

# GZS Baskerville Pages 01

<http://www.gndzerosrv.com/Executive%20Pages/pdf/GZS%20Baskerville%20Pages01.pdf>

**Stephen Baskerville, Ph.D, Howard University**  
[sbaskerville@cox.net](mailto:sbaskerville@cox.net), [www.stephenbaskerville.net](http://www.stephenbaskerville.net)

Page	#	Date	Title
2	[78]	06-17-06	<a href="#">Innocence Is No Excuse</a>
3	[77]	05-11-06	<a href="#">The Next Conservatism #40: Why Sex is Better than Gender</a>
4	[76]	04-24-06	<a href="#">Which Party Will Win the Parents' Vote?</a>
5	[75]	04-13-06	<a href="#">How the Government Creates Child Abuse</a>
6	[74]	04-01-06	<a href="#">Banned Near Boston</a>
7	[73]	10-24-05	<a href="#">The Fathers' War</a>
9	[72]	10-21-05	<a href="#">Wedded to the State</a>
10	[71]	10-08-05	<a href="#">Violence Against The Constitution</a>
11	[70]	08-29-05	<a href="#">Violence Against Families</a>
13	[69]	04-23-05	<a href="#">Fathers Into Felons</a>
16	[68]	03-01-05	<a href="#">The No-Blame Game</a>
20	[67]	02-02-05	<a href="#">The Federal Propaganda Machine</a>
22	[66]	12-27-04	<a href="#">The Doofus Department</a>
24	[65]	09-03-04	<a href="#">The Failure of Fatherhood Policy</a>
26	[64]	08-13-04	<a href="#">Child Support Feds Hold Meeting, Announce New "Strategic Plan"</a>
27	[63]	08-13-04	<a href="#">A Primer Against Gay Marriage</a>
29	[62]	06-01-04	<a href="#">The Fatherhood Crisis</a>

Previous articles by Stephen Baskerville at <http://www.gndzerosrv.com/Executive Pages/pdf/GZS Baskerville Pages00.pdf>

# Innocence Is No Excuse

<http://www.lewrockwell.com/baskerville/baskerville10.html>

**Stephen Baskerville, ACFC President, 05-11-06**

The totalitarian mentality of the feminist domestic violence industry was on display recently at the *New York Times*, where two lawyers outline plans for suspending the Bill of Rights. The *Times* normally postures as a champion of civil liberties, but when the malefactors belong to politically unfashionable groups then innocence is no excuse. Only the guilty need constitutional protections, and we may as well just string them up.

"[When Words Bear Witness](#)" is a more appropriate headline than Michael Rips and Amy Lester may realize, since their own words reveal the brave new world the feminists and bar associations are creating around the trumped-up issue of "domestic violence." "Domestic violence accounts for up to 34% of all reported violent crimes," they state. Given that government authorities define domestic "violence" as "name-calling and constant criticizing, insulting, and belittling," it would appear that many "reported violent crimes" are not very violent.

"Reported" crimes are also not proven crimes, and strong incentives exist to report violence where none has taken place. Fabricating abuse accusations ensures custody of children and marital property during divorce. The custody battles are lucrative for lawyers, whose bar associations control judicial appointments and promotions, which is why patently false accusations are treated as fact.

This perversion of the justice system is now common knowledge among legal practitioners. Thomas Kasper recently described in the *Illinois Bar Journal* how false accusations readily "become part of the gamesmanship of divorce." Bar associations and even courts themselves sponsor divorce seminars counseling mothers on how to fabricate abuse accusations. "The number of women attending the seminars who smugly – indeed boastfully – announced that they had already sworn out false or grossly exaggerated domestic violence complaints against their hapless husbands, and that the device worked!" astonished Thomas Kiernan, writing in the *New Jersey Law Journal*. "To add amazement to my astonishment, the lawyer-lecturers invariably congratulated the self-confessed miscreants." The *UMKC Law Review* reports a survey of judges and attorneys found complaints of disregard for due process and allegations of domestic violence used as a "litigation strategy."

Since most reports involve no crime, it is hardly surprising that domestic violence, as Rips and Lester claim, "is notoriously difficult to prosecute, because [alleged?] victims frequently drop charges or refuse to testify when their [alleged?] abusers [allegedly?] threaten them with further violence." What is this "further violence"? "One study found that many such witnesses received threats that their children would be kidnapped if they testified," says Joan Meier of George Washington University. Their children kidnapped! These wife-beaters are so sophisticated they have organized child kidnapping operations to intimidate witnesses. Translation: The accusations are concocted to separate the children from their fathers, and the fathers understandably want their children back. Each lie necessitates another.

Rips and Lester continue: "In the 1980's and 1990's, the refusal of [alleged?] victims to cooperate in the prosecution of their [alleged?] batterers may have resulted in the dismissal of as many as 70% of all domestic violence cases." The refusal of Rips and Lester to observe the presumption of innocence in their writing is not only standard in feminist literature; it pervades state and federal statutes, including the notorious Violence Against Women Act, for which Congress is now considering appropriations. VAWA grants encourage governments to "mandate and encourage police officers to arrest [alleged?] abusers." It is more likely that the cases were dismissed because there was no evidence, because there was no violence and no crime, and because the objective of obtaining custody was accomplished.

But now we can secure convictions even when there is no evidence, no victim, and no crime: "Prosecutors, police officers, and advocates for domestic violence victims have developed techniques, together known as 'evidence-based prosecution,' that focus on the use of reliable evidence, like 911 tapes, to build cases that do not depend on the cooperation of the [alleged?] victim." As with the Ministry of Truth, "evidence-based prosecution" is designed to convict those against whom you have no evidence. And since the defendant – excuse me, the "batterer" – can be convicted using hearsay, with no right to face his accuser, it is not really necessary that there even be an accuser, or for that matter a crime.

It is not difficult to see where this is going. In Britain, "special domestic violence courts" allow third parties such as civil servants and pressure groups to use "relaxed rules of evidence and the lower burden of proof" to bring actions against those they identify as batterers, even if no alleged "victim" comes forward (or even exists). "Victim support groups," who say women "should be spared having to take legal action," can now act in the name of an anonymous or purported plaintiff to seize the children, homes, and other property of men who have not been convicted of any crime. Similar "domestic violence courts" are being created in the United States and Canada, where "conviction rates have risen" and "guilty pleas are way up," *Mother Jones* magazine enthuses. In other words, rigged trials and the certainty of conviction allow prosecutors to extort guilty pleas.

Sending men to jail is apparently now a virtue in itself. In San Diego, Rips and Lester report with glee, suspending due process protections "obtains convictions in about 88% of its cases." Convicting people of crimes – thousands of people of whose guilt or innocence we can have no first-hand knowledge – is now something to be celebrated for its own sake.

Guilt used to be determined by juries weighing evidence in specific cases. But Rips and Lester apparently know that these "batterers" are guilty *en masse*, and all that remains is removing constitutional impediments to convicting them. Trials, juries, evidence, and the entire apparatus of due process are superfluous because guilt is not defined by whether an individual committed a specific deed. Guilt is a foregone conclusion because the defendant belongs to a class that is guilty by political definition. The New Jersey family court invokes feminist jargon to argue that allowing due process protections to abuse defendants "perpetuates the cycle of power and control whereby the [alleged?] perpetrator remains the one with the power and the [alleged?] victim remains powerless."

My niggling interpolations are no doubt annoying for prosecutors whose careers depend on their conviction rates. They have effectively institutionalized the archetypal loaded question, "When did you stop beating your wife?"

