in loco parentis doctrine, many of the state statutes that recognize stepfamilies for a specific purpose are limited to those situations where the stepparent and child are tied together by more than the stepparent's marriage to the child's parent. For example, the New Jersey inheritance tax statute establishes preferential rates and exemptions for bequests made to "any child to whom the decedent . . . stood in the acknowledged relation of a parent, provided such relationship began at or before the child's fifteenth birthday and was continuous for ten years thereafter."25 Similarly, the crime of "sexual abuse by a parent, guardian, or custodian" in the West Virginia Code applies to "the spouse" of a parent "where such spouse shares actual physical possession or care and custody of a child."26 Each of these statutory standards, like the common law in loco parentis standard, requires the assumption of some form of responsibility by the stepparent before legal rights and duties are imposed.

The use of this type of differential standard is supported by the findings of social scientists who have studied families. Researchers have found that the relationships actually established between stepparents and their stepchildren vary widely from one family to the next, for example, in the level of commitment, amount and quality of personal interaction, and the degree of economic and custodial responsibility assumed by the stepparent.27 Variable factors that appear to influence these matters include the age of the child when the stepfamily is formed, the length of the marriage, the presence of a noncustodial parent, and the presence of stepsiblings in the family.28 The empirical information about the wide range of stepfamily experiences, coupled with private and societal expectations in this field, support the efforts by lawmakers to develop standards that segregate those stepfamilies where meaningful family ties exist.

The creation of legal standards that are premised on actual relationships in the stepfamily is also consistent with the theories of family scholars who have addressed the question of legal status outside the nuclear family in a more comprehensive fashion. Thus, one widely discussed theory, which was disseminated during the 1970s by the authors of a book entitled Beyond the Best Interests of the Child, emphasized the importance of psychological, rather than biologic, parenthood. The psychological parent is defined as "one who, on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological

25. N.J. STAT. ANN. § 54:34-2.1 (West 1988).
26. W. VA. CODE ANN. § 61-8D-1 (4), (5) (1992).
27. See Judith Zucker Anderson & Geoffrey D. White, An Empirical Investigation of Interaction and Relationship Patterns in Functional and Dysfunctional Nuclear Families and Stepfamilies, 25 Fam. Process 407 (1986); Furstenberg, supra note 9.
28. See Fine, supra note 18, at 55–56; Lawrence H. Ganong & Marilyn Coleman, The Effects of Remarriage on Children: A Review of the Empirical Literature, 33 Fam. Rel. 389, 402–03 (1984).
needs for a parent, as well as the child's physical needs." According to this theory, the laws should protect relationships between children and their psychological parents, because disruption of these bonds would be harmful to the children.

A more recent and more refined proposal appears in Katharine T. Bartlett's article, *Rethinking Parenthood as an Exclusive Status: The Need For More Legal Alternatives When the Premise of the Nuclear Family Has Failed*. Professor Bartlett has proposed that adult-child relationships outside the nuclear family should be recognized whenever the following criteria are met.

The first criterion is that the adult have had physical custody of the child for at least six months. . . .
*Mutuality* is a second criterion for psychological parenthood. To meet this criterion, the adult must demonstrate that his motive in seeking parental status is his genuine care and concern for the child. . . . Mutuality also denotes that the child perceives the adult's role to be that of parent. . . .

As a final criterion for psychological parenthood, the . . . adult [must] prove that the relationship with the child began with the consent of the child's legal parent or under court order. This requirement is designed to avoid enhancing incentives for child-snatching.30

According to Professor Bartlett's own analysis, a stepparent might qualify as a parent figure under this test, at the same time that the stepchild's two biologic parents retain their legal roles.31

Once the limitations on legally significant stepparent-child relationships have been established, under the in loco parentis doctrine or some other standard, the remaining questions involve the scope of legal rights and responsibilities within the stepfamily. The logical starting point in this analysis is that stepparents could be treated like biologic families; that is, the same legal rights enjoyed by biologic parents and children could be extended to qualifying stepparents and their stepchildren. Indeed, a num-

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29. JOSEPH GOLDSTEIN, ANNA FREUD, & ALBERT J. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 98 (1973).
30. Bartlett, supra note 13, at 946-47. Additional standards for recognizing nontraditional adult-child relationships appear in Polkoff, supra note 13 (advocating recognition of functional parent-child relationships that are initially created with the consent of a legally recognized parent); Note. *Looking For a Family Resemblance: The Limits of the Functional Approach to the Legal Definition of Family*, 104 HARV. L. REV. 1640, 1646, 1655 (1991) (describing a functional parent-child relationship that "shares the essential characteristics of a traditional relationship and fulfills the same human needs," including the child's physical, emotional, and financial needs).
31. See Bartlett, supra note 13, at 951.
ber of the existing laws dealing with stepfamilies for specific purposes treat them on a par with biologic families. For example, under the New Jersey inheritance tax statute quoted previously, both biologic children and qualifying stepchildren, who receive bequests upon the death of a parent or stepparent, enjoy the same preferential tax rates and exemptions.32 A second illustration of equivalent treatment of parent-child and stepparent-child relationships appears in the laws governing the discipline of children. In most states, stepparents who stand in loco parentis to their stepchildren are entitled to discipline them, and are subject to the same limitations on the use of force as biologic parents.33

