Family Law—what next?

ACLS grant enables Schneider to study context of change, implications for the future

"No area of law deals more regularly and closely with moral problems than the law of the family," observes Michigan's family law specialist, Carl E. Schneider. However, during the last two decades, Schneider notes, "both legislatures and courts have tended to eliminate moral language and purpose from their discourse and to transfer moral deliberation and responsibility to families." Schneider feels that this transformation raises questions of considerable magnitude and scope, which he is exploring with the aid of a fellowship from the American Council of Learned Societies. The grant will enable Schneider to continue the work he began while on leave from the Law School during the first semester of the 1985-86 academic year.

Among a number of causes for the transformation of family law in the last twenty years, Schneider explains, is the rise of what Philip Rieff calls "therapeutic man." Schneider feels that our increasing tendency to think and talk about ourselves in psychological terms has influenced legal discourse in general, as well as the very substance of family law. For example, Schneider said, "therapeutic man seeks to discover the 'true self' concealed by social roles. Family law has sought to eliminate reliance on social roles by eliminating presumptions based on gender and illegitimacy and by requiring more elaborate hearings to discover the facts of a particular case. Again, therapeutic man assesses commitments to people, community, and creed in terms of their ability to promote his psychic well-being; and he consequently prefers 'non-binding commitments.' Family law recognizes non-binding commitments through such doctrines as no-fault divorce and its tendency to see families as collections of individuals rather than social units."

In Schneider's view, this description of the context of the transformation of family law raises questions about the assumptions underlying the transformation of family law. He asks, "What assumptions does that transformation make about the possibilities of resolving family problems fairly without considering the moral relations between the people involved? What assumptions does it make about the possibility of writing family law without making moral decisions? What assumptions does it make about human nature and the extent to which some regulation of family behavior is necessary? The final questions of Schneider's study will be to ask whether a liberal, secular, pluralistic, individualistic society can be a moral community and whether a society can prosper which is not a moral community.

Schneider, an associate professor at the Law School since 1981, has taught courses and written numerous papers on family law, abortion, and neonatal euthanasia. He received his J.D. at Michigan in 1979 and his B.A. from Harvard (in history) in 1972.