LAW IN THE DEVELOPMENT OF DYNASTIC FAMILIES AMONG AMERICAN BUSINESS ELITES: THE DOMESTICATION OF CAPITAL AND THE CAPITALIZATION OF FAMILY

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American dynastic business families as descent groups constitute a category of social organization with which anthropologists have been traditionally familiar, but in the unlikely setting of a complex, bureaucratized society. This paper examines aspects of such groups and argues that law has been a critical organizational resource in their development. Law does not merely impinge at times on family concerns, but becomes an integral dimension of extended family relations in the arrangements for perpetuating collective wealth as business capital, and in distributing individual entitlements to that wealth among descendants. A general model of family/business formations is presented, supported by a comparative discussion of two dynastic families of Galveston, Texas.

I. INTRODUCTION

As an anthropologist interested in the study of American families of old wealth, which appear to be analogous with descent groups in tribal and aristocratic societies, I became impressed with the substantive role of legal arrangements in structuring social relations within these dynasties as they age generationally. Collectively shared hereditary wealth is given form as business capital through the creative use of legal instruments, then managed and maintained by legal specialists and family leaders. A legally devised plan to transfer and conserve patrimonial capital in one generation becomes in the next generation an organizational framework for extended family relations—actually a formal model or surrogate of the family, with law rather than the founding entrepreneurial patriarch as its source of authority. This legal surrogate comes to figure importantly in relations among descendants, who are tied to it by their hereditary entitlements, especially as some of them attempt to alter their given positions in the formal organization of family interests. During the past century,

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American business dynasties—termed here family/business formations—have achieved durability as descent groups in a bureaucratized society by assimilating, rather than resisting, characteristics of formal organization which are usually assumed to be antithetical to kin-based groups.

This paper proposes an historic and processual model of American family/business formations which emphasizes how legal rules and instruments, while being used to adapt family-held concentrations of capital to the socioeconomic environment, become an integral dimension of family relationships themselves. I am interested here in the formations which were founded by entrepreneurs in commerce and industry during the later nineteenth-century period of national economic expansion, and particularly in those of Galveston, Texas, which I have investigated first-hand.[1] These formations have endured as both extended family and business organizations well into the twentieth century under political, economic, and cultural conditions manifestly unfavorable to their survival.

It is important to know at the outset that the role of law in these formations has in no way replaced or negated the flexible normative content of middle-class kinship which characterizes American family life. Rather, law overlays, and to a degree, complicates kin relations by giving a more formal organization to the extended family than that of most middle-class families.[2] As will be seen from the Galveston cases, formations are set on a structured course by their internal administration of patrimonial capital and businesses, but final outcomes of this process still depend very much upon the long-term emotional atmosphere of a dynastic family. Popular interest in formations has focused on their "human drama" aspect, to the

[1] I have conducted this research in Galveston, intermittently from 1977 to the present, with an intensive period of work during the summer of 1978. The summer investigation was supported by an NEH Research Stipend. Numerous informants, in and outside the formations, have richly enhanced what I have learned from limited documentary sources and journalistic accounts. The Rosenberg Library of Galveston has recently acquired the Kempner family papers which are uncatalogued and with which I have as yet done very limited work.

[2] There are other social categories on the margins of American middle-class lifestyles, whose members are also distinguished by their strongly developed extended family relations: among the poor, kin support is often cultivated circumstantially as a viable resource (e.g., see Stack, 1974); and among partly assimilated ethnic subcultures, extended family relations serve both as a resource and a key emblem of separate identity. For contemporary wealthy families, however, strong extended family relations are not so much a resource or an ideal, as a necessity of being rich, which entails the constitution, conservation, and distribution of private wealth as capital through legal rules and sanctions.

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exclusion of their legal dimension. I argue that without consideration of this dimension, their distinctive nature as groups in modern societies cannot be fully understood.

The significance of the study of family/business formations for the sociology of law in capitalist societies is that it directs attention to the relatively neglected subject (as noted by Friedman, 1975: 48) of how law functions as an organizational resource within the confines of particular groups. The conventional notion is that legal matters impinge directly on units of social organization, particularly in conflict situations, but do not themselves become part of the processes internal to groups. For anthropologists, Bohannan offers this view in his statement that law is doubly institutionalized custom which "has been restated in order to make it amenable to the activities of the legal institutions" (1967: 47). Law "sets up" units of social structure in forms which allow disputes within them to be processed in a legal system; it also provides few formal statuses through which a diversity of groups, such as families and voluntary associations, can be treated as uniform subjects in the operations of major political and economic institutions.

This view is confirmed by the many entrepreneurial families whose business concerns have been absorbed by large corporate structures and whose hereditary capital has been externally administered by banking institutions and legal firms. Relations among descendants of such failed dynasties are influenced to a much lesser extent by their entitlements linking them to shared hereditary wealth than are relationships in active family/business formations.[3]

The family/business formations discussed in this paper are distinguished by the fact that they have tried to perpetuate a particular set of controlling ownership interests in operating family businesses. Regardless of the steps taken to cultivate certain male or female descendants as successors to family leadership, the transference of wealth to descendants combined with the effort to conserve capital has required the internally motivated reproduction of a family in formal terms,

[3] Friedman (1964) has written an important paper on the legal development of the dynastic trust instrument. However, he does not distinguish, as I do in this paper, family/business formations from cases in which the dynastic dimension of families is primarily managed professionally and externally, without active participation from beneficiaries, who are thereby free of any salient, superimposed organization of extended family relations. For family/business formations, whose patrimonial capital is still critical for family-managed business operations, the dynastic trust remains the key instrument by which wealth is conserved and transferred, but as an integral part of intrafamily relations.

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through the use of such legal instruments as trusts, foundations, and holding companies. The result is a surrogate which is the substantive successor to first- and second-generation patriarchal authority. It defines the family as a collectivity represented by its capital and specifies the individual shares of ownership and income interests among beneficiaries in this collectivity. Once legally constituted, the surrogate takes on a life of its own, subject to the ultimate authority of the state. Its formal status and identity is continually adapted to changes in the wider society by the legal specialists who act as its caretakers.

As the organizational core of a formation, the surrogate is challenged externally by long-term political and economic trends which have tended to constrain the inheritance of great wealth and to diminish generally the directing role of family interests in modern business organization. Internally, the surrogate is challenged by descendants who are tied to it by entitlements and managerial responsibilities, but who vary greatly in their degree of commitment to its perpetuation as an objectified, collective form of the extended family.

To descendants/beneficiaries, the surrogate has the quality of a Durkheimian collective representation which is independent of their individual wills but involves each of them, both symbolically and materially. From the perspective of an individual formation member, family wealth and power, defined by its own discrete corporate structure, is very tangible. But it is also symbolic and mystical, its workings known more to some "insider" family managers than to those who share the wealth.

Thus, as a twist on Bohannan's (1967) perspective, the double institutionalization of custom in law might be viewed as working in the opposite direction. In order to control its patrimonial capital through the instruments and expertise of the legal system, a family of wealth reinstitutionalizes its internal relations in a form that permits it to operate in a rationalized social order.

In her paper on semi-autonomous social fields, Moore (1973) has provided one of the few conceptual discussions of how law affects routine processes within groups. She recognizes the importance of understanding the relationships of a discrete group or institution to the "larger body politic" in a complex society and the effect of these relationships on a group's internal organization. To determine a group's relative autonomy, one must focus on how relevant laws are

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assimilated into its informal rule system. As she says (1973: 744), "A court or legislature can make custom law. A semi-autonomous social field can make law its custom." Once law becomes implicated in a group as its custom, the ultimate sanction behind any exercise of authority within the group is, in turn, the authority of the courts and the state. Thus, the autonomy of a group in its environment and the exercise of authority among its members are interrelated dimensions bound up with how legal rules become a routine part of a group's structure, concerns, and practices.

Because of the important role of law in defining the form in which any considerable accumulation of business capital can be privately owned, wealthy families of business origin are one of the most important categories of American social organizations for investigation as semi-autonomous social fields. The legal reproduction of family relations in providing a mechanism for the distribution and control of capital—that is, the family's double institutionalization as a surrogate—has consequences which both strengthen and weaken the extended family organization of a formation. Although a formation's existence may be continually challenged by taxation, government regulation, and economic conditions, it can respond and adapt to such external challenges through manipulation of its legal status. Internally, it replaces first-generation patriarchal authority with legally sanctioned contractual arrangements which bind wavering descendants to the formation. Yet, the formation gains this qualified, external support for the highly structured ordering of its internal social relations at a cost to its autonomy. Both the adoption of such legal instruments as the foundation and the conduct of business itself open the formation to regulation by government agencies and the possible airing of its internal disputes in court.

The eventual weakening of a formation's internal coherence results from important changes in three closely entwined dimensions of its organization: its autonomy in its environment, its authority over internal activities, and the nature of its legal constitution. During the period of third- to fourth-generation transition, a tension between the extended family as a set of contracts organizing wealth and the nuclear family as the basic unit of middle-class social organization, surfaces in intraformation disputes. As descendants go their own way in the wider society, and as family capital loses its traditional connections with ancestral enterprises, the

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surrogate's paternalistic role in preserving the family as institutionalized wealth increases in importance. Disputes arise out of beneficiaries' differing commitments to continued participation in a strongly organized extended family balanced against their conflicting desires concerning how the collective capital, or individual shares of it, should be used.

The courts, adjudicating particular suits, become a common arena for the partial expression of intraformation disputes, since the durability of the formation and activities within it rest on a foundation of law. Whatever their idiosyncratic features, formations typically begin to dissolve from within as descendants attempt to alter their entitlements in the distribution and managerial control of patrimonial wealth. Thus, what began in the nineteenth century as family organization serving the accumulation of capital has climaxed in the later twentieth century as the legal organization of capital serving the perpetuation of family.

The process by which legal arrangements to organize hereditary, collective capital come to structure extended family relations among descendants is central in the three- to four-generation history of family/business formations, and will be the focus of a model discussed in the remainder of this paper. This model is inspired primarily by intensive research among the old business elite of Galveston, Texas, but also derives from my reading of the abundant literature on great American families and of the much scarcer literature on lesser known, but just as dynastic, family/business formations. While there is considerable generality to the model, I have not attempted to distinguish it sharply from my Galveston cases by reference to other examples. To the contrary, I have chosen to rely on the detailed description of two Galveston formations as support for the model, since I have a rich, intimate knowledge of these cases.[4]

[4] Although generally supportive of the model, the literature on American dynasties has paid insufficient attention to the integral legal dimension of extended family organization. There is very little indeed of a theoretical nature on the family structure of old wealth. Baltzell's study (1958) of the Philadelphia business aristocracy is perhaps the best known, and also the best, sociological work on American wealth, but he looks at an urban subculture in totality rather than at its units of social organization. I have no doubt that the basic model of this paper also applies with some adjustments to contemporaneous formations in European societies (particularly Great Britain and Ireland), but the pursuit of this suggestion is beyond my scope here. In the broadest terms, what I am describing is a major structural manifestation of the interrelationships between law, wealth-holding, and elite family organization over the past century in Western capitalist societies.