# The Next Conservatism #40: Why Sex is Better than Gender

<http://www.freecongress.org/commentaries/2006/060511.asp>

**Stephen Baskerville, ACFC President, 05-11-06**

A problematic question for the next conservatism is the politics of "gender" (formerly known as sex). It is also urgent.

A critical change in the Left over the last few decades has been the shift from the economic to the social and increasingly the sexual. What was once a semi-socialistic attack on property and enterprise has become a social and sexual attack on the family, marriage and masculinity.

The consequences are incalculable. No ideology in human history has been potentially so invasive of the private sphere of life as Feminism. Communists had little respect for privacy. Feminists have made it their main target.

Like other radical movements, only more so, Feminism's danger comes not so much from the assault on freedom (which traditional tyrannies also threaten) but specifically from the attack on private life, especially family life (which traditional dictatorships usually leave alone). "Radical Feminism is totalitarian because it denies the individual a private space; every private thought and action is public and, therefore, political," writes Former Judge and Solicitor General Robert H. Bork. "The party or the movement claims the right to control every aspect of life."

The Left's brilliant move has been to clothe its attack on the family as a defense of "women and children." Marian Wright Edelman openly acknowledges she founded the Children's Defense Fund to push a Leftist agenda: "I got the idea that children might be a very effective way to broaden the base for change." This climaxed in the Clinton Administration, in which radical policy innovations were invariably justified as "for the children." Using children to leverage an expansion of state power by eliminating family privacy is succinctly conveyed in Senator Hillary Rodham Clinton's aphorism, "There is no such thing as other people's children."

This nationalization of the family under the guise of protecting it leaves pro-family politicians in a difficult position. One way out is to join in the demonization of those who literally embody the Feminists' hated "patriarchy" - fathers. Relabeled "deadbeat dads," "batterers" and "pedophiles," fathers are now railroaded into jail through methods one recent scholar, writing in the RUTGERS LAW REVIEW, calls a "due process fiasco" and Bryce Christensen says is leading to a "police state."

Knee-jerk calls to "get tough" on criminals have unintended consequences when the penal apparatus has been commandeered by ideologues who redefine criminality to include an assortment of gender offenses that bear little relation to what most Americans understand as crime.

The evolution of the Justice Department's Office of Victims of Crime illustrates the deception. Proceeding from President Ronald Reagan's 1982 Task Force on Victims of Crime, this agency has since been hijacked by Feminists, and most of the "crimes" have been redefined in Feminist terms. By definition, the "victims" are all women, the "perpetrators" are all men and the "crimes" are mostly political: sexual harassment, date "rape" (which is seldom rape), domestic "violence" (that is not violent), child abuse (that may be ordinary parental discipline), "stalking" (fathers trying to see their children), and so forth.

Far from softening the hard edges of male-dominated power politics, Feminism has inserted calculations of power into the most private corners of life and subjected family life to bureaucratic control. This is what makes the dream of a more "caring" public sphere through Feminism not only naïve but dangerously utopian. For as Feminists correctly pointed out, the feminine functions were traditionally private; politicizing the feminine has therefore meant politicizing private life. This is why the "totalitarian" potential which Bork senses is already being realized.

"All politics is on one level sexual politics," writes George Gilder. At least sexual politics is the logical culmination of all radical politics, which is the politics that has defined modern history. More than any other threat, Feminism demands that the next conservatism examine conservatives' own reflexes and habits in a world in which radical assumptions have permeated well beyond the ranks of Leftist ideologues. It demands that a new conservative agenda challenges not just this doctrine or that, but the very concept of a politics defined by ideologies, activists, organizations, opinion-mongers, and a professional political class for whom politics is all-consuming (even when we agree with them). The next conservatism must try to recover a civic life of citizens, householders, parents, churches and synagogues, local communities, and values that transcend political calculation. Czech - dissident and later President Vaclav Havel called this "apolitical politics": a world where, contrary to Feminists and Communists and all ideologues, the personal is not political.

**Stephen Baskerville is President of the American Coalition for Fathers and Children. The views expressed are his own.**

# Which Party Will Win the Parents' Vote?

<http://www.humaneventsonline.com/article.php?id=14244>

**Stephen Baskerville, ACFC President, 04-24-06**

With Republicans facing the "too long in power" syndrome and the Democrats licking their chops each time their opponents shoot themselves in the foot, the GOP has an opportunity to regain the moral and electoral high ground and to do so in a way that demonstrates both a commitment to traditional conservatism and an ability to adapt.

The Republican renewal in the last election was occasioned by the assault on marriage. Marriage and the family have become issues of electoral salience for Americans, and beyond habitual Republican voters.

Gay marriage did not emerge from nowhere. It grew directly out of changes in family law over decades, whose consequences are only now becoming apparent. The most serious fallout is the decline of fatherhood, about which we have heard so much but whose full implications we have yet to understand.

While the devastating social effects of fatherless children are now well known, we are only beginning to see the political impact of childless fathers. For what the policy wonks have told us is fathers abandoning their children is in reality a tyranny of courts and government bureaucracies confiscating vast numbers of children from their fathers. What officials call "deadbeat dads" are more likely plundered pops: solvent and responsible citizens who are being looted by extortionate child support, coerced attorneys' fees, and other government expropriations that -- despite claims of it all being "for the children" -- border on thievery. Now the fathers are fighting back.

With some 20 million "non-custodial" parents (to adopt an oxymoron) having lost their children to divorce and separation, this crisis touches virtually every family in America. Many are African-Americans and other minorities who generally vote either Democratic or not at all.

These votes are available to candidates who address this destructive injustice and a natural constituency for any party claiming to champion the family. They logically belong to the party that opposes "judicial activism," because family law literally brings home for Americans the realities of judicial tyranny, which is no longer a remote abstraction when it involves judges confiscating their children. Phyllis Schlafly draws this connection in the forthcoming revision of her book, "The Supremacists."

Yet until now Republicans have not only failed to court these parents; they have seemed to go out of their way to alienate them. Republican politicians pander to feminist votes they can never win with demagoguery against "deadbeat dads," "domestic violence," and other questionable evils on which the public has never demanded any government intervention or expenditure. The beneficiaries are Democratic loyalists: lawyers, judges, social workers, psychotherapists, single mothers.

The ultimate boondoggle was the Violence Against Women Act, where congressional Republicans handed a \$4 billion pork pie to feminist groups, ostensibly to combat "domestic violence." In actuality, the measure creates a massive political war chest for leftist causes. Something is seriously amiss when Republicans are subsidizing their opponents with taxpayers' money.

Republican politicians fear being labeled as defenders of deadbeat dads, wife-beaters, and pedophiles - the standard smears feminists throw at divorced fathers, both in court and in the political arena. This has silenced opposition and given feminists a free ride.

At the same time, no political party can forever ignore a voting bloc this massive. The roughly 20 million childless parents (about 10% are mothers) roughly doubles if one adds second wives, whose families are devastated by the shake-down of their husbands, and grandparents, who are cut off from their grandchildren and often forced to take in penurious sons. These family members are often more outspoken than the fathers.

Will millions really decide their votes on issues of child custody? These are parents who face ordeals of truly Orwellian proportions: Their children have been taken away without necessarily any show of wrongdoing, and they are suddenly told they can be arrested for trying to see their own children without government authorization. Many have been forcibly removed from their own homes, which are then confiscated and sold, again without any legal infraction. They face a panoply of other expropriations, including the attachment of their earnings for years to come with crushing child support burdens that reduce them to penury and even homelessness. They are forced to pay fees of attorneys, court psychotherapists, and others whom they have not hired and whose services they do not want.

