reasoning will obviously be based on political judgments in more instances than in the West.

VIII. PARENTAL OBLIGATIONS

The objectives of Soviet and Western society are consonant in this regard. In addition, legislation appears to play a very prominent role in the delineation of parental rights and obligations in both capitalist and communist society. Professor Luryi points out that the leading statutory enactment in the U.S.S.R. in this regard is Chapter 8 of the Family Code.[80] The major difference between the U.S.S.R. and the West is that in the U.S.S.R. the Family Code imposes upon the parents of children the statutory mandate to engage in "active participation in the building of Communism."[81] In Canada, the benchmark traditionally relied upon by our judiciary in balancing the rights of the state *vis ā vis* private individuals has always been that "the paramount consideration is the welfare of the child." The commentary appended to the pertinent portion of the U.S.S.R. Family Code pertaining to parental rights is strikingly similar, in that it states that such rights should be exercised "in the interest of the children."[82] The application of this apparently similar benchmark is different in practice, however, as in the U.S.S.R. "the interest of the children" should be interpreted as "ensuring their correct upbringing and developing those roles set out for the system of education in our country in general."[83] Therefore, as in many other areas of family law, obviously parental obligations are much more politicized in the Soviet Union.

Professor Luryi goes on to point out that there is no article of the Family Code that specifically refers to personal rights of parents.[84] This is not a legislative oversight, but is a purposeful omission in order to have parents conform to the moral tenets of communism. Parental rights are subordinate to this more lofty purpose, and may not be implemented against the interest of the children. This is in direct contrast to a line of jurisprudence that has been developed by the Supreme Court of Canada commencing with the decision of in *Re Baby Duffell; Martin & Martin* v. *Duffell*[85] and further developed by the subsequent decision in *Hepton* v. Matt. The Court stated that, in appropriate circumstances, particularly where the rights of natural parents are involved, the personal rights of such parents must be given effect unless "very serious and important" reasons require otherwise, having regard to the child's welfare. By way of caveat, it should be pointed out that this particular principle should not be considered sacrosanct in Canada, as it has been hard hit by later cases.[87] In all in-

80. *Id.*, at n. 175.

81. *Id.*, at n. 176.

82. *Id.*, at n. 175.

83. Id., at n. 177.

84. *Id.*, at n. 175.

85. [1950] S.C.R. 737; [1950] 4 D.L.R. 1.

86. [1957] S.C.R. 606.

87. *McGee* v. *Walder and Cunningham* (1972), 4 R.F.L. 17 (Alta S.C.) and *Re Moores and Feldstein* (1974), 12 R.F.L. 273 (Ont. C.A.) are typical examples of recent Canadian decisions where the Canadian courts followed the "equitable" line of English decisions that hold that, even where the rights of natural parents are concerned, the welfare of the child must be the paramount issue and other considerations are subordinate.

stances, in Canada at least, where there is a direct statutory enactment, the courts look at the specific wording of the pertinent child welfare legislation to ascertain the principles to be followed in custody and adoption disputes where the private rights of natural parents are involved. Thus, as a typical example, in the Manitoba decision of *McDonald* v. *McDonald,*[88] the Court held that according to the specific terminology of the Manitoba *Child Welfare Act*[89] it is only necessary to determine what is in the best interests of the children as the governing factor. In this context, parental rights are only one of the factors to be involved in arriving at a correct decision. In any event, in theory at least, parental rights are given an appropriate measure of consideration in Canada.

Even in view of the foregoing, it would be unfair to say that parental rights are completely ignored by the Soviet legal system. Professor Luryi refers to inter-party disputes between natural parents and those individuals who might have *de facto* guardianship or custody of children. In those instances, Soviet courts have the right to refuse the petition of the parents, if they arrive at the conclusion that it is in the best interests of the child to do so.[90]

In Canada, as in most western jurisdictions, these problems usually devolve from the situation where a child is spirited out of a jurisdiction in which there is in existence a valid and subsisting custody or guardianship order. More often than not this "civil kidnapping" is perpetrated by the natural parent who has been denied custody by the courts. In these instances, *The Extra-Provincial Custody Orders Enforcement Act,* which is in force in most Canadian jurisdictions,[91] is a salutary method of resolving most inter-jurisdictional custody disputes. In a monolithic state like the U.S.S.R., inter-jurisdictional problems of this sort are of only minor importance.

