

The Family Is Changing and We Should Admit It

By THOMAS F. COLEMAN

Public officials are beginning to see that diversity is the hallmark of contemporary family life in America, and the legal definition of "family" is changing.

If two or more people function as a family, legislatures and courts are beginning to say, they are a family and should be treated legally as one, even if no blood tie or formal marriage exists.

This concept was validated on July 6 in a New York court ruling that broadened the legal definition of "family" to include unmarried couples living together in long-term relationships. As a result, Miguel Braschi will not be evicted from the rent-controlled apartment that he shared for 10 years with his now-deceased domestic partner.

The Braschi decision epitomizes American values at their best. It incorporates our legal tradition of flexibility in defining "family" and respects the pluralism of our culture.

Much to the disappointment of some conservative political forces, the court refused to limit the definition of family to blood, marriage or adoption. The definition of family, the state Court of Appeals ruled, should "find its foundation in the reality of family life" rather than "fictitious legal distinctions or genetic history."

Some critics called the decision a gay-rights case that created a sharp break with tradition. Nothing could be further from the truth.

American law has a history of flexibility in defining family. As early as 1921, for example, the California Supreme Court granted worker's compensation survivor benefits to an unmarried woman, ruling that she and her deceased male partner had been a family.

Only three months ago in New York, the Court of Appeals declared unconstitutional a single-family zoning law prohibiting four unrelated elderly people from sharing the same residence, ruling that the four functioned as a family.

In a report released last month, the California Legislature's Joint Select Task Force on the Changing Family recommended that families be identified by functions rather than structures. Locally, the Los Angeles City Task Force on Family Diversity called for the use of expanded definitions of "family" as new laws and regulations are adopted by city government.

Los Angeles and San Francisco have passed "domestic partnership" ordinances, joining the ranks of West Hollywood, Berkeley and Santa Cruz.

Municipalities in other states have made similar legal changes. In March, the Denver City Council repealed a zoning law that made it illegal for an unmarried couple to live in a jointly owned home in many residential areas. Late last year, the city of Madison, Wis., extended sick and bereavement leave to unmarried city employees living with a "family partner."

Although same-sex couples are properly protected by these legal changes, the primary beneficiaries will be the millions of parents and children who live in foster families and step-families and the millions of unmarried heterosexual men and women who live together as domestic partners.

Recent demographic studies show that only a small minority of American households fit the "Ozzie and Harriet" model of a breadwinner-husband and homemaker-wife raising young children. In fact, most people live in families with two working parents, a single parent, a step-parent. Or they live in foster families, extended families, domestic partnerships or one-person households.

Expanding benefits in the name of "family diversity" makes some people uneasy. They cite morality and administrative convenience as reasons to maintain the status quo.

But doesn't morality teach us that we should not discriminate against people just because they do not fit our stereotypes? We should not, however, confuse public morality with private morality. If government gets into the business of legislating a particular brand of private morality, then step-families, for example, might be punished because many religions do not allow divorce and remarriage.

As for administrative convenience, the Braschi decision will consume some court time in determining whether two people are a "family" or merely roommates. However, this problem can be resolved by domestic partner laws that provide for a certificate authenticating the relationship.

In the meantime, America would be better off if our leaders would accept what the public already knows. Family diversity has arrived and it's here to stay. The challenge we face is not how we can turn back the clock, but rather how we can forge solutions to our problems that do not pit one type of family against another.

Thomas F. Coleman, a Los Angeles attorney and adjunct professor at USC Law Center, filed a brief in the Braschi case on behalf of the Family Diversity Project and Family Service America.