These are law-abiding citizens who suddenly face indefinite prison sentences, without trial, if they cannot pay government-imposed "debts" and "obligations" they did nothing to incur. And they have been ignored by both parties. How would you respond to a candidate that offered relief?

The best indication of the electoral potential came in liberal Massachusetts in 2004, where a whopping 85% of voters defied the strident opposition of feminists and lawyers to approve a non-binding referendum providing for shared parenting in custody cases.

Every recent election has seen the specter of a new and supposedly decisive voting bloc (soccer moms, NASCAR dads). This is more than an emerging demographic, however; it is a political pressure cooker that has been building over decades by an extremist ideology that has used fear, hysteria, and emotional blackmail to build a bureaucratic machinery of Soviet proportions to oppress millions and intimidate opposition. The courage to challenge this machine will bring a windfall for Republicans that could influence elections for years to come.

# How the Government Creates Child Abuse

<http://www.humaneventsonline.com/article.php?id=13996>

**Stephen Baskerville, ACFC President, 04-13-06**

Just in time for "Child Abuse Prevention Month," the Department of Health and Human Services (HHS) publishes its annual contribution to obfuscating the causes of child abuse.

Operatives of the child abuse industry often wax righteous about the "scandal" of child abuse. "We cannot tolerate the abuse of even one child," says an HHS press release. But the real scandal is the armies of officials who have been allowed to acquire -- using taxpayers' dollars -- a vested interest in abused children.

Devising child abuse programs makes us all feel good, but there is no evidence they make the slightest difference. In fact, they probably make the problem worse. Child abuse is largely a product of the feminist-dominated family law and social work industries. It is a textbook example of the government creating a problem for itself to solve.

Child abuse is entirely preventable. A few decades ago, there was no child abuse epidemic; it grew up with the welfare system and the divorce revolution. It continues because of entrenched interests who are employed pretending to combat it.

A few undisputed facts will establish this -- facts that are passed over and even distorted year after year by HHS and others whose budgets depend on abused children.

Almost all child abuse takes place in single parent homes. A British study found children are up to 33 times more likely to be abused when a live-in boyfriend or stepfather is present than in an intact family. HHS has its own figures demonstrating that children in single-parent households are at much higher risk for physical violence and sexual molestation than those living in two-parent homes. Yet this basic fact is consistently omitted from its annual report.

Shorn of euphemism, what this means is that the principal impediment to child abuse is a father. "The presence of the father ... placed the child at lesser risk for child sexual abuse," conclude scholars in the journal *Adolescent and Family Health*. "The protective effect from the father's presence in most households was sufficiently strong to offset the risk incurred by the few paternal perpetrators."

In fact, the risk of "paternal perpetrators" is miniscule. Contrary to the innuendo of child abuse "advocates," it is not married fathers but single mothers who are by far the most likely to injure and kill their children. "Contrary to public perception," write Patrick Fagan and Dorothy Hanks of the Heritage Foundation, "research shows that the most likely physical abuser of a young child will be that child's mother, not a male in the household." Mothers accounted for 55% of child murders, according to a Justice Department report (1,100 out of 2,000, with fathers committing 130). Here again, HHS itself has figures that women aged 20 to 49 are almost twice as likely as men to be perpetrators of child maltreatment: "almost two-thirds were females." Given that "male" perpetrators are not usually fathers but much more likely to be boyfriends and stepfathers, fathers emerge as by far the least likely child abusers.

While men are thought more likely to commit sexual as opposed to physical abuse, sexual abuse is much less common than severe physical abuse and much more likely to be perpetrated by boyfriends and stepfathers. "Children are seven times more likely to be badly beaten by their parents than they are to be sexually abused by them," according to the National Society for the Prevention of Cruelty to Children. The NSPCC found that father-daughter incest is "rare, occurring in less than 4 in 1,000 children," and that three-fourths of incest perpetrators are brothers and stepbrothers rather than fathers. HHS's own figures show that reported sexual abuse is a tiny minority of reported child abuse, and of this little is committed by real fathers. The *Journal of Ethnology and Sociobiology* reports that a preschooler not living with both biological parents is forty times more likely to be sexually abused.

Yet feminists would have us believe that father-daughter incest is rampant, and conservatives credulously swallow their propaganda. A recent PBS documentary, "Breaking the Silence: Children's Stories," asserts without evidence and contrary to known scientific data that "Children are most often in danger from the father."

Feminist child protection agents implement this propaganda as policy. "One scholarly study concluded that "An anti-male attitude is often found in documents, statements, and in the writings of those claiming to be experts in cases of child sexual abuse." Social service agencies systematically teach children to hate their fathers and inculcate in the children a message that the father has sexually molested them. "The professionals use techniques that teach children a negative and critical view of men in general and fathers in particular," the authors write. "The child is repeatedly reinforced for fantasizing throwing Daddy in jail and is trained to hate and fear him." A San Diego grand jury investigative report found that false accusations during divorce were positively encouraged by government officials. "The system appears to reward a parent who initiates such a complaint," it states. "Some of these involve allegations which are so incredible that authorities should have been deeply concerned for the protection of the child." Such behavior by officials is driven by federal financial incentives. "The social workers and therapists played pivotal roles in condoning this," charged the grand jury. "They were helped by judges and referees."

Seldom does public policy stand in such direct defiance of undisputed truths, to the point where the cause of the problem -- separating children from their fathers -- is presented as the solution, and the solution -- allowing children to grow up with their fathers -- is depicted as the problem. If you want to encourage child abuse, remove the fathers.

That is precisely what officials do -- not only social workers but also family court judges. It is difficult to believe that judges are not aware that the most dangerous environment for children is precisely the single-parent homes they themselves create when they remove fathers in custody proceedings. Yet they have no hesitation in removing them, secure in the knowledge that they will never be held accountable for any harm that comes to the children. On the contrary, if they do not they may be punished by the bar associations, feminist groups, and social work bureaucracies whose earnings and funding depend on a constant supply of abused children. It is a commonplace of political science that bureaucracies relentlessly expand, often by creating the problem they exist to address. Appalling as it sounds, the conclusion is inescapable that we have created a huge army of officials with a vested interest in child abuse.



# Banned Near Boston

More chicanery from the underworld of family law

<http://www.lewrockwell.com/orig2/baskerville9.html>

**Stephen Baskerville, ACFC President, 04-01-06**

Nearly ninety years ago, when divorce liberalization was being advocated by feminists, G.K. Chesterton warned in [The Superstition of Divorce](#) that undermining the family would imperil civic freedom.

His warning was vindicated recently when Massachusetts family court judge Mary Manzi outlawed a book that criticizes government officials. Manzi herself is sharply criticized in the book but obviously did not recuse herself from the proceeding.

On March 24, Kevin Thompson received an order prohibiting distribution of his book, [Exposing the Corruption in the Massachusetts Family Courts](#). The court also impounded the records of Thompson's custody case, reinforcing the secrecy in which family courts like to operate.

The standard justification for secret courts is the one Judge Manzi now extends to censorship: "privacy interests of the parties' minor child." Thompson's son has already been forcibly separated from his father, and his life is now under the total control of state officials.