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II. THE DEVELOPMENT OF FAMILY/BUSINESS FORMATIONS

A general model of family/business formations must be framed by the particular historic conditions in which they evolved, as well as by a parallel, more abstract conception of their internal development as groups. Historically, this model concerns roughly the past century, from the end of the Civil War to the present. Structurally, it concerns a three- to four-generation process of group formation.

Contemporary formations evolved in the later nineteenth century from the replacement of the eastern and southern gentry of colonial origins by a new entrepreneurial elite who engineered the growth and integration of a national economy. The southern gentry declined rapidly as a result of the Civil War, while the remnants of the eastern gentry lost their predominance in commerce but retained their patron roles in certain cities and distinguished themselves in academia and the professions. They looked on pessimistically as New York bankers and industrialists took control of the developing national economy, defined a new upper-class culture devoted to the accumulation and display of wealth, and promoted the spread of this culture across the country (Persons, 1973; Jaher, 1972). Entrepreneurs in regional cities, like those of Galveston, emulated both the high society styles and business methods of the new rich, and shared their fate in the course of later changes (Amory, 1960).

The structural economic changes of the twentieth century, such as the complex governmental regulation of corporate ownership and operations, and competition within an environment of ever larger concentrations of capital, displaced individual entrepreneurs and family firms from dynamic roles in the economy[5] and challenged the long-term viability of any fixed configuration of family-dominated economic interests. A simultaneous ideological reaction against the holding of hereditary wealth[6] resulted in increased taxation of the private

[5] Increasing scale of operations and accumulation of capital led to the appearance of large, rationalized business organizations, corporations, and to the much-discussed structural distinction between corporate managers and owners (e.g., see Berle and Means, 1932). While the intimate connection between family ownership and close supervision of management is common in certain kinds of contemporary businesses, such as banking, insurance, and publishing, the continuing debate over the effective managerial functions of family owners (see Zeitlin, 1974) is unresolvable as a general issue because of the complex variations from case to case.

[6] There has been an unceasing popular fascination with the drama of the rise and decline of dynastic families as well as a love-hate orientation toward those families which apparently have succeeded as dynastic organizations.

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accumulation and inheritance of wealth and greater limitations on the legal vehicles commonly used to preserve such wealth.

Less tangible, but perhaps more important, have been changes in the American family, which have presented family/business formations with a cultural challenge. In fundamental ways, members of formations participate in middle-class culture and share some of the moral ambivalence about hereditary wealth. Aside from such cumulative factors as proliferation of descendants and fragmentation of wealth, this deep involvement in broader cultural trends has been the most serious internal threat to dynastic organization.

The often quoted American folk saying, "shirtsleeves to shirtsleeves in three generations," accurately assesses the typical longevity of entrepreneurial fortunes in descendants' hands. However, its designation of a modest beginning and end for a short-term dynastic cycle reflects the saying's underlying ideological ambivalence rather than actual historic patterns. The saying incorporates two themes in American culture. It assumes the possibility of unlimited accumulation of wealth as the fruits of individualism, but asserts the balancing value of equality in predicting the generational fragmentation of accumulated wealth. In fact, neither have the beginnings of most great fortunes been that humble, nor have descendants returned so quickly to conditions implied by shirtsleeves. It is a family's organized involvement with its patrimonial wealth that may end within three generations, while the dissipation of shares of wealth often takes much longer, once they have been put under professional management.

The temporal dimensions of a family/business formation as an organized entity, conceived as three periods of generational transition—first to second, second to third, and third to fourth—are captured in the saying. The following discussion will deal with these periods in the development of a family/business formation within the above historical context.[7] I have assigned

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This interest has been fed by a nonfiction genre of dynastic sagas, which has included periodic recountings of the progress of nationally famous formations, such as the Fords, DuPonts, Rockefellers, and Mellons (e.g., see the recent works of Collier and Horowitz, 1976; Hersh, 1978; and Koskoff, 1978). Nonetheless, the overall and long-term cultural reaction to business fortunes passed to descendants has been negative. Unlike England, the U.S. has had no embedded aristocratic or explicit class tradition in which old business wealth could find a cultural refuge. When in the public view, later generations of family/business formations have sought an uneasy justification in philanthropy and public service careers. Yet, their preference has been for inattention and privacy in a culture which thrives on the recognition of celebrities.

[7] The enduring nineteenth-century formations are also comparable with other younger, more entrepreneurially active formations of the post-World War I and post-World War II periods, which are now in the process of first- to

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specific year intervals to the transitions, assuming thirty years to be an appropriate length for a generational transition. Although 1890 is rather late for the beginning of first-generation family foundation, it is roughly the beginning of first- to second-generation transition for the century of historic time with which we are concerned. This method of temporal segmentation does approximate the historically embedded phases of transition in the Galveston formations.

First- to Second-Generation Transition (approx. 1890-1920): Patriarchal Succession

The nineteenth-century entrepreneur created three things as an integrated part of his life history: a business organization, a family, and personal wealth. Family/business formations developed in cases where the entrepreneur transmitted all three creations in a similarly integrated way to members of the second generation. Before the twentieth century, careful planning of careers, control over the marriages of certain children, general assertion of paternal authority—backed ultimately by the will—and family politics within the primary group, were the critical factors upon which the continued union of family, business, and wealth depended.

First- to second-generation transition left either single individuals or cooperative sibling groups as owners of the largest portions of entrepreneurial fortunes and as managers of continuing business enterprises. In the absence of a legal or customary rule of succession, such outcomes were a mixture of the founder's consciously dynastic design to concentrate his estate in a single line of descent or in a sibling group, and the attempts of second-generation heirs to include or exclude each other from sharing in the patrimonial wealth and business

second- or second- to third-generation transitions (e.g., see *Fortune Magazine* of November, 1957; July, 1966; June, 1967; May, 1968; September, 1975; and most recently, February, 1979). However, the conditions of early development for these newer formations have been clearly different. The introduction of legal instruments to organize holdings at an early stage of development has been routine for them. The older formations arose from a cultural context of the patriarchal family and dynastic ambition. For them, legal reproduction was linked to a strong motivation to perpetuate family solidarity and conserve accumulated wealth in a society where cultural support for corporate family organization has been eroding. The newer formations have arisen from a cultural context of weakened middle-class family structure, and the dynastic motivation in the first or second generation is probably muted or underlaid with less real commitment and vision. Here, extended family organization is most often a by-product of the legal entanglements of sharing indivisible capital. In the nineteenth-century formations, legal entanglements only became the primary bulwark of extended family organization in the later phases of a long period of evolution, during which other, less durable aspects of a formation such as its business function and sentiments of ancestral tradition differentially lost their strength in descendants' concerns.

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responsibilities. Also, chance factors such as the early death of the founder sometimes played an important role in galvanizing a decisive pattern of second-generation leadership and concentration.

Two Formations from the Old Business Elite of Galveston

From the founding of Galveston, Texas, in 1836 to the end of the century, merchants in this island city made fortunes in marketing cotton, banking, and provisioning the agrarian hinterland of east Texas. Drawn from the East, the South, and several European countries, Galveston's mercantile elite established a wealthy, cosmopolitan enclave that stood in striking contrast to Texas frontier society. Following the serious disruptions to the port's economy during the Civil War, a new influx of entrepreneurs, as diverse in origin as the antebellum elite, settled in Galveston and made their fortunes in the old way—as cotton traders, bankers, and merchants. The final two decades of the nineteenth century were a period of particular extravagance in local culture. Members of the post-Civil War elite vied with one another in imitating their counterparts in New York, for whom they were a distant outpost, tied by credit relationships and occasional social intercourse. Though small in population compared to prosperous commercial centers nationwide,[8] late nineteenth-century Galveston had one of the highest concentrations of wealth, proportional to its size, of any American city.

Even during the period of opulence, long-term economic trends were undermining Galveston's regional significance in commerce and limited manufacturing. The continental expansion of railroads opened Texas to overland trade and stimulated the growth of inland cities. Galveston's rival, Houston, became the major Gulf Coast rail center, and eventually (in 1914) opened a deep water port, after decades of channeling to the Gulf, thus diminishing Galveston's primary natural advantage. Two further events sealed Galveston's fate for much of the twentieth century as an economic backwater of past glory: a catastrophic hurricane in 1900, from which it took years to achieve even partial recovery; and the discovery of Texas oil in 1901 and the resulting industrialization of an

8 In 1880, Galveston had a population of only 22,200, but was the largest city in Texas. By 1900, before the storm, it had a population of 37,700, but had become fourth in size among Texas cities. Currently, Galveston has a population of about 70,000 compared to Houston's population of a million and a half.

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agrarian economy—a process in which Galveston wealth, derived from cotton, did not take a leading role.

The Galveston business elite declined with the city's regional position, except for a few families—three in particular—who had diversified their interests beyond cotton, in fields such as insurance and banking, before the oil boom. Experienced in commerce rather than industry, these families were not part of the new oil elite as such,[9] but made a niche for themselves in fields, which if not at the center of the new regional growth, did prosper in an overall environment of expanded opportunities. The second generations of the three families increased their respective assets during the first decade of the twentieth century, while overseeing the declining economy and social life of their home city.

These families had rivalrous relationships of varying intensity with each other—not primarily as business competitors, but as city patrons. Until the mid-1950's (the approximate end of second-generation leadership), the families dominated city affairs, each controlling a major bank, and two owning controlling interests in their city's major assets. Since the 1950's, one family has reduced its presence in Galveston, while the other two have more clearly separated their own evolution from that of the city. They are now more detached city patrons, as they have turned inward to concerns with third- to fourth-generation intraformation disputes. Their long-term history of relations with the city should be seen in the context of the spread of an integrating national economy which in its later stages has dissolved local business cultures while making a structural place as family/business formations for those interests that adapt and survive. The orientations of these formations have, in turn, become less tinged by local culture and more introspectively concerned with preserving their legally evolved constitutions in an increasingly rationalized economic system.

It is these two formations of the Galveston old elite[10]—the Kempners and the Moodys—which are of interest here. They

[9] The one exception is the Sealy family, which historically owned the Galveston wharves and controlled them until the late 1940's. In 1911, John Sealy (II) was an original backer of Magnolia Petroleum Company. This company was gradually reabsorbed by Standard Oil, which earlier had been ousted from Texas. However, Sealy was not principally an oil industry pioneer. Indirectly, all three families have added large increments to their fortunes from the oil industry by negotiating mineral leases on their sizable land holdings.

