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Defining Familial Relations Within the Law: Nuclear Family vs. Extended Family

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The idea of family has evolved in the last century from the extended family towards a narrower concept, the so-called nuclear family. Relationships with relatives other than very close ones are often scarce or non-existent. This evolving situation has had an impact on the law. There are fewer and fewer juridical restrictions in a number of areas: for example, in some regions of Spain there is no longer an obligation to reserve a portion of the deceased's estate for the family (or the inalienable portion has been greatly reduced); and in many European legal systems the impediments to marriage arising from kinship have been steadily diminished as a result of the exercise of legislative discretion and shifting cultural and historical influences on family structure. Criminal law has also taken a less restrictive approach to the issue of impediments, to the point where a trend may be developing in some countries in the direction of the decriminalization of incest.

However, social pressures are now developing which support a larger role for the extended family. The current financial crisis is a major factor. It is noticeable, for example, that many couples with children can achieve a work-family balance only because of the help they receive from their own parents. Very often, people turn to the extended family as an ultimate resource in cases of special need, occasioned, for example, by unemployment or illness, and also in other sensitive situations such as a marital crisis. One-parent families (increasingly common today) often appeal to their extended families as a means to handle their special difficulties. At the same time, stepfamilies give rise to certain relationships that are not based on kinship, but sometimes are even stronger, or generate moral obligations that do not exist with blood relatives. Other situations are contributing to the increasing importance of the extended families. Immigration usually strengthens bonds with relatives, even distant relatives, who happen to live in the host country.

This social trend should find an accurate reception in juridical systems. The law should not disentangle itself from this situation. There is a compelling state interest in this matter because of the deterioration of the welfare State. In times of economic growth the State provided for most basic needs, and therefore family support appeared to be non-essential from an economic point of view. Now, the family is replacing the State because the latter cannot universally supply those basic needs. Therefore, the family, including the extended family, is gaining again a primary role in society.