What "privacy" does this child have left? Thompson understands that the true reason for the secrecy and censorship is not to protect privacy but to invade it with impunity: "The only interests that are protected are the interests of the racketeers and hypocrites who invade 'family privacy' by removing loving fathers from the lives of their children against their will and without just cause to fill their pockets."

Many people have trouble believing the harrowing tales of human rights abuses now taking place in American family courts and wonder why, if they are true, we do not hear more about it. Perhaps because in many jurisdictions it is a crime to criticize family court judges or otherwise discuss family law cases publicly. In other words, censorship works.

Thompson's case is not isolated. Under the pretext of "family privacy," parents are gagged and arrested for criticizing the courts:

- Alice Tulanowksi of New Brunswick, New Jersey, was placed under a gag rule in 2000, though judges and the New Jersey Chapter of the Association of Family and Conciliation Courts were left "free to discuss the intimate details of Alice's case" in public.
- Stanley Rains of Victoria, Texas, in 2001 was gagged "from speaking, writing, or publishing his opinions" about why he was cut off from his daughter for more than two years, according to court documents. The order covers private conversations and discussions with mental health professionals and his minister. Issued with no evidentiary hearing, the order followed an article Rains published in *Fathering Magazine*. He was also prohibited from criticizing a city council candidate who was a divorce lawyer. The order precluded Rains from photographing death threats written on his mother's car.
- The former husband of singer Wynonna Judd was arrested and jailed for talking to reporters about his divorce.
- A California judge shut down the web site of the Committee to Expose Dishonest and Incompetent Attorneys and Judges in 2001.
- In 2005, Texas Attorney General Greg Abbott formally asked a federal court to punish Charles Edward Lincoln, for criticizing the state's family courts. Abbott termed the criticism, which consisted in filing some court papers, "bloodless terrorism."

Outright censorship is only the start, since judges usually prefer more subtle methods for stopping the mouths of their critics. Thompson is also being forced to pay the attorneys who advocated the book ban. This practice has the marvelous double effect of providing booty for the judge's cronies and justifying incarceration of critics who cannot pay the instant "debt." Following his criticism of the family courts in testimony to Congress, Jim Wagner of the Georgia Council for Children's Rights was stripped of custody of his two children and ordered to pay \$6,000 in fees of attorneys he had not hired. He was soon after arrested for nonpayment.

Censorship of speech and press is only the tip of the iceberg and serves to cloak even more serious constitutional and human rights violations. Writing in the *Rutgers Law Review*, David Heleniak recently revealed the "due process fiasco" of family law. Calling family courts "an area of law mired in intellectual dishonesty and injustice," Heleniak identifies six major denials of due process by which courts seize children and railroad innocent parents into jail: denial of trial by jury, denial of poor defendants to free counsel, denial of right to take depositions, lack of evidentiary hearings, lack of notice, and improper standard of proof. In family law, "the burden of proof may be shifted to the defendant," according to a handbook for local officials published by the National Conference of State Legislatures. Dean Roscoe Pound writes that "the powers of the Star Chamber were a trifle in comparison with those of our juvenile court and courts of domestic relations."

In fact, even this only scratches the surface. One can run point-by-point down the Bill of Rights and other constitutional protections, and there is hardly a clause that is not routinely ignored or violated in family law, where practices include mass incarcerations without trial, summary expropriations, presumption of guilt, coerced confessions, *ex post facto* provisions, bills of attainder, and more. Family courts and their hangers-on are by far the greatest violators of constitutional rights in America today.

Journalists of both the left and right studiously ignore these violations, as do "human rights" groups, even when shown undeniable evidence. It will be interesting to see if they can ignore censorship that touches their own profession.

For his part, Thompson says he intends to ignore the censorship. "Everything that I am doing right now is for my son," he declares. "I will not be shut up."

# The Fathers' War

They serve their country and lose their children.

[http://www.amconmag.com/2005/2005\\_10\\_24/article2.html](http://www.amconmag.com/2005/2005_10_24/article2.html)

**Stephen Baskerville, The American Conservative, 10-24-05**

While our country focuses on the war abroad, many of our soldiers fight personal battles here at home—or more accurately, can't fight. They are losing their families and getting little help from an administration that claims to "support the troops" while doing nothing to protect the parental rights of the fathers it sent into combat.

All the services are facing a severe drop in recruitment, and additional recruiters, stepped-up advertising, and bigger bonuses have not reversed the trend. The media points to the war itself, but the shortfall also coincides with a dramatic rise in military divorces, which the Army reports have nearly doubled since 2001. "We've seen nothing like this before," says Col. Glen Bloomstrom, a chaplain who oversees family-support programs. "It indicates the amount of stress on couples, on families, as the Army conducts the global war on terrorism."

It indicates much more than stress. "There most certainly is a relationship between current recruiting problems and an increase in military divorces," says Capt. Gene Thomas Gomulka, a retired Navy chaplain and writer on military marriage.

Muffled by feminist orthodoxy, the Army and media are not disclosing the facts behind these divorces or publicizing the threat they pose to preparedness. The important points are these: the divorces are almost all initiated by wives, the servicemen usually lose their children—which for many is their main incentive for serving their country—and finally, they often become liable to criminal prosecution for child support that is impossible for them to pay.

Laws protecting active-duty servicemen against legal actions are ignored by family courts. Deployed servicemen have virtually no protection against unilaterally initiated divorce proceedings that permanently separate them from their children without any show of wrongdoing. Child kidnapping laws likewise do not protect them from having their children relocated, even to foreign countries, while they cannot be present to defend their parental rights. When they return, they have no necessary right to see their children—and can be arrested for trying to do so—who often join the ranks of the permanently fatherless.

The *Lansing State Journal* recently reported on Joe McNeilly, a National Guardsman who "would still have his son if he hadn't been deployed," according to Maj. Dawn Dancer, public-affairs officer for the Michigan National Guard. Invoking the correct legal buzzwords, the mother and her lawyer claimed he lost custody not because of his deployment but because of his "parenting skills." Yet his parenting skills were clearly defined in terms of his deployment. The court attested that it stripped him of custody because his wife was the "day-to-day caretaker and decision maker in the child's life" while McNeilly was deployed. His alleged parental deficiencies also proceeded apparently from his duties as a soldier. "My client is making sure to turn off the TV when the news reports deaths in Iraq," the mother's lawyer said, "and (McNeilly) was engaging in behaviors that brought fear." In other words, he was fighting a war.

Even more astounding, vicariously divorced servicemen can be criminally prosecuted for child-support arrearages that are almost impossible not to accrue while they are on duty. Reservists are hit particularly hard because their child-support burdens are based on their civilian pay and do not decrease when their income decreases. Because reservists are often mobilized with little notice, few get modifications before they leave, and modifications are almost never granted anyway. They cannot get relief when they return because federal law prohibits retroactive reductions for any reason. Once arrearages reach \$5,000, the soldier becomes a felon and subject to imprisonment.

Further, states assess interest and penalties on arrearages, which may accrue because of human or computer errors. These too cannot be forgiven, so parents who fall behind for reasons beyond their control can never have these debts erased. Because state agencies are federally subsidized based on how much they collect, they have a powerful incentive not to reduce burdens, to extract every penny they can find, and to make "errors."

Deployed soldiers are also targeted by women who falsely designate them as the fathers of their newborns. "The military provides a steady, easily garnished income as well as medical care," says Carnell Smith of Citizens Against Paternity Fraud. It is difficult to contest paternity while fighting a war thousands of miles away.