[10] The Sealys were included in my original investigation, but they failed to create a surrogate organization which would define them as a family/business formation. Since the 1940's and the end of second-generation

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represent basic variations within the developmental model of American dynastic families sustained by business wealth.

The Kempners

In 1870, Harris Kempner, a Polish immigrant from New York, arrived in Galveston after several years as a country merchant in the hinterland of east Texas. He amassed a million-dollar fortune, primarily as a cotton factor, but also from investments in railroads, land, and private banking. He married a Cincinnati woman and had eleven children, eight of whom survived to adulthood—four sons and four daughters.

Kempner died unexpectedly in 1894, just as his eldest children were maturing. He left no written will, and unburdened by taxes, his estate was officially administered by his widow as "survivor in community" (Texas has had a community property law, in which the surviving spouse manages her own half share of the estate as well as her husband's half). Under this legal status, the Kempner family businesses were developed and conducted collectively by the four brothers during the next four decades. Harris' widow, surviving until 1947, was a strong moral force for solidarity among her children, but it was the cooperative relationships among the Kempner siblings themselves which held the firm of H. Kempner together during the early second-generation period.

Under the informal leadership of the eldest brother, I.H., each of the brothers returned to Texas from education elsewhere and developed his own special business projects, but each business was closely managed through daily consultations and councils among all the brothers. During the early twentieth century, the brothers multiplied the value of their collective patrimony hundreds of times by investments in cotton, insurance, and banking, all centered in Galveston; by a major industrial venture in sugar refining and agricultural development on large rural estates near Houston; and by miscellaneous other, but ephemeral, projects.

The Moodys

W.L. Moody moved to Texas in 1852 after receiving a law degree in his native Virginia. After a legal practice, a mercantile buiness in rural Texas, and service in the

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entrepreneurial leadership, they have not sustained an extended family organization based on economic interest. They make for an interesting comparison with the Kempners and Moodys, precisely because they represent the more common pattern of dissolution of old wealth in America.

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Confederacy, then Colonel W. L. Moody came to Galveston in 1866. He eventually became its leading cotton factor, with subsidiary interests in land, railroads, and private banking, all characteristic business opportunities of his times. Moody married an Alabama woman and had six children, three of whom survived to adulthood.

Colonel Moody lived until 1920, but his namesake, W.L. Jr., had long since become his lineal successor. By the end of the first decade of the twentieth century, W.L. Jr. had made banking and insurance the core of the Moody interests. Besides sustaining the cotton company, he also acquired a Texas chain of newspapers (including the Galveston paper), a national chain of hotels, and ranches in several states.

Second- to Third-Generation Transition (approx. 1920-1950): The Appearance of the Surrogate

The key process during the second generation was the legal reproduction of family business and wealth, which formally differentiated the integrated creations of the founder as three organizations, and interrelated them in specific ways. The businesses became corporations, owned through the surrogate structure of collective capital to which the related families of descendants were diversely tied. The surrogate was the durable linchpin of this tripartite structure and defined family continuity amid more tenuous and changing relationships with its companies, on one hand, and its beneficiaries/descendants on the other.

The legal reconstitution of second-generation family businesses arose from the interrelated historic problems discussed previously. The widespread structural distinction between managerial functions and conditions of ownership necessitated the adoption by large family businesses of the same distinction internally. Family partial, controlling, or full ownership of a corporation, regardless of its management, was thus established in a system of stock distribution. The total invested capital and assets of the family had to be protected in two ways—on one hand, from the effects of progressive state and federal inheritance taxation in transferring a configuration of ownership interests intact to the third generation, and on the other hand, from the threat of fragmentation inherent in the independent control by beneficiaries of their patrimonial shares. The introduction of a particular combination of these legal instruments at some point or over a period of years under the second-generation leadership differentiated dimensions of

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the family business which had been integrated during the first generation.

The particular selection and arrangement of legal instruments, constituting a family surrogate, varied according to the purposes of second-generation leaders. Some family/business formations merely wished to adapt to changed forms of business organization and still maintain old enterprises or insure family management of newly established corporations. Other formations were expansive and used collective capital to build a complex pyramid of corporate holdings with independent managements only distantly influenced by family members on boards of directors.

It is important to emphasize the reliance of second-generation family leadership on legal expertise to create the arrangements which organized the family/business formation, and on legal and financial specialists to guide all phases of a formation's development. Family institutions have both a sociological reality for family members and a totally separate, but parallel, technical reality for specialists, particularly within the legal system. For second-generation family members, the formal organization of the wealth had less reality than it does for the third and fourth generations. The second generation viewed the organization as merely a legal device by which they could make necessary adaptations "on paper" to a changing economy and still continue to conduct business as usual in the integrated style of the first-generation entrepreneurial founder. The third-generation leadership began to manage family capital in the framework of the new instruments, and the fourth generation views the arrangements as a monolithic legacy which controls extended family relationships more than it is controlled by them.

For the lawyers, bankers, and financial analysts who give advice to family leaders on maintaining the formal organization of capital, the primary concern is adapting the mechanism on which the family/business formation depends to changes in political economy. These specialists may be fully employed by a large formation, or they may be associated with a legal firm or financial institution which serves a wide range of wealthy clients. Even if not fully employed within formations, particular specialists usually develop a long-term relationship of service and friendship with particular formations, and thus know their situations well.

The employment of legal and financial experts as caretakers of the formation's core arrangements in the broader

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structure of the state and economy has three important consequences. First, the independent tracking of the arrangements by these outside specialists is responsible for the monolithic "thing in itself" quality of collective capital experienced by family members who benefit from the wealth, but who do not participate in its management. The arrangements do not maintain themselves, yet they are not completely maintained by family managers, who may also experience them as having a kind of separate, semi-autonomous existence.

Second, the complexity of the arrangements and the technical knowledge required to understand and manipulate them make the distribution of such knowledge among family members an important factor in defining their relationships to the collective capital and to each other. Family managers, who devote considerable time, or their entire careers, to the formation, are in more frequent contact with outside specialists and thus learn more about the internal operations of the family surrogate than do mere beneficiaries. Beneficiaries who would make an assault on the collective wealth from an interest in withdrawing their shares or controlling the formation, must know at least as much about the organizing arrangements as the managers do and also be able to update this knowledge, or else employ their own specialists to advise them. Inertia, other priorities, and comfortable existences usually discourage beneficiaries from making the effort. As such, the complexity of a formation's formal organization and the difficulty of undermining it from within is one source of its strength against fragmentation.

Third, the specialists perform their maintenance function within the framework of organized professions and on a society-wide scale. The strongest argument for the basic comparability of family/business formations is that they all partake of a shared pool of special knowledge and techniques created by professionals, who adapt the various situations of their clients to government-initiated changes affecting the wealthy with rough uniformity (for example, see the recent American Bar Association panel discussion on estate freezing, Wallace *et. al.*, 1980). Thus, through the nexus of specialists who create, emulate, and continually adapt a body of instruments to conserve and increase private capital, a basic structural identity is established among all the social units, such as family/business formations, which use their services. (The analyses of Lundberg, 1969; and Tuckman, 1973, arise from

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their perception of this underlying identity among all categories of the rich.[11])

An extended discussion of the instruments and typical kinds of arrangements by which a surrogate is constructed cannot be presented here (but see Friedman, 1964). The most common instrument used to organize private capital has been the trust in various forms (e.g., individual trust funds, Massachusetts trusts, and foundations). The trust has existed in English law since the twelfth century. Kinds of trusts vary in longevity, capacity to collectivize wealth, and provision for active family control of capital. Often a family's controlling ownership of a bank is the key property which, as part of its routine functions, coordinates the specific holdings of different trust instruments so that the overall pattern of ownership, necessary for the formation's control of associated companies, is maintained.

The important point is that, in expert hands, the limited legal forms can be combined to achieve great flexibility and fit, at least initially, the circumstances of different families and the desires of their leaders. Once a surrogate is initiated, its expert caretakers face the challenge of maintaining the same flexibility in adapting it to unpredictable circumstances among the descendants which it includes. While slowly yielding freedom of action in the face of external regulation since World War II, the sets of instruments at the core of family/business formations have ironically grown more imposing and constraining internally to their beneficiaries.

Wills merely dispose of wealth when relatively small estates or large estates unassociated with operating business enterprises are involved. In the context of family/business formations, however, second- and third-generation wills are triggering mechanisms or final touches on the continuing implementation of long-term planning for transference of collective wealth as an adaptation to an adversary political and economic environment. Aside from variable cash and property

[11] I do not intend to develop in this paper what would be very interesting comparisons between American business dynasties and the better studied (Thompson, 1963; Spring, 1963; Spring, 1964; 1977), classic case of the English landed aristocracy during the same historic period. However, in regard to the important role of legal specialists in the constitution and maintenance of American family/business formations, it is worth noting the recent paper by Eileen Spring (1977), which points to the lawyers who administered aristocratic estates, rather than to aristocrats themselves, as the key interest in retarding for so long the nineteenth-century parliamentary drive to undermine aristocratic land law. The implication is that the law, through its specialists, has been as much of a support for the survival of dynastic families among the aristocracy of modern England as it has been for that among business elites of modern America.

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bequests, there are rarely any surprises for family members in the second-generation leader's will. The selection and arrangement of a set of instruments for the perpetuation of family capital usually occur well before the leader's death.

Wills also provide only limited support for paternal authority in family/business formations. Exclusion of direct descendants has often been the subject of litigation, ending in large settlements for those excluded from the wills. Besides, descendants usually derive inherited wealth from more than one source and so are not totally dependent on fathers to enrich them. To the contrary, third-generation parents may be in the position of having to persuade and cajole their own adult children to invest their independently controlled shares of wealth in collective family projects. Rather than invoking the will as a means of strengthening bonds with offspring, second-generation family leaders are much more likely to cultivate their preferred successors by periodically transferring considerable wealth and responsibilities to them while the former are still alive. Not only do such gifts offer a distinct tax advantage, but also they serve both to strengthen intergenerational bonds by creating personal obligations in the favored recipients and to train successors for future management functions in the formation.

In analyzing the design of a surrogate, one must look at the relatively inclusive or exclusive manner in which it programs participation in the control of collective capital among descendants/beneficiaries. This aspect of a surrogate is most important to its role as a constitution for a descent group. Distribution of income is usually inclusive. Control can be either exclusive, when it is in the hands of a particular person who is granted freedom from interference by the body of beneficiaries, or more inclusive, in which a broader participation, or at least voice, among beneficiaries is encouraged. Thus, although formations are alike in their general evolution, the process of institutionalizing collective wealth itself can incorporate idiosyncratic and quite different trends of family development, as will be seen in the two Galveston cases.