In analysing the custody disputes referred to by Professor Luryi, one is compelled to conclude parental rights are decidedly subservient to the overriding political considerations of the state. Only in those instances where such political considerations are absent are child custody cases decided on their merits.

The relatively new and innovative concept of "split custody" where one or more children of a marriage may be placed with different parents, or custody and guardianship may be apportioned between the parents intermittently, is relatively unknown in the Soviet Union.[92] This is inconsistent with the prevailing Western view that in many instances, irreparable psychological injury will be done to a child if it is denied access to a parent

88. (1978), Unreported (Co. Ct.) (Ferg J.).

89. R.S.M. 1970, c. C80.

90. Luryi text, *Supra* n. 182.

91. *E.G.*, R.S.M. 1970, c. C360. This particular uniform Canadian legislation states, in essence, that in most instances, an enforceable custody or guardianship order should be that of the jurisdiction which has the most "real and substantial connection" to the child. This legislation is in force in Manitoba (which was the first Canadian province to enact it), British Columbia, Alberta, Saskatchewan, Newfoundland and Prince Edward Island. An eighth province (Nova Scotia), has enacted a variation of it.

92. Luryi text, *Supra* n. 189-93.

to whom the child has already forged a strong emotional bond. In this regard, at least, Soviet and Western psychological and psychiatric theory do not appear to coincide. This may be symptomatic of a much graver social ill; namely that, in the Soviet Union, basic human rights quite often tend to be ignored.

Culpability is quite often the test used by Soviet courts in determining whether a parent should be deprived of their children.[93] Culpability appears to be rather an outmoded precept to be used in this connection, particularly when one takes into account the fact that this can quite often lead to the deprivation of the human rights of a child who is denied the company of his natural parents. Once again, this is an exemplification of political rights outweighing human rights.

IX. ALIMENTARY OBLIGATIONS OF FAMILY MEMBERS

Of interest here is the fact that child maintenance in the Soviet Union is quite often calculated by way of a rigid mathematical formula.[94] However, there are certain exceptions made where income earned by parents is irregular, or in those cases where a parent might have frequent changes in his or her income.[95] Western courts, on the other hand, by and large appear to lay greater stress on the multitude of factors that must be weighed in assessing maintenance for a child.[96]

From a practical point of view, there are certain advantages which can be garnered from residing in an authoritarian society. A prime example of this is illustrated by Professor Luryi when he states that where a defaulting respondent in an alimony action cannot be located, his whereabouts can be ascertained through the investigatory power and records of the police.[97] This could certainly prove to be a most efficient method of enforcing alimony and maintenance arrears in the Western world. Indeed, such a stance has been advocated many times in the past, particularly in briefs submitted to various Canadian Law Reform Commissions and legislative amendment committees. Because of the intricacies of our present "voluntary" method of tax collection, and because most factions of our present society would maintain that the intervention of the police power of the state in such a manner would be tantamount to a substantial infringement of civil and human rights, this method of enforcing alimony and maintenance arrears would not appear to be, at least at the present time, politically acceptable.

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93. *Id.*, at n. 198-200.

94. *Id.*, at n. 202-05.

95. *Ibid.*

96. *E.g., The Family Maintenance Act*, S.M. 1978, c. 25, s. 13, which provides as follows:
In determining whether to make an order under this Part . . . and what provisions the order should contain and, in particular, in determining what is reasonable . . . for the purposes of the order, a court shall consider the following factors, and any additional factors it deems relevant:
(a) The cost of residential accommodations, housekeeping, food, clothing, recreation and supervision for the child.
(b) The need for and cost of providing a stable environment for the child.
(c) The financial circumstances and other financial obligations of the persons who have the obligation to provide for the child's support, maintenance and education. . . .

97. Luryi text, *Supra* n. 217.