Spouses have other financial incentives to divorce military personnel. A serviceman must complete 20 years of active service to qualify for retirement pay. A woman married to the man for one day may claim a portion of the pension for life, without regard to fault or need, simply by filing for divorce. As David Usher points out in *Men's News Daily*, there is no limit on how many times a woman can do this. (Men have done it too.)

None of this is hypothetical. Many veterans face such hardships now:

- "Gary," an 18-year veteran with an unblemished military and civilian record, was stripped of his child by a California court while deployed in Afghanistan as a Navy SEAL, according to Fox News. Columnist Glenn Sacks reports that he is now being bankrupted by child support and legal fees.
- Bobby Sherrill, a father of two from Parkton, North Carolina, was held hostage in Iraq for nearly five months. The night he returned from the Persian Gulf he was arrested for failing to pay \$1,425 in child support while captive.

• While serving in Iraq, Taron James was ordered to pay support for a child he knew could not be his, and DNA tests confirmed his claim. The district attorney and Los Angeles County Child Support Services nevertheless seized his tax refund annually, blocked him from renewing his notary-public license—which caused him to lose his job—ruined his credit, blocked him from obtaining a passport, and forced him to drop out of college.

These are not aberrations. They proceed from the ideologically and bureaucratically driven logic of the custody-support industry, which depends for its justification on removing children and criminalizing the fathers.

The Army's response has been to spend millions on therapeutic gimmicks in a futile effort to reduce the divorces: counseling services, support groups, romantic getaways, even advice to single soldiers on how to pick partners wisely.

"Our hope is to change the culture," says Bloomstrom, who also adopts civilian-sector jargon. "Initially there's a stigma about any program to do with relationships. We need to teach that there's nothing wrong with preventive maintenance for marriage."

The Army is burying its head in the sand. We can only hope that communications workshops and cultural understanding are not the approach they take to opponents in the field. They do so in this case because the threat is not Islamic radicals but feminist radicals.

Those affected see through the obfuscation. "This is outrageous," said Kathy Moakler, deputy director of government relations of the National Military Family Association. "It's a scary precedent to set, charging the parent with abandonment because he was deployed."

Obviously these men have not abandoned their children. Yet what justifies criminal penalties, if it is not to catch those who have? If these fathers are being stripped of their children and criminalized through no fault of their own, why should we assume that others are being treated any less unjustly? This points to the larger issue, since the obvious injustices to soldiers, sailors, and airmen are simply the logical next step from what has been inflicted on others for years. The dysfunctional effects on military efficiency are also paralleled elsewhere in society.

The flight of men from the military strikingly parallels the flight of men from marriage, with its attendant drop in birth rates, that has come to preoccupy policymakers up to the level of president. Men are staying away from both institutions for the same reasons: for many they have become a ticket to jail.

The National Marriage Project at Rutgers University reports a continued drop in the marriage rate. They too ignore the criminal penalties that men can incur when they marry, instead urging therapy and formulaically excoriating men for their lack of "commitment." Citing the Rutgers study, Assistant Secretary of Health and Human Services Wade Horn promotes federal marriage programs inculcating "conflict-resolution skills."

Men do not risk their lives, fight, and die for a country that is an abstraction. They fight and die for their families and homes and freedom, all of which are being taken away by the courts. "Sometimes I wonder what I risked my life for [in Afghanistan]," "Gary" tells Sacks. "I went to fight for freedom but what freedom and what rights mean anything if a man doesn't have the right to be a father to his own child?"

Gordon Dollar was a reservist for 16 years in the National Guard and Naval Reserves. "I have friends that are very motivated and dedicated people, Frogmen/SEALS, Green Berets, and Rangers, and they were getting out too," he tells Usher. "I think people who served this country are feeling betrayed by it, and see no point in serving it."

California Gov. Arnold Schwarzenegger has just signed legislation protecting military personnel in custody and child-support cases. Missouri is the only other state to protect reservists on active duty by requiring automatic adjustments in their child support. More states need to act.

Federally, the Servicemembers Civil Relief Act, which protects deployed military persons from other civil suits, should be amended to include specifically the actions of divorce courts and child-support bureaucracies. The Uniform Child Custody Jurisdiction and Enforcement Act, designed to prevent parental kidnappings, could also be modified to protect service personnel whose children are snatched away. Finally, Congress should repeal the infamous Bradley Amendment, so that judges can exercise reasonable discretion to modify child-support debts downward as well as upward in cases in patent injustice.

It is ironic that, as we defend a questionable military policy with patriotic appeals to support the troops who must execute it, we allow the breakdown of traditional morality and the erosion of ancient legal protections for the family to ruin those same troops once they return home. This undermines not only the military, of course, but also the patriotic appeals. But even more, in the long run it also undermines our national defense. It would be difficult to find a single policy that so simultaneously weakens the nation within and without.

What we are seeing here is only one vindication of now forgotten prophecies from critics like G.K. Chesterton that easy divorce would destroy not only the family but civilization itself. Yet as the prediction is fulfilled before our eyes, our leaders obfuscate it with clichés and psychobabble.

The much-belabored parallel with Rome is irresistible. External threats are successfully withstood until the internal moral decay that accompanies the breakdown of republican freedom and virtue. For Islamists who regard the West as a morally and sexually decadent culture, the prospect must be encouraging.



# Wedded to the State

## Rejected by National Review

<http://www.lewrockwell.com/orig2/baskerville8.html>

Stephen Baskerville, ACFC, 10-21-05

Writing recently in [National Review Online](#), Wade Horn, Assistant Secretary of Health and Human Services (HHS), describes the huge social costs of family breakdown and the benefits to children and society of marriage. He also points out that his agency spends \$46 billion each year on programs "the need for [which] is either created or exacerbated by the breakup of families and marriages." He rightly argues that we need to address this costly "family breakdown" problem.

In fact, one could look beyond his Administration for Children and Families (ACF) and even HHS and make a similar point about virtually all programs for law enforcement, substance abuse, and school performance.

Indeed, his argument demonstrates more than that the runaway growth in domestic government spending is attributable to family breakdown. It is also an acknowledgement that the federal government and its hangers-on have a clear self-interest in broken families. ACF and the half-trillion dollar HHS generally constitute a massive in-house lobby of social workers, psychotherapists, lawyers and others who are not so candid as Dr. Horn about how they depend upon a steady supply of fatherless and troubled children to justify their huge consumption of tax dollars – dollars that in turn subsidize and increase the number of such children.

The fact that Dr. Horn has a tiger by the tail may explain why, as remedy, he can offer only palliatives in the form of yet another government program, this time state-sponsored psychotherapy: "Through marriage education, healthy conflict-resolution skills can be taught." In what Christina Sommers and Sally Satel have called in their book title, [One Nation Under Therapy](#), does anyone really believe that our multi-billion dollar family crisis is due to a lack of communication workshops and anger-management classes? And do we really want the federal government defining (and potentially re-defining) the terms of marriage?

The smorgasbord of programs Dr. Horn lists is more than a response to broken families; it is a major cause of broken families. Before we initiate new federal programs, we ought to remember the first rule of public policy intervention, which is to first examine the effect of existing programs to see if adjusting them may correct the problem. Could our current public programs and policies be contributing to the family breakdown problem, and, if so, how can we alter them to yield better results?

