P.S. to the NEWS
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PROBLEMS OF CHILD CUSTODY

Child custody has become the orphan of the changing attitudes toward marriage, family, sex roles, and sex morals. In the "Me Generation," when each individual seeks his or her own self-fulfillment in a personal and selfish way, when divorce is easy, speedy, and "no-fault," when an increasing number of couples are living together without matrimony, still the nagging question remains: who will take care of the children?

Do we apply traditional moral or social criteria to the determination of child custody? Or are there some new, yet-to-be-determined standards on which to make a decision?

It takes a man and a woman to produce a child. But which does the child belong to when the bond between his parents is severed? To answer that by saying "the best interest of the child" is to beg the question. What is the child's best interest?

King Solomon solved his famous custody problem by offering to cut the child in half -- a threat that produced the truth about which woman loved the baby more. His solution is hardly practical today.

In the recent Jarrett decision, the U.S. Supreme Court let stand an Illinois Supreme Court ruling giving custody of three daughters to their divorced father. The reason was that Mrs. Jarrett was living in sin with her lover, and Mr. Jarrett persuaded the court that he could better provide for the girls' "spiritual well-being and development."

Mr. Jarrett was willing to leave the girls with their mother if she either married her lover or gave him up. Rather than do either, she preferred to give up her daughters.

The advocates of "alternate lifestyles," easy divorce, and permissive sex, who believe that society has no right to make a moral judgment, have flocked to defend Mrs. Jarrett and her right to retain child custody while choosing her own sex habits. Mrs. Jarrett's defenders are incensed that the court record includes moralistic judgments and words such as "fornication" and "flaunting."

It is obvious that if the mother had violated other laws, if she were a drunkard or a drug pusher or incestuous or a sadistic child-beater, few would have argued that

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she should have custody rather than the father. But fornication is likewise a crime under state laws (at least in 19 states, including Illinois), and the "statutorily expressed moral standards of the state" are a reasonable criterion on which to make the difficult child custody decision.

A number of courts, including Massachusetts, have held that a lesbian mother is no longer unfit by definition. So a straight father may not get custody of his children away from their lesbian mother.

Just because a million couples are living together without marriage does not make it right or legal or socially acceptable, any more than ten million persons suffering from venereal disease makes that acceptable.

Until the last few years, courts traditionally favored the mother in custody decisions. That bias was based partly on a societal respect for motherhood and its role in nurturing children, and partly as compensation because, in the majority of divorces, it was usually the husband who wanted to shed the bonds of matrimony and start a new life (usually with a younger woman), rather than vice versa.

The movie "Kramer v. Kramer" shows that, in our changing times, it is now just as likely that the wife is the one who wants out of marriage in order to be liberated to seek her own identity. The movie's success can be laid principally to the fact that it probes one of the tenderest nerves of today's society.

Who gets the child when the parents go their separate ways? Mrs. Kramer chose her modern liberated lifestyle, but in the custody battle, she used the weapon of the court's traditional bias in favor of mothers. The audience "court" would probably opt for Mr. Kramer to get custody because he provided the nurturing after she walked out.

The alternate lifestyle advocates see the Jarrett case as an attempt by an archaic court to impose obsolete moral standards. The trouble with their argument is that they have no new standards with which to replace the old.

The alternate lifestyle advocates may tell themselves that they are the wave of the future. In Illinois, at least, marriage and family still get preferred treatment over sin.

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