The Kempners (see Figure 1)

Early on, the Kempner siblings established a policy that not only would the businesses be collectively managed, but also collectively owned and passed down the eight second-

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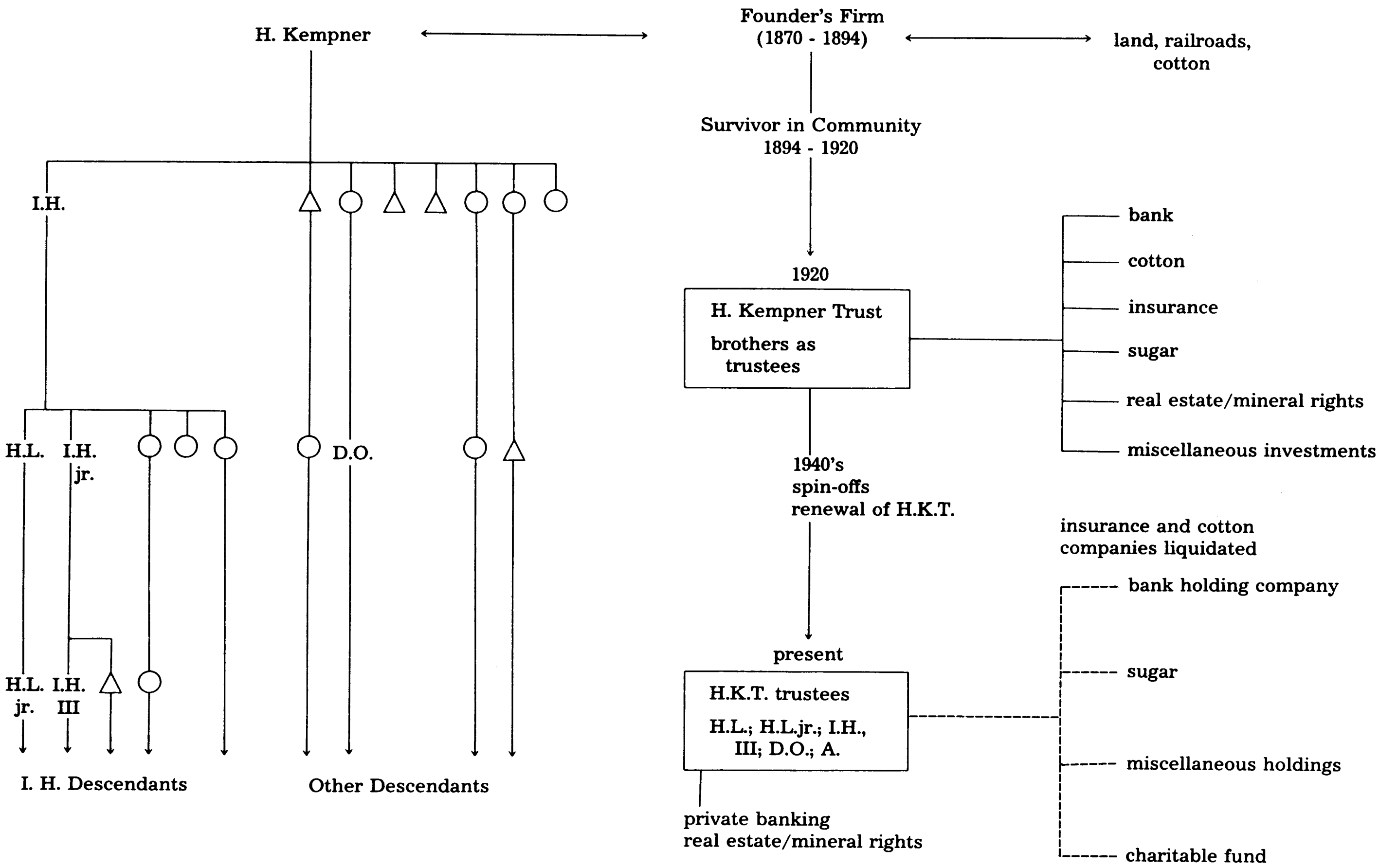
Figure 1. The Kempner Family/Business Formation



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generation sibling lines in equal shares. This feeling of clanship was incorporated into the design of their surrogate.

Even if there had not been an inclination among the Kempner siblings to pool their wealth and coordinate their projects, the prolonged legal status of "survivor in community" would have made any subdivision of the estate among the heirs very complicated. By the second decade of the twentieth century, both the enlarged scale of the brothers' operations and the emergence of a nationally uniform set of alternative instruments for organizing business activity necessitated some change in the formal status of the Kempner firm. The Massachusetts trust instrument was adopted in 1920 as the means of formalizing existing family circumstances and commitments.[12]

In the context of family/business formations, the Massachusetts trust remains the ideal instrument of formal organization for a large body of descendants/beneficiaries. It can simultaneously serve the family as an investment trust, a voting trust for blocks of shares in corporations, a coordinating directorate for the close management of several businesses, and a holding company for a pattern of controlling interests in a number of corporations.

The H. Kempner Trust (hereafter HKT), subject to renewal by agreement of its beneficiaries every 20 years, consisted of 45,000 beneficial shares divided evenly among the eight Kempner siblings and Harris' widow. The four brothers were the original trustees. All Kempner companies were integrated within HKT, and each beneficial share was worth some portion of the total value of the various Kempner enterprises. The trust document contained the standard provisions regarding the powers of trustees and rights of beneficiaries, but they had little impact upon the brothers' work habits during the first three decades of the HKT.

From the late 1940's to the late 1960's, all the Kempner businesses—including a Galveston bank, an insurance company, a cotton company, a sugar refining company, and a holding company managing the diverse interests associated

12 Massachusetts (or business) trusts were first employed extensively when rights of incorporation were a privilege difficult to obtain. During the 1900's, they were a means of avoiding regulation and of securing corporate advantages without incorporation. The business trust derives its authority for doing business, not from the state, but as a matter of contract. However, since the 1930's, the undefined nature of business trusts has been modified by a body of court decisions and statutes which have crystallized the rights and duties among participants in approximate conformity with requirements for corporations.

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with the sugar business—were either spun off from HKT as private corporations with their own stock and management structures, or eventually liquidated. These changes paralleled the gradual transition from second- to third-generation leadership. Spin-offs were a necessary response to increasing taxation of capital transactions within the HKT framework, and were not the result of internal dynastic strategy. Only miscellaneous Kempner real estate, mineral leases, and reserve capital remained within the Trust. Each Kempner within the eight sibling lines now held a certain number of beneficial shares in the Trust, as before, as well as different amounts of stock in each of the companies which had been spun off.

The Trust had no legal or formal connection to any of the spun-off enterprises. Nonetheless, the H. Kempner trustees dominated the boards of directors of the companies and occupied special "chief executive officer" positions within their management structures. The stock of the companies has been dominated by Kempner holdings, which have been effectively kept together by the trustees, doubling as overseer managers within the formally separate structures of the various companies.

In 1948, the HKT was renewed for 20 years (and it has been renewed again in 1968, under third-generation leadership, for another 20 years). The second-generation trust directorate has gradually been replaced by third- and fourth-generation family members. The two sons of I.H. formed a de facto line of succession. The elder, H.L., served a long apprenticeship with the brothers in Galveston, after returning from Harvard, and long ago assumed a position of primary leadership during the present third- to fourth-generation period. The trustees carefully select their own successors.

The brothers always have had an inside-outsider, a key staff person, who was not a lineal kinsman, but who was intimately involved in the operations of the directing group. As H.L. began assuming major leadership responsibilities from the late 1950's, he recruited A., temporarily resident in Galveston, to be his own and the directorate's new career "man of business," a term which H.L. used only half-seriously in telling me of H. Kempner's chain of successive inside-outsiders.

The Moodys (see Figure 2)

W.L. Jr. married the daughter of a prominent Houston business family, and the couple produced four children. The eldest, M., a daughter, was always close to her father and was

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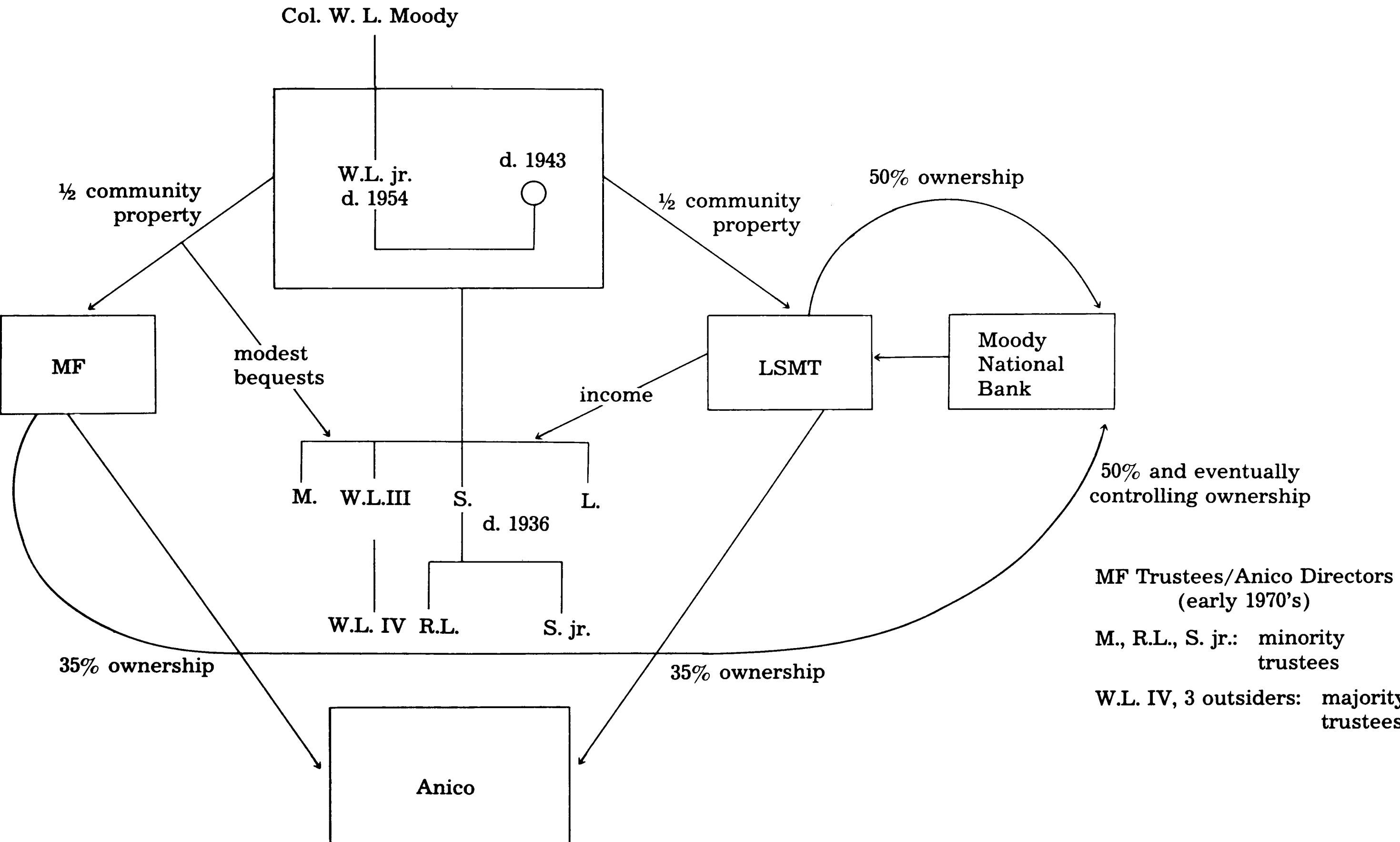
Figure 2. The Moody Family/Business Formation (late 1960's, early 1970's)



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his confidante from the 1940's until his death in 1954. She married a local insurance man, now deceased, but they had no children. W.L. III, W.L. Jr.'s potential successor, had an uneasy relationship with his father. After intermittent participation in the Moody businesses, he left them finally in 1950; but he was already wealthy through inheritance and in his own right. His son, W.L. IV, however, has been an important figure in formation affairs during its third- to fourth-generation period. W.L. Jr.'s second son, S., had amiable relations with his father and was his likely lineal successor, but he died suddenly in 1936. He left two sons, S. Jr. and R.L., who have also been active within the formation during the third- to fourth-generation period. Finally—unlike M., W.L. IV, S. Jr., and R.L.—W.L. Jr.'s fourth child, L., a daughter, has been more an observer of than a participant in formation affairs since the death of W.L. Jr.