Dr. Horn provides a good example of how a federal program can be altered to become much more socially productive. Our welfare system used to be a major direct cause of family breakdown or non-formation. We used to pay poor mothers not to marry or work. With welfare reform, we changed that system to allow them to marry and no longer pay them not to work. As he notes, this change in the system has been a huge success. Our welfare rolls have decreased, and child poverty has declined.

Similar political courage will be needed to address the other known public programs and policies that are undermining marriage. These include:

- (1) The states have failed, since the 1960's, to treat marriage as a real contract. Currently anyone who wants out of a marriage can unilaterally end it without penalty. This is not what was intended when marriage laws were changed in the 1970's. "No fault" divorce was to be allowed only when both parties agreed to it. This would have made marriage more like a real contract, with less interference by the state in the matter of its ending. Instead, marriage has become a non-contract, with no protection for those who invest in it.
- (2) Paternalistic "family" courts and new laws have seriously undermined fatherhood. There has long been a huge bias in divorce courts to grant custody of children to mothers. As this bias threatened to diminish, feminists pushed through the [Violence Against Women Act](#), which makes it easy for any mother considering divorce to toss the father out of his own home and claim the family assets, including the children, simply by accusing him of domestic violence. No evidence or formal charge is required, and domestic "violence" need not even be violent. Shared parenting provisions would end this winner-take-all lottery.
- (3) Federally funded state child support systems set excessive awards and penalize non-payment harshly, even when the circumstances for non-payment are clearly outside the control of the payer. Child support awards are so high that the children have become a profit center for middle class divorcing moms – an additional financial incentive for them to divorce. As Kimberly Folse and Hugo Varela-Alvarez write in the *Journal of Socio-Economics*, "Strong enforcement...may... lead to the unintended consequence of increasing the likelihood of divorce." Yet in a striking slight-of-hand, disbursements under the "healthy marriage" mantra have actually gone less to counseling than to child support enforcement.

Is it any surprise that divorce in families with children is almost entirely instituted by the moms? But young men have gotten the message and are increasingly avoiding marriage and avoiding having children inside or outside of marriage. These men are scolded for their lack of "commitment" by the National Marriage Project, whose interpretation Dr. Horn is using to formulate policy. But no man in his right mind would start a family today if he understood how the federal government subsidizes the stealing of his children and his own incarceration for an assortment of newfangled gender "crimes" they make it impossible for him not to commit.

Exhorting people to marry is pointless so long as marriage is a bait-and-switch carrying financial rewards for those who break it. People will simply not invest in a worthless investment, no matter how much you preach at them. If marriage was a worthwhile investment, we would see more of it.

# Violence Against The Constitution

<http://www.newswithviews.com/Baskerville/stephen4.htm>

Professor Stephen Baskerville, Ph.D., [NewsWithViews.com](http://www.newswithviews.com), 10-08-05

Tyrants and totalitarians never lack excuses for new forms of tyranny, and they are usually good ones: "necessity," "public safety," "the poor" – these have been standard throughout history. With the rise of feminism, the rationale has become, "It's for the children" – or sometimes, "women and children."

The Violence Against Women Act (VAWA), currently up for renewal, is possibly the most totalitarian measure ever passed by the Congress. Every jurisdiction has criminal statutes punishing violent assault. So why do we need a law punishing assaults specifically "against women"? Why must it be a federal law, for which no constitutional authority exists? And why is \$4 billion in taxpayers' money required to outlaw something that is already against the law? The answer, as usual, is power – power for those who promise to protect us against yet another new danger.

It is politically hazardous for politicians to question any measure marketed for women and children. But no evidence indicates any problem of violence specifically against women. A virtually unanimous body of research has demonstrated that domestic violence is perpetrated by both sexes in roughly equal measures. So what is the real agenda behind this bill?

First, it politicizes criminal justice and redefines crime according to feminist ideology. Similar to "hate crimes" laws, criminals are designated not by their deeds but by their gender. As the act's title makes clear, only women qualify as victims. Violence against men is permissible. Both genders are equal, but one is more equal than the other.

Supporters like Senator Joseph Biden hem and haw that, despite the name, VAWA applies to both sexes. Yet they adamantly oppose explicitly gender-inclusive language. This is self-refuting, like the joke about the bad restaurant where the food is inedible and the portions are too small.

The "crimes" too are defined not by their statutory illegality but by ideology. VAWA allows men to be arrested and prosecuted for "violence" that is not violent: "name-calling and constant criticizing, insulting, and belittling the victim," "blaming the victim for everything," "ignoring, dismissing, or ridiculing the victim's needs."

VAWA also funds political advocacy. It creates programs to "educate" (the old Maoist euphemism for indoctrinate) police, prosecutors, judges, and other officials in feminist ideology, so they will administer not equal justice but feminist justice.

VAWA circumvents the Bill of Rights. Criminal assault charges require due process of law, but labeling something "domestic violence" allows officials to ignore constitutional protections: the presumption of innocence is cast aside; hearsay evidence is admissible; no jury trial is required; the accused cannot face their accusers; even forced confessions are permissible. These are the methods being used in the burgeoning system of feminist "domestic violence courts" that are created for no reason other than to bypass civil liberties protections and railroad men into jail.

Further, VAWA mandates "restraining orders" that do not punish criminals for illegal acts but prohibit law-abiding citizens from otherwise legal ones. Judges can simply legislate new crimes on the spot. But they are only crimes for some people, who can then be arrested for doing what no law prohibits and what others may do.

Finally, VAWA destroys families and leaves children fatherless by providing weapons for divorce and custody battles. It is common knowledge among legal practitioners that [trumped-up accusations](#) are rampant and even [encouraged in divorce courts](#). "The number of women attending seminars [on divorce by bar associations] who smugly – indeed boastfully – announced that they had already sworn out false or grossly exaggerated domestic violence complaints against their hapless husbands, and that the device worked!" astonished author Thomas Kiernan, writing in the New Jersey Law Journal. "To add amazement to my astonishment, the lawyer-lecturers invariably congratulated the self-confessed miscreants." The feminists' own literature reveals the true agenda. A special issue of Mother Jones magazine ostensibly on domestic violence is devoted, from the first paragraph, largely to securing child custody.

A chorus of opposition to VAWA has arisen. Heads of major pro-family organizations have written Congress warning of the dangers and urging changes. Yet the juggernaut rolls on, promoted from the inside by judges and civil servants who are supposed to be apolitical but whose lobbying is financed by VAWA itself.

VAWA represents the dangerous acceptance of extremist ideology by the mainstream. As recently as 1999, Mother Jones published a reasonably balanced report on the gender breakdown of domestic violence. By contrast, the recent issue is a screed, a vicious hate campaign by an extremist sect that abandons all pretence of objectivity and accuracy – and which, astoundingly, is being implemented by the US Congress.

*Stephen Baskerville holds a PhD from the London School of Economics and teaches political science at Howard University in Washington, DC. In January 2004 he became President of the American Coalition for Fathers and Children. He has appeared on national radio and television programs, including The O'Reilly Factor, Hardball with Chris Matthews, Court TV with Fred Graham and Katherine Crier, Think Tank with Ben Wattenberg, Endangered Liberties with Paul Weyrich, Legal Notebook with Tom Jipping, the Armstrong Williams Show, Take Action America, and others. He is a regular radio commentator for the Free Congress Foundation.*

# Violence Against Families

Fathers fall victim to domestic-abuse laws

*The American Conservative*, vol. 4, no 16 (August 29, 2005), pp. 23 -25

[http://www.acfc.org/site/PageServer?pagename=Baskerville\\_American\\_Conservative\\_Article&JServSessionIdr006=gzg1xc22s1.app6a](http://www.acfc.org/site/PageServer?pagename=Baskerville_American_Conservative_Article&JServSessionIdr006=gzg1xc22s1.app6a)

**Stephen Baskerville, The American Conservative, 08-29-05**

Feminists are playing the victim card with a vengeance, mostly because it is the only card left, with sympathy for feminism's strident campaigns at a low point. Yet beneath the media radar, victimhood has helped feminism advance virtually unopposed to aggrandize power in realms few perceive.