The biologic family is not, however, the only model for defining legal rights in the stepfamily. For example, state lawmakers have established entirely different child support responsibilities for parents and stepparents. In most jurisdictions today, stepparents have no enforceable obligation whatsoever to support their stepchildren. But even in the eighteen states where lawmakers have imposed a statutory stepchild support duty,34 it is much less significant than the corollary responsibility of biologic and adoptive parents. Most notably, the obligation of stepparents does not survive the termination of the marriage which created the stepfamily.35 Of course, this durational limitation stands in stark contrast to the universal rule in the biologic family, where support obligations continue at least until children reach the age of majority. Professor David L. Chambers has pointed out that the current law of support in stepfamilies (no obligation following divorce) and in natural families (full support responsibility during every child’s minority) does not exhaust the available options. Thus, for example, lawmakers could establish a postdivorce stepparent obligation that endures for a shorter period of time than the duty of biologic parents.36

Indeed, in thinking about a legal definition of the stepfamily status, it is both liberating and overwhelming to consider all of the available options. As to each legal issue, the inquiry must be whether the family-related policies that justify regulation in the biologic family also extend to the stepfamily; and if so, what form of regulation is appropriate in this nontraditional family setting. The task of segregating eligible stepparents and stepchildren, and

32. See N.J. STAT. ANN. § 54:34–2.1 (West 1986).
33. See, e.g., TEX. PENAL CODE ANN. § 9.61(a)(1) (West 1974) (authorizing reasonable use of force by parents, stepparents, and others standing in loco parentis).
34. The law of stepparent support, including the state statutes, is discussed fully in chapter 2.
35. See, e.g., Deal v. Deal, 545 So. 2d 780 (Ala. Civ. App. 1988); But see N.D. CENT. CODE § 14–09–09 (1991) (extending stepparent support duty “during the marriage and so long thereafter as [the stepchildren] remain in [the stepparent’s] family”).
36. David L. Chambers, Stepparents, Biologic Parents, and the Law’s Perception of “Family” after Divorce, in Divorce Reform at the Crossroads 102, 127–29 (Stephen D. Sugarman & Herma Hill Kay eds., 1990).
then identifying appropriate legal rights and responsibilities for them, is a difficult and complex one. The absence of any comprehensive definition of stepfamily rights in the law can be explained in part by the difficulty of the undertaking.

Surely, one attractive feature of the traditional model of the family is its simplicity: two biologic parents and their children, with immutable rights and responsibilities, is an easy model for everyone to work with. Parents, children, employers, teachers, doctors, and other third parties all know that the two parents have an exclusive claim to and responsibility for their children. In reality, the addition of a residential stepparent complicates a child's daily life in many ways. Developments in the law, acknowledging the stepparent's presence, would complicate the legal picture as well, with some resulting uncertainty about the lines of authority and responsibility within the family. This is especially apparent when the biologic parent who is not married to the stepparent plays an active role in the child's life. The challenge for the legal system is to formulate laws that fairly reflect and define the interests of family members without creating undue confusion or uncertainty.37

The practical difficulties involved in expanding the legal definition of the family are apparent. But the cumulative decision of lawmakers to keep their distance from the subject of stepfamilies is rooted as well in a philosophical reluctance to move away from the nuclear family as an exclusive legal model. The traditional system of family law is premised on the important assumption that the biologic mother and father have exclusive relationships with their children. Within this framework, the legal recognition of stepparent-child relationships calls into question established social and legal assumptions about the family. Stepfamily members and others seeking a broader legal definition of the family have frequently encountered stiff resistance, because their position is viewed as a threat to traditional values.

The remaining chapters explore in detail the current law of stepfamilies. The various issues affecting stepfamilies are typically raised one-by-one in the state courts and legislatures. Each time the question of legal status for stepparents and stepchildren is raised, the particular lawmakers appear to balance anew all of the competing interests regarding stability and protection for stepfamily members, on the one hand, against the reluctance to complicate the system by moving away from the preference for nuclear families. Different weight has been assigned to these competing values, depending upon the particular legal context and the philosophical

37. The tension between the goals of fairness, on the one hand, and certainty and predictability, on the other, permeates the system of family law. See generally Mary Ann Glendon, Fixed Rules and Discretion in Contemporary Family Law and Succession Law, 60 Tul. L. Rev. 1165 (1986); Carl E. Schneider, The Tension Between Rules and Discretion in Family Law: A Report and Reflection, 27 Fam. L.Q. 229 (1993).
disposition of the decision maker. The overall result of this process is an unsettling lack of consistency from issue to issue and from state to state in the legal definition of the stepfamily. Still, it is fair to summarize the current law as denying legal recognition to stepfamilies, subject to a number of specific judicial and legislative exceptions in the laws of each state.

The increasing number of individuals who are living in nontraditional families, especially stepfamilies, is necessarily changing the way in which Americans think about the family. For lawmakers, the task of translating these social realities into a responsive system of family laws in the future is a challenging one. Only when this challenge has been met will the basic goals of the family law system be realized for the families of the twenty-first century.