Increased state and federal taxation of private estates was even more of a threat to the perpetuation of W.L. Jr.'s fortune than was the absence of a favored male successor. In the early 1940's, W.L. Jr. took two steps to meet the external challenge of taxation, which at the same time had important internal consequences in shaping the relationships of Moody descendants to the institutionalization of family capital and ownership interests. He created the Moody Foundation (hereafter MF) in 1942, and the Libbie Shearn Moody Trust (hereafter LSMT) in 1943. W.L. Jr.'s will functioned as a sort of triggering mechanism on his death in 1954, and completed the process by which the Moody family/business formation was legally reproduced as a surrogate, distinct from the body of descendants.

In 1942, W.L. Jr. established the MF with initial assets of 100 shares of Anico (American National Insurance Company—Moody's centerpiece enterprise and one of the richest insurance companies in the United States). Its income was to be spent for religious, charitable, scientific, and educational purposes in Texas. The MF was to be the tax-protected, ultimate receptacle of the bulk of W.L. Jr.'s total fortune.

In 1943, virtually as a deathbed act, W.L. Jr.'s wife, in her will, placed most of her half of the Moody fortune (to which she was legally entitled under Texas community property law) in a trust, the LSMT. Under the provisions of this trust, its income was to pass first to her husband; upon his death, equal shares of the income were to go to her children; and upon their deaths, to her grandchildren. As the beneficiaries in each line died,

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their shares would be paid three-fourths to the MF and one-fourth to the First Methodist Church of Galveston. Following the death of the last beneficiary, the trust will be terminated and approximately three-fourths will go to the MF and the remainder to the First Methodist Church. Estate taxes were paid on the death of W.L. Jr.'s wife, but no further taxes will be paid at the termination of the trust, since its corpus will be transferred to a charitable foundation. The Trust Department of the Moody National Bank, one of W.L. Jr.'s properties, has managed the LSMT; after W.L. Jr.'s death, the MF gained the controlling interest in the bank.

W.L. Jr.'s official estate inventory, based on conservative appraisals, estimated his wealth at $200 million, but informal estimates placed it at over $400 million. Aside from about $1 million in cash bequests, the bulk of W.L. Jr.'s estate went to the MF. M., W.L. Jr.'s confidante among his children, and the Moody National Bank were named as independent executors of his will.

With the implementation of W.L. Jr.'s will, a carefully designed structure for the organized preservation of his wealth came into being, to which his descendants had defined passive linkages, but more importantly, in which they would have to define their own active roles of control and leadership. Although the MF and LSMT held about equal shares in all of W.L. Jr.'s assets and operating companies, the organizational core of the Moody formation was family control of W.L. Jr.'s major creation, Anico, through the splitting of the majority of Anico stock between the MF and the LSMT. The MF owned about 35 percent of Anico stock, and the LSMT also owned a similar amount. The LSMT provided for the personal income of the Moody descendants, while the MF trustee directorate was the cockpit from which the entire structure would be managed.

W.L. Jr. had exercised a personal control over Anico, the LSMT, and the MF, whatever the paper arrangements structuring his property. On his death, control of the MF directorate became the effective center of gravity in the structure which W.L. Jr. had designed. MF trustees would at the same time be major Anico directors, and in reinforcing their own positions, they could ensure that the composition of the MF and LSMT holdings remained stable (in the case of the LSMT, through the MF's control of the Moody National Bank, which in turn managed the LSMT). The centrality of the MF in the Moody formation has been entirely aside from its philanthropic function, which has been actively carried out by a

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professional staff after the final transfer of W.L. Jr.'s fortune to the MF in 1959.

While the Kempners and Moodys have experienced the same general evolution as family/business formations, the particular surrogate developed in each case has reflected, and in a sense perpetuated, their very different, long-standing characters as families. Whereas the Kempner experience can be seen as the perpetuation of family organization through a surrogate which duplicated the "shape" of the extended family and incorporated all descendants, the Moody experience can be seen as the perpetuation of family organization through unremitting conflicts of interest among descendants. The exclusive, lineal trend in Moody succession from father (Col. Moody) to son (W.L. Jr.) to a combination of formal family institutions, in a sense, bypassed family members, leaving them to define their personal interests in the collective wealth and to compete for control of family institutions which structured it. Finally lacking a male successor, W.L. Jr. relied on legal instruments and on the loyalty of his daughter M. to perpetuate his estate intact.

Third- to Fourth-Generation Transition (approx. 1950-1980): The Surrogate in Family Relations

Second-generation institutionalization imposes a structure on the relations among third- and fourth-generation family members. The structure balances degree of individual involvement in managing the collective capital against the distribution of individual shares of ownership. Members of the third generation live very much in the reality of these distinctions, while fourth-generation members, although heir to their specific circumstances within the formal organization of the family, tend to be more personally distanced from their defined positions. Family capital has a mystique for both the third and fourth generations, but members of the third generation first experience this sense of mystique strongly when they begin to conceptualize the family capital as a legacy to be passed to the fourth generation. Members of the fourth generation view the family capital all along as the fabric of their parents' generation and as something separate from themselves, which nonetheless powerfully constrains their lives and affects family and nonfamily relationships.

During the third- to fourth-generation period, the differing management/ownership relations of individual family members to the collective wealth, which has heretofore been

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an underlying element in casual relations among themselves, becomes the dominant conceptual framework of discussions about the family. For example, aunts are loved as aunts, and brothers are respected as brothers, but more importantly, each is known among the whole as a sharer of so much of the capital and as an active or passive participant in family business affairs. To escape the ambiguous morass of sentiment and economic self-interest which arises in any common issue considered among the extended family, family members look to the formal calculus of management/ownership interests as one important shared frame of reference for explaining and judging actions among themselves.

The following is a typology of family and nonfamily membership roles in family/business formations during the third-to fourth generational transition:

Family member managers/leaders are formally trustees of trust funds or group trust instruments, board members of companies in which the family has a controlling interest, and managing executives of family-owned companies. Family leaders have an interest both in the operations of companies controlled by the formation and in maintaining the organization of patrimonial capital for the benefit of inheritors. Managers may devote full- or part-time careers to formation business. Often, they can be distinguished as those who are tradition-oriented and those who are change-oriented. The former place the coherent organization of family capital above all other economic considerations and view themselves as working for the common good of all the beneficiaries in return for salaries and income from their personal shares of the patrimony. Change-oriented managers wish either to maintain and dominate organized family capital for personal investment projects or to give priority to business opportunities and impersonal managerial decision making, downplaying the goal of stabilizing a formation's structure of holdings. Change-oriented managers motivated in the latter way are not necessarily anti-family, but accept the middle-class norms of loosely structured family relations rather than enforced family solidarity through a formally organized lineage surrogate.

Beneficiaries are a highly varied category of geographically dispersed family sharers in the patrimonial wealth. Most interesting are beneficiaries who hold large hereditary interests in family capital—larger than those of family leaders—and who, justified by these interests, intervene periodically and at will in the activities of the managers. Some such beneficiaries depend

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on their shares for a wealthy existence. Others are independently wealthy by their own enterprise or from other patrimonial sources, and view periodic participation in formation affairs as a duty, hobby, or matter of self-esteem. Most of these casual participants are viewed by family managers as a clientele to be satisfied, but a few are valuable, talented advisors both in business affairs and in managing interpersonal relations among extended family members.

Third- and fourth-generation family leaders usually begin their careers in middle-level executive positions within family companies. Some third- and fourth-generation beneficiaries with only average or minor shares of wealth may be employed in nonleadership, dead-end positions within family-controlled companies. Until mobilized by a crisis of withdrawal or rivalry for control, the majority of beneficiaries are passive recipients of income from the patrimonial organization and, by the fourth generation, plan their own families and estates without continuous attention to their affiliation with a family/business formation.

Drop-outs and noninheriting relatives are those who no longer, or never did, come under a patrimonial calculus of shares/involvement in collective capital. Noninheriting relatives are genealogically distant cousins of formation members and have little significant contact with a family/business formation unless they are, in their own right, members of other formations, and thus desirable associates. Drop-outs are former members of a formation who sold out their interests. Depending on the manner of their exit, such close kin of continuing members may sever all relations with the formation or may acquire a new position of trust based on the fact that their orientation to the family is no longer colored by economic self-interest. Under the unusual circumstances of an amicable withdrawal, drop-outs may serve as go-betweens or brokers at times of family crises or disputes—functions more commonly performed by nonfamily staff persons and confidants within the family organization.

Nonfamily personnel within family/business formations include managing executives of family-controlled corporations; the legal and financial specialists with narrow, but critical, maintenance functions, previously mentioned; and general advisors and confidants recruited by the formation's leadership. These latter members of a formation serve as troubleshooters between the formal organization of family capital and all its interfaces. They mediate relations between the core

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organization of capital and controlled companies; between the formation and the public; and most importantly, among extended family members in their positions as leaders and beneficiaries within the organization. An advisor is personally loyal and responsible to whoever recruits him, either the senior leader of a formation or a leadership group. In a formation held together by continuous conflict, each active family manager usually recruits his or her own close advisor. Some advisors eventually view themselves, through their service to particular leaders, as caretakers of family institutions in the face of intrafamily disputes which engulf leaders and beneficiaries alike. In these disputes, the advisor may be the only participant to retain a broader perspective and emotional detachment. Particularly significant is the go-between role of advisors acting for disputing family members, since they oversee settlements which would be particularly embarrassing for family members to handle themselves. As such, complete outsiders, who never become personally close to their employers, are often desirable to fill these special staff positions. They may be rewarded with personal financial interests in family businesses as well as with high salaries, but rarely are they encouraged to become part of the family in a fictive kin sense or through intermarriage.