Victim politics requires exploiting traditional gender roles. This does not mean feminism has moderated; simply that it has exchanged ideological purity for power. Much as Stalinism inherited the habits of czarist absolutism and nationalism, feminism now exploits the stereotype of helpless damsels in distress and the public's good intentions.

Today's foremost case in point is the Violence Against Women Act (VAWA), currently up for reauthorization in Congress. VAWA appeals to mom-and-apple-pie sentiments: what legislator can oppose protecting women? The bill commands bipartisan sponsorship, and its renewal in 2000 was mostly unopposed.

Yet VAWA illustrates a serious problem with political conservatism and demonstrates how the Left advances despite its unpopularity. More than a failure of nerve, VAWA exemplifies a trend not so much to discard traditional values as to politicize them. Politicians can posture as champions of motherhood and family while turning them over to the safekeeping of the state. Thus domestic-violence legislation is pitched as an appeal to male chivalry, and Republicans are quick to volunteer. In contrast to traditional chivalry, however, today's political version does not proceed from personal duty and requires no risk or heroism. The gallantry feminists demand is bureaucratic, exercised by functionaries who wield state power that they expand as a result.

"Domestic violence" is now a vast and growing government industry. Yet the term has never been clearly defined. Given that criminal statutes against violent assault already exist, precisely what purpose is served by laws creating special categories of crime of which only some people can be victims? Domestic violence designates criminals politically, in terms of their membership in a group rather than acts they have actually committed. It also creates crimes based on relationships rather than deeds. Conflict that is not criminal between strangers becomes a crime between "intimate partners."

Whereas criminal assault charges require due process of law, designating a matter "domestic violence" circumvents constitutional protections. Law-abiding citizens are issued "restraining orders" that do not punish them for illegal actions but prohibit them from otherwise legal ones. Because violent assault is already punishable, the only people effectively restrained are peaceful ones.

Men's groups complain that VAWA excludes male victims and point to research showing that men are equally likely to be victims of domestic assault. Yet something more than "gender bias" is at work. Though advertised to protect women, VAWA's provisions are better seen as weapons in divorce and custody battles. As Thomas Kasper writes in the *Illinois Bar Journal*, measures funded by VAWA readily "become part of the gamesmanship of divorce." Groups like the New Hampshire Coalition Against Domestic and Sexual Violence lobby strenuously on custody laws, using unverifiable assertions like "80% of fathers who desire shared custody of their children fit the profile of a batterer."

Restraining orders are routinely issued without any evidence of wrongdoing to criminalize fathers' contact with their own children. "Restraining orders and orders to vacate are granted to virtually all who apply," and "the facts have become irrelevant," writes Elaine Epstein, former president of the Massachusetts Women's Bar Association. "In virtually all cases, no notice, meaningful hearing, or impartial weighing of evidence is to be had."

Even feminists backhandedly acknowledge what the social-science literature clearly establishes: that domestic violence and child abuse are overwhelmingly phenomena not of intact families but of separated and separating families and that the safest environment for women and children is a two-parent home. By encouraging marital breakup, VAWA exacerbates the problem it ostensibly exists to solve.

VAWA also blurs the distinction between violent crime and ordinary disagreement. Federally funded groups like the National Victim Assistance Academy (NVAA) and the Justice Department itself use vague and subjective terms to define "violence" where none took place: "extreme jealousy and possessiveness," "name-calling and constant criticizing, insulting, and belittling the victim," "blaming the victim for everything," "ignoring, dismissing, or ridiculing the victim's needs."

If domestic violence were a major problem, one would expect limited resources to be reserved for serious cases and those concerned about true violence to resist this cheapening of the language whereby the stuff of lovers' quarrels becomes grounds for arrest. Instead, activists use vague terms to imply criminal violence where none has taken place. In *The Battered Woman*, psychologist Lenore Walker excuses a woman who violently attacked her husband because he "had been battering her by ignoring her and by working late."

Though part of VAWA was declared unconstitutional on federalist grounds, the judiciary refuses to pass constitutional review. On the contrary, it is implemented by the very judiciary that is normally expected to protect constitutional rights. Strikingly, judges openly acknowledge the unconstitutionality and their own indifference to it. "Your job is not to become concerned about the constitutional rights of the man that you're violating as you grant a restraining order," New Jersey municipal court judge Richard Russell told fellow judges at a government-run training seminar in 1994. "Throw him out on the street, give him the clothes on his back and tell him, 'See ya

around."

VAWA also funds special courts to administer not equal justice but feminist justice: ideological justice reminiscent of the French Revolution's political tribunals or Hitler's dreaded "people's courts." Some 300 "integrated domestic violence courts" now operate nationwide. In New York, Chief Judge Judith Kaye declares that the courts are created not to dispense impartial justice but to facilitate punishment: "to make batterers and abusers take responsibility for their actions."

These courts bear little relation to most Americans' understanding of due process. There is no presumption of innocence, hearsay evidence is admissible, and defendants have no right to confront their accusers. Even forced confessions are extracted. Warren County, Pennsylvania, requires fathers like Robert Pessia, on pain of incarceration, to sign prefabricated confessions stating, "I have physically and emotionally battered my partner." The father must then describe the violence, even if he insists he committed none. The formulaic documents state, "I am responsible for the violence I used. My behavior was not provoked."

VAWA also subsidizes ideological advocacy of feminist organizations. Though Republicans in particular are feeding a mouth that bites them, the larger principle is whether taxpayers should ever sponsor political ideology. "If there is any fixed star in our constitutional constellation," wrote Supreme Court Justice Robert Jackson, "it is that no official, high or petty, can prescribe what shall be orthodox politics, nationalism, religion, or other matters of opinion."

Especially questionable is federal funding of lobbying by judges, who are professionally obligated to be apolitical. The National Council of Juvenile and Family Court Judges (NCJFCJ) consisting of judges who sit on actual cases and are required to be impartial receives federal support to attack fathers' groups and fathers themselves for being "at odds with the safety needs of the rest of the family." Can fathers summoned before these judges expect equal justice? NCJFCJ advocates administrative termination of paternal rights, termination of fathers' rights to their see their children with no evidence of violence, ignoring officials who question abuse allegations, ignoring visitation orders, re-education of judges, and labeling law-abiding American citizens who criticize the government as "dangerous."

They even seem to endorse the fabrication of evidence and a presumption of guilt. NVAA's Jacobin-style agenda is likewise endorsed and disseminated by the Justice Department: "establish a Family Violence Coordinating Council," "implement a massive community education program," "specialized domestic violence courts, and vertical prosecution," "fast track domestic violence prosecutions through priority docketing," "electronic monitoring," and "warrantless searches of their persons or homes."