Regardless of the idiosyncracies of family relations, formations are formally structured in accordance with legal rules. In all cases, then, the ultimate source of authority for this structure lies outside a formation in the state and federal courts, but establishes itself within the formation in ways which more or less mask the externality of this source. How intraformation relationships are keyed to a particular situation of internal authority is the emphasis of the following discussions of the Kempners and Moodys.

The Kempners

During the third- to fourth-generation period, the trustees as managers of the wealth have become more formally separate from the dispersed body of beneficiaries/owners. Interestingly they replicate within the formation the same structural distinction between managers and owners that is widespread in corporate organization. Under H.L.'s leadership, their meetings are still very much in the brothers' tradition of collective management by consensus, even though personalities and commitments have changed. There are underlying differences of opinion and orientation among trustees, representative of

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the fundamental, broader lines of conflict among the descendants as the formation ages.

Since the Trust has been formally decoupled from the Kempner businesses, it has had the following residual functions:

1. Venture capital. Although the trust capital could function as a modest source, by contemporary standards, for new enterprise, it has not been so committed during the past 20 years.

2. Back-up for operating businesses and continued collective management of spin-off companies. After the Depression years the brothers viewed the trust reserves as a support for any companies in financial difficulty. A common view among trustees now is that the businesses must stand on their own or be sold, and that the Trust should not be used as an artificial psychological or substantive support for existing operations. The desirability of this informal function—perhaps the trust's most important business one—has been a major underlying controversy among third- to fourth-generation Kempners who have been active in formation affairs.

3. Miscellaneous holdings and philanthropy. The Trust negotiates lucrative mineral leases, manages diverse real estate holdings, and oversees the investment of the capital reserve. It also holds the capital from which the Kempner Fund, founded in 1950 with a separate board, distributes mostly local grants.

4. Private banking, personal financial services, and distribution of income to beneficiaries. The Trust retains the right to conduct private banking, derived from an early twentieth-century charter, but restricts it to intrafamily business. In recent years, the Trust has been able to provide family members with loans on easy terms to meet their needs for cash. This benefit has minimized the potential demand of third- and fourth-generation beneficiaries to withdraw from the Trust.

5. Glue for family solidarity. Whatever its business functions, the Trust holds the extended family together in the third and fourth generations in a much stronger form than would otherwise be possible. All descendants of the five reproducing sibling lines have some financial tie to the Trust. A core of active managers among these beneficiaries have provided the organization for ongoing extended family relations.

During the second- to third-generation period, the HKT's management of personal finances—estates, investments, life insurance, private banking, and disbursement of dividends—

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was important to a smaller body of beneficiaries. It conducted still growing businesses while keeping personal estate taxes from eroding operating capital. As businesses have aged (the decline of no. 1), the paternalistic function of the trust (no. 5) stands in relief against residual instrumental functions which either give substance to paternalism (no. 4) or are redundant and of questionable value from a business standpoint (nos. 2 and 3). The dispersed and varied body of third- to fourth-generation beneficiaries are now more clearly divided in their orientations to the preservation of family solidarity through a patriarchal surrogate.

The major structural dynamic in contemporary family relations has grown out of the formation's commitment to equal subdivision among the eight second-generation sibling lines and the facts of differential reproduction among the siblings and their descendants. Formation leadership has come from the descendants of I.H., who was the most prolific of the siblings. I.H. had five children. Two brothers and one sister died unmarried and without children; their shares were redistributed among all the other descendants. The remaining four siblings of I.H. produced a total of five children. Thus, in the third generation, and more markedly in the fourth, family leaders manage collective wealth in which their own personal ownership of shares is much less than certain cousins, who descend from less prolific second-generation siblings.

With primary responsibility for managing the total wealth rather than their personal shares, trustees have become polarized from the dispersed body of beneficiaries. They tend to view themselves generally as altruists, serving the financial interests of their cousins, who passively accept their leadership. They adopt a more politic stance in relation to active beneficiaries—especially those with large hereditary shares of the whole—who, on the strength of their ownership, periodically desire a voice in how HKT and the companies are run.[13]

[13] To grasp the variation in the ideological salience of the trustee/beneficiary polarity for extended family members, it is useful to distinguish two genealogical domains among the Kempner descendants. On one hand, there are the descendants of I.H., from whom the trustees have largely been recruited and who own roughly equivalent shares of the total wealth. Because of this rough equivalence, as well as residential proximity and affective closeness of descendants in this domain, certain sociological factors have more salience for them, in the way that they conceive their interactions, than do the terms of the legal model, which nevertheless formally bound their relationships. On the other hand, there are the dispersed descendants of the other four second-generation siblings, for whom the distinction between trustee and beneficiary in its formal context has more salience in their mutual dealings

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The function of the inside-outsider has been very important to the Kempners in sustaining a predominantly familial quality of open-ended generosity in formation relationships. In handling a broad range of formation business, the successive Kempner inside-outsiders have performed those tasks which require the knowledge of an insider but would be difficult for family members themselves to do in a face-to-face manner. The inside-outsider has been particularly useful as a mediator when the self-interested dimension of family relations, keyed to some aspect of their formal organization, looms larger in dealings among family members than do their usual personal perceptions of each other as kin.

During the present third- to fourth-generation period, the inside-outsider has played an important role as broker in disputes between the trust directorate and beneficiaries about the formal arrangements of the formation, as well as about relations among trustees themselves. Trustees have fundamentally opposed views on certain matters but feel restrained in expressing them out of regard for the family tradition of consensus and solidarity. Maintaining a distance from family relations, the current inside-outsider provides other trustees with a needed independent and detached perspective on the formation's most intimate matters.

The present inside-outsider is effective, not because of his direct relationship to the formation's leader, who recruited him, but because he has skillfully negotiated the set of contradictions which define his position as a middleman in the formation. By career, the inside-outsider is a fully trusted member of the formation leadership group, yet he is not their real or fictive kinsman and has thus been able to maintain emotional distance. His first loyalty is to H.L.; yet, he has offered independent views at times. Particularly in periods of crisis, he has taken the broader perspective, acting more for what he perceives as the good of the formation as an abstract collective rather than of any particular faction within it. In short, just as the family has a surrogate organization, the current inside-outsider has been a surrogate to its source of authority in its unitary (H.L.), collective (the trustees), and abstract (HKT as a legally constituted thing in itself) senses.

The HKT surrogate imposes on family organization a calculus of self-interest and, at the same time, a framework for a strong tradition of family authority and solidarity. The

with trustees, than do the kinds of personal factors which set off the beneficiaries descended from I.H.

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contemporary problem for the Kempners is that they apparently cannot have one feature of organization without the other. The inside-outsider partly suppresses the problem for them by separating out the uncomfortable reality of bureaucratic organization within the family as the sort of "details" which he handles when he is requested to by family leaders, or when he himself initiates more subtle stewardship. The family trustees are then left to translate a legally derived source of internal authority into a manifestly familial one. Only when a dispute bypasses mediation by the inside-outsider and reaches the courts, as has recently occurred, does it challenge the formation's definition of its own authority and autonomy.

The Moodys

The third- to fourth-generation history of the Moody formation divides into three distinct periods: 1954 to 1960, during which a pattern of intraformation relationships was established; 1960 to the early 1970's, during which disputes and factionalism intensified among MF trustees and Anico directors; and the early 1970's to the present, during which older disputes have receded and changes in positions of control have occurred. For the purpose of presenting an overview of the Moody formation's recent development, much of the complexity, detail, and debate about the causes and course of Moody disputes has been considerably glossed in the following account.[14]

Civil litigation was from the outset a mode of action in formation affairs. However, this litigation served in most instances as a stimulus to engender out-of-court settlements, rather than as the direct use of judicial decision-making to settle complex disputes, all the facts of which were not evident or even admissible in any one lawsuit. Only lawyer-negotiated settlements in the shadow of the courts could take a fuller

[14] Apart from my own research, I have relied heavily for this account on the official *Attorney General's Report on the Trustees of the Moody Foundation*, published in 1971, which documents a masterly job of field investigation conducted by a respected state judge. However, in fairness, it should be noted that the *Report* is limited in that it deals extensively with the family MF trustees and only concerns itself with the two major nonfamily groups in the Moody formation—the MF outsiders and the Anico management—in regard to the accusations against them in litigation. Certain family members have seen this limitation as a distortion of the facts, and have offered interpretations in which the MF outsider faction (including W.L. IV) and the Anico management cooperated behind the scenes and were much more active than acted against. For the purposes of this paper and because of current gaps in my own investigation, it would be inappropriate for me to explore views alternative to those in the official *Report*.

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account of factors embedded in a history of separate suits, counter-suits, and underlying motivations. The financial ability and will to pursue litigation has thus been the catalyst available to both family members and outsiders to bring mounting tensions from conflicting interests in W.L. Jr.'s legacy to some sort of climax and resolution.

The years 1954-1960 were marked by two sets of events. First, there was complex, multiple litigation undertaken by Moody descendants concerning W.L. Jr.'s will. Second, there was a stalemate among MF trustees, which the Texas Attorney General perceived and brought suit to correct. This action resulted in the introduction of outsiders onto the MF board.

In all, there were three out-of-court cash settlements to suits brought by W.L. III, L., and S.'s widow and her two sons, respectively. The litigation over W.L. Jr.'s estate was important for establishing a pattern of family participation (and nonparticipation) in the future internal affairs of the Moody formation. W.L. III, L., and their respective families were socially distanced from the other Moody descendants and formally excluded from formation affairs. Their litigation and the emotions underlying it effectively hindered them from informally acting as economically disinterested mediators in relations among kin who were still financially involved in the formation. By not joining in any litigation and not altering his hereditary position in the family, W.L. IV defined his interest in an active career commitment to formation affairs.

Likewise, M., who was the titular head of all her father's enterprises and executrix of his will, refrained from litigation and resented it as an attempt to dismantle the surrogate which W.L. Jr. had left. Among the third- to fourth-generation descendants, she has remained the staunch traditionalist, comparable to H.L. in the Kempner formation, and has stood for the protection of the organized patrimony against any moves toward its dissolution or control by individuals for personal ends.

In their litigation, R.L. and S. Jr. remained beneficiaries of the LSMT and signaled their active interest in management of the formation. At the same time, each was giving priority to the development of outside projects. The nature of the settlements indicated that their participation in the formation had mixed motives calculated, on one hand, to support their own respective business projects and, on the other, to meet challenges from nonfamily sources which might limit family discretion over its patrimony.

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These orientations, reflected in the litigation, were further clarified in the stalemate among MF trustees. By 1955, W.L. IV, S. Jr., and R.L. had joined M. as members of the MF board. The MF was limited in what projects it could support until litigation over the will was settled, allowing transfer of the estate. Nevertheless, between 1955 and 1959, operations of the MF were hindered by the alignments implicit in the orientations of trustees to the family surrogate left by W.L. Jr. Voting among the trustees was consistently split two against two on many issues; M. and W.L. IV were aligned against R.L. and S. Jr.

In Texas, the Attorney General oversees the operations of foundations. As long as the MF had modest assets, its directorate did not attract much attention from the Attorney General. However, with the estate transfer the MF would become the largest foundation in the state and among the 15 largest in the country. The State Attorney General filed suit in 1959 to remove the family members as trustees because they had not been able to perform their functions. This suit forced an out-of-court settlement in which M. agreed to yield her titular position as president of all the Moody businesses, and the family MF trustees agreed to add three outsiders to the board.

The three outsiders were all Texas businessmen, only one of whom had a minor previous linkage to the Moody formation (one of these men died in 1964 and was replaced). These outsider trustees became Anico directors and controlling directors of other Moody companies as well. When W.L. IV joined them in defining a management clique for the entire Moody formation, the lines of factionalism were drawn for disputes of the 1960's. The three outsiders plus W.L. IV were the majority trustees in opposition to M., who objected to their policy of liquidation, but did not consistently oppose them; and to S. Jr. and R.L., who, although not agreeing on all matters nor cooperating as business associates, resented the outsider clique.

The internal authority situation has never been fully resolved in the Moody formation since the death of W.L. Jr. The form of his legacy has left ambiguous the structure of control among various family and nonfamily parties with differing interests in his institutionalized property. Certain of W.L. Jr.'s descendants reached financial settlements and retreated from formation affairs. Others have continuously struggled among themselves, and together against outsiders, in the pursuit of their own personal control of key parts of the

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whole. Whether altruistically or selfishly motivated in terms of family tradition, the pursuit of personal ends has served to sustain Moody control of W.L. Jr.'s major asset, Anico, through the structure of instruments and arrangements which he created to guarantee family control.

In contrast to the Kempners, the Moodys have used unrelenting intrafamilial conflict as a de facto means of integration within the formation. Because of factionalism resulting from the competition for positions in the Moody surrogate, which has been, more than the Kempner surrogate, a collective representation with a life of its own, no mediating role was possible for an inside-outsider. Rather, in the midst of Moody family conflict, outsider confidants were more partisan henchmen than caretakers of solidarity in family relations.

In the Moody case, inside-outsiders were introduced by the state into the organizational core of the formation, as a kind of price paid for using the foundation instrument to institutionalize Moody wealth as ownership capital. Although not responsible for originating intrafamily conflict, the introduction of outsiders certainly exacerbated and focused it in the new alignments of the MF board. The disputes of the 1960's were precipitated by efforts among family activists to expel the outsiders, rather than being a mere continuation of antagonisms from the period before the Attorney General intervened.

The Fourth Generation and After: Disputes and the Withering Away of the Formation

During the third to fourth generation and after, the internal coherence of a family/business formation begins to decline. Its eventual dissolution is a slow process, in which some dimensions of the formation last longer than others. The relationship of the extended family membership to its formal surrogate is consistently the weakest link in the formation's organization and needs constant attention from the formation's managers. As descendants become more numerous and shares of wealth more fragmented, this linkage is the first to dissolve, generally through withdrawal disputes or fights over consolidation of control during the third- to fourth-generation period.

Third- to fourth-generation disputes often have their origin in fundamentally differing orientations among descendants concerning the desirability of continuing a particular configuration of patrimonial capital and the degree to which

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family tradition and sentiment should have priority over business considerations in managerial decision-making. Consequently, major disputes take the form of attempts by beneficiaries to reduce the discretionary power of entrenched formation leadership to withdraw their participation and capital from the collectivity, or to gain managerial control of the collective wealth in formations with divided internal authority structures.[15] In a broader sense, such disputes are internal assaults on the perpetuation intact of the surrogate legacy, organizing patrimonial wealth.

Because moves to withdraw, to weaken strong leadership, or to establish total control involve some manipulation of a formation's legal constitution, they have potentially adverse implications for the delicate balance of semi-autonomy which a formation maintains in its political and economic environment. If, in pursuing their claims or plans, family members align with outsiders who hold important positions in a formation or appeal to the external authority of the courts, the autonomy of both family leaders and the surrogate itself may be compromised and permanently modified. Whether drawing the authority of the legal system into formation affairs strengthens or weakens the organization, the introduction of such an external authority superimposes a risk to the formation's autonomy onto the other issues at stake in a dispute. Formations with strong authority structures, such as that of the Kempners, are particularly sensitive to litigation, since it unveils the degree to which familial authority is dependent upon the legal supports on which it is founded.

The continued family control of companies which have traditionally been controlled in this way is the second least durable linkage in the formation's structure. As noted, disagreement about ending ownership and direct management of closely held companies has been a major source of division in the formation. Either as the issue which weakens family ties to the formation or as a decision taken after family involvement

[15] The nature of Moody and Kempner disputes is representative of family/business formations in which their operating companies are closely held by family stockholders. Equally, if not more, common are family/business formations in which companies are controlled by the family surrogate through the holding of minority, but substantial, portions of their stock. In these formations, family members in dispute for ownership control of companies must deal with the larger nonfamily owners of company stock. These disputes generally involve much more complex maneuvers, including stockholder suits, proxy battles, and the manipulation of stock classifications, than do those in formations with closely held businesses. Major nonfamily shareholders, especially managing executives of formation-controlled companies, often assert their influence at the core of the formation through their alignments in family disputes for decisive ownership control.

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in the formation has decreased or disappeared, the selling of companies to larger business organizations is a relatively early phase of a family/business formation's dissolution.

The legally constituted instruments of a formation and the prestige value of the family name itself are often the most lasting dimensions of a family/business formation. Instruments have different legally defined tenures but can conceivably outlast participation by family members, if they are managed by nonfamily trustees. By definition, they must outlast, merely as collective capital, control of particular companies. The major example of a perpetual family instrument is the foundation, which can change holdings or management, but which nonetheless still bears a family name. Granted that not much is left of the formation after it has been divested of the holdings of previous generations and bereft of family leadership, but surviving instruments continue as the direct patrimonial descendants of the first-generation founding and the second-generation institutionalization.

The independent power of the family name only really becomes apparent after it is differentiated from its substance, the organization of the family/business formation. The organization loses its internal coherence in different stages, while the family name retains its cumulative mystique. The decline of the name eventually follows the decline of its substantial support, but this need not occur quickly if individual family members, now loosely associated and not tied in any significant way to a surrogate, distinguish themselves as celebrities, politicians, or even executives in corporations which were once owned by their family's dissolved or dissolving formation. The value of a family name, on which a descendant can trade in various ways, is the most adaptive resource of a family/business formation, sustaining the external image and reviving itself in any later achievements of family descendants.

A formation's region and community may perceive it as much more organized and powerful than it actually is. After all, though a formation loses its "thing in itself" quality for family members and its power of concerted action within particular political and business environments, its decline does not mean financial impoverishment or demoralization for them. Individual family members have different degrees of power in their personal environments and, to some extent, they are better off being free of the constraints of family organized capital, including the burden of bearing a name which was

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formerly tied to the operations of the family institutions. They are freer to downplay or make use of their name according to personal design.

What dissolves, then, during the third- to fourth-generation period and after is the formation's coherence as a descent group in direct continuity from its ancestral entrepreneur. A possible outcome in this dissolution is the rebirth of family power in the person of a single descendant who, during the period of dissolution, concentrates control of capital in his or her own hands. This is apparently what is happening in the Moody formation. However, it is important to note that such a rebirth marks a fundamental break in family continuity with no guarantee that the post-formation leader will revive or generate a new descent group.

The alternative outcome is the dissolution of all dimensions of the formation (a process which may continue until the sixth or seventh generation) without renewal from within the family. Eventually, the entire body of descendants of a family/business formation merges anonymously into the middle class.

The Kempners

During the third- to fourth-generation period, two major disputes have occurred. The first, which took place between the late 1950's and the early 1960's, was not as disruptive to the formation's organization as the second, which began during the early 1970's and climaxed recently. The first led to the eventual attempt by a non-I.H.-descendant to withdraw her share of the wealth from the formation, by litigation if necessary. This dispute, which ended in the descendant's withdrawal, seemed less severe in retrospect than the more recent one because of several factors: successful mediation by the trust's inside-outsider and the avoidance of litigation and publicity; the stabilizing role of still active second-generation sibling leaders; and the fact that the descendant was geographically and socially distant from the core of I.H. descendants in Galveston. Also, while this descendant merely wanted out, the more recent litigation by an I.H. descendant became a direct assault on the performance, and implicitly on the intentions, of the HKT and family leaders.

The basis of the most recent dispute was a complex suit brought by an I.H. descendant and her husband claiming mismanagement, fraud, and a host of misdeeds against HKT trustees and others, for millions of dollars in damages. After

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four years of litigation, a final settlement was reached in 1977. All claims were given up in exchange for organizational changes in the Kempner formation which increased the influence of the plaintiff and outside directors in the family companies and gave holders of beneficiary shares in the HKT an opportunity to cash in their shares.[16]

Whatever its immediate effects, the recent litigation has signaled a fundamental break in the formation's century-long history. The management of an intrafamily dispute in the courts rather than by informal mediation marks the first penetration of outside authority to the heretofore autonomous internal control of family affairs. Furthermore, the litigation indicates that the instrumental relationships, long imposed by formal family organization on the Kempner cousins, had gained priority over the affective relationships for some of them. A descendant in the line of I.H. chose to seek redress outside the formation for a grievance that originated from the informal, personal conditions of family relations.

This apparent weakening of the formation's core organization should not be viewed only as the work of an aberrant beneficiary who irresponsibly opened the gate of family privacy to outside authority and publicity. The litigation clearly tapped an underlying attitude among a number of fourth-generation family members questioning the desirability of the formation in its highly organized version. This sentiment had perhaps been acknowledged by trustees since the earlier withdrawal dispute, but its existence could be minimized and discounted by them as characterizing only erratic family members. The recent litigation, however, brought to the surface considerable ambivalence within the entire family about the formation's existence. The strength of the formation's formal organization has long stood in contrast to the weakening of relations among extended family members and between them and their formal surrogate. The recent litigation manifested this contradiction.

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16 Although it is too soon for any reconciliation to have occurred among the I.H. beneficiaries, the resolution of the litigation seems to have created a momentary solidarity among family members and generally renewed bonds between trust leaders and beneficiaries. For the immediate future (at least until the time for trust renewal in 1988), the strength of the formation's organizational core depends on the continued willingness of family members to keep their shares of the patrimony in the Trust. The settlement, offering the opportunity for withdrawal, was a test of this willingness. To the relief of the core trustees, only three beneficiaries opted to sell their shares.

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The Moodys

The years between 1960 and the early 1970's constitute a second distinct period in the third- to fourth-generation phase of the Moody formation. This period was dominated by ongoing conflict between the minority family trustees and the majority outsider trustees of the MF, which involved a complex history of litigation and legal maneuvers to modify W.L. Jr.'s arrangements.

Unsentimental about retaining W.L. Jr.'s legacy intact, the majority trustees undertook the liquidation of Moody controlling interests in all family companies, except for the critical Galveston-based holdings of Anico and the Moody National Bank. Most of W.L. Jr.'s businesses, which had been neglected by formation management, were sold against the wishes of M., whose priority had been to preserve all her father's property under surrogate control.

During the 1960's, R.L. and S. Jr. each experienced financial difficulties with their own insurance companies in other states. Apparently, both brothers viewed the Moody formation wealth as a source of reserve capital that could be used to alleviate such difficulties. With their business problems providing the impetus, the brothers (and especially S. Jr.) sought greater personal control over the Moody wealth. Thus, antagonisms within the MF directorate intensified during the late 1960's, as the majority clique stood in the way of the brothers' attempt to manipulate the collective capital.

Wrongdoing within the Anico management created the conditions for a showdown. Anico grew impressively, first under M.'s tenure as general overseer of the Moody enterprises, then through the 1960's under the management of two Anico chief executives, who became chairman and president when M. surrendered formal leadership. In the late 1960's, one of the outsider MF trustees began to question some procedures of the Anico management as well as certain loans and purchases made with Anico capital. A thorough audit and an informal investigation by the four majority MF trustees resulted in the quiet expulsion of the chief executives.

S. Jr. had allegedly been accumulating material for a lawsuit against the majority MF trustees, but the revelations about the Anico executives gave him the opportunity for a major case implicating the majority MF trustees in the questionable practices. A stockholders' suit was developed with the cooperation and in the name of a son of W.L. III's daughter, who had a fractional income interest in a trust, the

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corpus of which was Anico stock. The massive class action suit was filed in late 1970 against the four MF majority trustees and other Anico directors (M., R.L., and S. Jr. were not named in the suit). This litigation stimulated a number of other suits and counter suits.

A resolution of the MF trustees in 1971 requested that the Texas Attorney General undertake a thorough investigation of the trustees, which would bypass the endless litigation and quickly restore confidence in both the MF board and Anico. The investigation was completed by late 1971. In brief, its findings were that the charges against the majority trustees were groundless; in fact, as noted, the trustees had been instrumental in uncovering the abuses perpetrated by the former Anico executives. Three family MF trustees, R.L., M., and W.L. IV, were either praised or cleared of any taint of wrongdoing, but the investigation was extremely critical of S. Jr.'s activities since the death of W.L. Jr. and recommended that he be removed from the MF board. The only other substantive suggestion from the investigation was that the MF board should be further increased from seven to nine members.

However, in late 1970 (three days after he himself was sued by Anico), S. Jr. had filed suit in the Galveston District Court to remove the three non-Moody trustees from the MF by challenging the validity of the 1959 agreement that placed them on the board. After the Attorney General's findings had been published, the District Court judge ruled that M. and R.L. were the only persons legally qualified to serve on the board. The Attorney General filed a cross suit and the case dragged well into the 1970's. In the meantime, S. Jr. was invited back onto the board. Despite the Attorney General's recommendations, the MF board at this time (1979) remains composed of only the three family trustees, including S. Jr.

In the wake of scandal, the reconstituted senior management of Anico made a strong effort to restore its image and reorganize the company. With a substantial block of voting shares in Anico, S. Jr. attempted to stop this reorganization, but at the same time he was hit with a stockholders' suit alleging mismanagement of his own insurance company. Faced with his own company moving toward receivership, S. Jr. agreed to drop his suits against Anico in 1972. This retreat was soon followed by a relatively modest out-of-court settlement of the class action damages suit against the MF and Anico. The mounting intensity of conflict within the Moody formation

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during the 1960's faded in the early 1970's with a surprisingly mild climax.

In retrospect, S. Jr.'s actions, regardless of his personal goals, can be seen as a vigorous attempt from within the family to maintain the most important parts of W.L. Jr.'s surrogate under family control. It was also an assertion of an individual position of primacy among family members. The prize at stake was clearly the Moodys' continuing ownership control of Anico. By the early 1970's, S. Jr. had been successful neither in strengthening the family's position in relation to Anico nor in establishing his personal leadership among family members active in the formation. His one important success was the removal of the outsider trustees from the MF board.

The most important event of the later 1970's has been the attempt by R.L., who had not been as active as S. Jr. in pursuing family and personal interests in the formation by litigation, to purchase controlling ownership of the Moody National Bank (MNB) from the MF. At present (1979), it appears that this attempt will be successful. R.L.'s purchase for $4 million of the MF's 51 percent interest in the bank will not only improve his own position in the formation, but will insure family control over Anico, which has been most seriously challenged by the effects of the Tax Reform Act of 1969 on W.L. Jr.'s surrogate.[17]

The family's struggle to control Anico since W.L. Jr.'s death has not been prompted by the desire to actively intervene in company affairs. There has been no record of such interference, and the Anico scandals make this clear. Rather, controlling ownership of Anico stock, and in a larger sense, preservation of W.L. Jr.'s major arrangements guaranteeing it, has been an end in itself, brought on by continual threats to the descendants' control. Undisputed family authority over the formation during the third to fourth generation might have

[17] The Act was designed to eliminate long-standing abuses of the foundation instrument nationally, most of which the MF had never committed. Establishing a 1979 deadline for divestment, the Act prohibited foundations from owning a majority interest in businesses unrelated to their charitable functions and provided for heavy taxation of excess business holdings. For the Moody formation, this would mean a reduction to only 20 percent of direct Anico holdings by the MF, as well as divestment of ownership control of the MNB, which in turn controlled considerable Anico stock through its management of the LSMT. R.L.'s purchase of controlling interest in the MNB would ultimately give him personal control over 39 percent of Anico's stock managed by the bank's trust department. R.L., in combination with the other MF trustees, who would continue to control over 20 percent of Anico's stock, could thus retain the controlling family interest in Anico despite the 1969 Act; at the same time, R.L. would establish his position as the effective family leader within the formation.

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produced a different, more active orientation to Anico operations. Now, with R.L.'s apparent consolidation of ownership control in the formation, attempts may be made to increase family influence in the running of Anico, the source of Moody wealth.

Underlying each of the above accounts are the critical dimensions of a formation's autonomy and authority as it ages, which are at stake in the playing out of the disputes. Both of these interrelated dimensions have their source in the formation's legal constitution. However motivated by personal feelings, intraformation disputes ultimately challenge the relative degree of a formation's external autonomy and, at the same time, its internal strength as an organization based on an authority structure more or less derived from outside sources. Because they invariably concern individual entitlements to hereditary estates, these disputes are fundamentally legal matters, whether mediated inside the formation or litigated. They thus reveal most clearly the integral formal, rather than familial, side of American descent groups.

The Kempners represent a more collectivizing, inclusive variant of the general model. The legal framework has been a key, but essentially background, support for strong, enduring sentiments of family solidarity. While the Kempners have had to adapt to increasing regulation, they have remained relatively autonomous in their own affairs. Internally generated litigation has been the major threat to bring them under outside authority and thus challenge their sense of secure, internal authority fostered by their surrogate organization.

In contrast, the third- and fourth-generation Moodys have lacked any strictly defined structure of collective authority in their surrogate. They have competed among themselves for control of a more monolithic patrimony, which by the nature of its institutionalization had a built-in role for state supervision. Consequently, after 1960, the Moodys faced constant and close oversight by the state, and the direct usurpation of their surrogate by outsiders. As in the Kempner formation during the same phase of development, some Moody family members were amenable to, if they did not openly support, strong outsider participation in formation management. The Kempners actively debated whether to have outsider participation; for the Moodys it was a moot issue.

The Moody case demonstrates how the state can sustain a family/business formation by providing appropriate instruments of institutionalization where the existing

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sentiment of family solidarity is relatively weak. But such intervention comes at the cost of challenging the power of family members to control their surrogate. Expensive litigation and legal action to offset the effects of regulation have been the only defense of family members who, rather than banding together to meet the external challenge, have incorporated sometimes successful responses to this challenge within their own disputes.

III. CONCLUSION

It is worth reviewing two basic points about the relationship of law to the form of extended family organization discussed in this paper. First, when adopted as a plan for the organization of wealth, legal instruments also serve as models of social organization which come to have important consequences for processes within the social units to which they apply. However, the effect of law tends to be subtle and cumulative, since legal matters within a family, governed by the formal authority of the state, remain ideologically the antithesis of family values founded on personal, face-to-face interaction. Thus, when they arise within a family, legal issues as such always appear marginal, technical, and inconsequential—or else a mask for deeper emotional, interpersonal conflicts. Also, legal maneuvering may be seen within a family of wealth as its shield or medium of adjustment in relation to its political and economical environment. Yet, because they define relationships and specify rights and obligations more authoritatively than do other sources of authority within the family, legal arrangements are important in shaping both the tone and substance of extended family relationships. Legal models of social organization insinuate themselves, as limited plans, into the affairs of a wealthy business family, and gradually, as the family ages, come to structure its interpersonal relations by defining individual relations to shared wealth.

Second, in their respective theories of modern industrial societies, Marx, Schumpeter, and Veblen emphasized that wealth in the form of business capital is fundamentally a metaphysical, abstract phenomenon, which it would be simplistic to conceive of in materialist terms. Capital is an illusively concrete shorthand for complex processes and relationships of production in a market economy, just as money is deceptively tangible as a concept, standing for a system of exchange. This insight is particularly relevant to an

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understanding of family-organized ownership of wealth, in which the owners never really "see" or touch their collective wealth as a totality in the form of capital, property, or money. Rather, they only experience it through a calculus of relative interests established by a set of legally organized and sanctioned relationships. The precise form and quantity of any part of the abstract wealth are only determinable in the framework of specific transactions among owners, in turn governed by legal rules. Law, then, functions to provide an appropriately objectified form for property as a set of relationships among owners in complex societies, where wealth is an abstract dimension of ongoing processes in an economic system, rather than a concrete thing.

After the first generation, the capital at the center of a family/business formation is simultaneously a Marxian fetish, a Durkheimian collective representation, and to a neo-classical economist, an instrumentality or factor of production in business activity. As it ages in a context of family ownership, capital in surrogate form assumes a more resonant sociological and symbolic, rather than economic, importance, thus highlighting through its legal constitution the multiple abstract dimensions of possessing considerable wealth in Western industrial societies.

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