The complaint that VAWA excludes the large percentage of male victims is not petty. Men are much more likely to experience violence that is premeditated or contracted and which may be excluded from categorization as domestic violence: shootings in the back, hired killers, midnight castrations, attacks with cars. Not only does this violence seldom elicit public sympathy; it is not foremost among the terrors of men themselves. "The most common theme among abused men is their tales not of physical anguish but of dispossession," writes Patricia Pearson in *When She Was Bad*, "losing custody of children due to accusations of physical and sexual abuse." "They may never see their children again," says Philip Cook, author of *Abused Men*. "They don't feel that they will get a fair shake in the courts regarding custody no matter what happens or what she does. And it's actually true. There are many cases...in which a woman who was actually arrested for domestic violence still receive[d] custody of the children." Losing custody is not the only danger: "A battered man knows that if his wife has been abusing him, she has often been abusing the children," writes Warren Farrell. "Leaving her means leaving his children unprotected from her abuse."

Here we arrive at the most insidious consequence of the moral grandstanding by VAWA's champions. Though advocates rhetorically intermingle child abuse with domestic violence, natural fathers commit a small fraction of child abuse; the overwhelming bulk is committed in single-parent homes. "Contrary to public perception," write Patrick Fagan and Dorothy Hanks of the Heritage Foundation, "the most likely physical abuser of a young child will be that child's mother, not a male in the household." Fathers commit 6.5 percent of child murders, according to a Justice Department study. The Department of Health and Human Services found that "women (the majority of whom are natural mothers) murder children 31.6 times more often than do natural fathers." A study by the Family Education Trust found children are up to 33 times more likely to be abused in a home without a father.

This is precisely the home environment VAWA subsidizes. Judges claim they remove fathers, even without evidence of abuse, to "err on the side of caution." In fact, they are erring on the side of danger, and it is difficult to believe they do not realize it. Recalling Dickens's observation that "the one great principle of the...law is to make business for itself," the domestic-violence industry appears to be making business for itself by creating the environment conducive to child abuse.

Appalling as this sounds, this proceeds from the logic inherent in all bureaucracies: to perpetuate the problem they ostensibly exist to address. It gains plausibility from the verbal smoke-and-mirrors domestic-violence activists employ. "Adult domestic violence and child maltreatment often occur together," says Meredith Hofford of the NCJFCJ, "with the same assailant responsible for both." Hofford provides no documentation, but to the extent it is true, the "assailant" is likely to be not the father but the single mother. Hofford herself wants more money to "support" what she describes as "battered women who maltreat their children." This spiral of more funding to address the "needs" created by the previous funding illustrates how the domestic-violence juggernaut, and with it the crisis of family dissolution and fatherless children, will continue to expand indefinitely until we learn to ignore hysterical people whom the government pays to cry wolf.

## Fathers Into Felons

No-fault divorce has turned a bastion of private life into a colony of the state.

[http://www.amconmag.com/2005\\_05\\_23/print/articleprint.html](http://www.amconmag.com/2005_05_23/print/articleprint.html)

Stephen Baskerville, *The American Conservative*, 04-23-05

By all indications, we are gearing up for a major cultural and political war over the family. Opposition to same-sex marriage has tapped a vein of grassroots outrage that may run deeper than most observers imagine, with implications extending to the welfare state, the judiciary, and the most fundamental questions about the role of government. Conservatives who warn that family breakdown will lead to civilizational collapse sometimes seem incapable of recognizing the fulfillment of their prophecies.

The family crisis is generally attributed to deteriorating moral norms stemming from the sexual revolution. Yet the warfare over marriage is as much political as cultural, though basic political questions are conspicuously avoided: what precisely is the legal status of marriage, and what is the appropriate role of the state in private families and households? What are the relations of church and state insofar as each claims authority over marriage?

Family scholar Bryce Christensen likens the family crisis to the Civil War, with constitutional implications that could prove equally profound. G.K. Chesterton once suggested that the family serves as the principal check on government power and predicted that someday the two would directly confront one another. Same-sex marriage is just one indication that that day has arrived.

Another is the administration's plan to redirect welfare funds for marriage education. Adapting Clinton-era fatherhood initiatives, the program is justified on the principle that marriage is a public institution conferring public benefits. "The time has come to recognize that marriage is a public social good," writes Alliance for Marriage President Matt Daniels. "The health of American families—built upon marriage—affects us all."

Yet the public nature of marriage is a truism that requires some qualification. The common-law tradition has long treated the family as a preserve of privacy that is largely off-limits to government—what Justice Byron White called a "realm of family life which the state cannot enter."

Family inviolability was never absolute, but the basic principle has been established for centuries and most emphatically in connection with what traditionalists point out is the unique and foremost purpose of marriage: raising children. The private family creates a legal bond between parent and child that allows parents (within reasonable limits) to raise their children free from government interference. "Whatever else it may accomplish, marriage acknowledges and secures the relation between a child and a particular set of parents," Susan Shell writes in *The Public Interest*. "The right to one's own children ... is perhaps the most basic individual right—so basic we hardly think of it."

Federal courts have long recognized parenthood as a "sacred" and "inherent, natural right," "far more precious than property rights," and "for the protection of which, just as much as for the protection of the rights of the individual to life, liberty, and the pursuit of happiness, our government is formed." Shell summarizes assumptions that, until recently, have been virtually universal among free societies: "No known government, however brutal or tyrannical, has ever denied, in fact or principle, the fundamental claim of parents to their children. ... A government that distributed children randomly ... could not be other than tyrannical. Even if it had the best interest of society in mind ... a government that paid no regard to the claims of biological parenthood would be unacceptable to all but the most fanatical of egalitarian or communitarian zealots."

As a statement of society's moral consensus Shell's point is unexceptionable. Yet it also illustrates the ignorance pervading current debates. For current marriage law has both validated her point and negated her fact: "No known government" ever crossed this line until about 30 years ago, well before same-sex marriage, when most of the Western democracies did so. It is having precisely the consequences she postulates.

Shell's principle also highlights an anomaly glossed over in official efforts to reverse family decline. Invoking the public benefits of marriage to justify state intervention in citizens' private lives and even to define—and potentially redefine—marriage would appear self-defeating. "No one would argue that crime and child poverty in America are not the business of government," writes Daniels. "And no one wants to see the government turn a blind eye to the social trends that are doing the most damage to American children." Daniels makes a powerful case, but he never distinguishes the public's interest from the state's. Government is not a neutral player.

Governments have always claimed control over marriage, whether solemnized religiously or civilly. Some libertarians now propose privatizing marriage as a strictly civil contract. Yet whatever the state's precise role in marriage formation, politically it is far less important than another question. The institutional strength of marriage—and its connection with larger issues of public policy—is determined not by the words through which a marriage is formed but by the deeds through which a marriage is dissolved.

Here the critical players, as both sides recognize, are not homosexuals but heterosexuals. "The problem today is not gay couples wanting to get married," writes Jonathan Rauch. "The threat to marriage is straight couples not wanting to get married or ... not staying married." The demand to recognize same-sex marriage is clearly a symptom of how weakened marriage has already become.

It is futile to try to assess the strength of marriage as an institution or understand its civic role without confronting its nemesis: divorce. Though traditionalists decry efforts to redefine marriage, the fundamental redefinition has already been effected by the little-understood system of "no-fault" divorce.



Some three decades ago, the Western world embarked on one of the boldest experiments in its history. With no public discussion of the implications, laws were enacted in virtually every jurisdiction that effectively ended marriage as a legal contract. Regardless of the terms by which a marriage is entered, government officials can now, at the request of one spouse, simply dissolve it over the objection of the other and with no penalty to the moving party. Maggie Gallagher titled her 1996 book *The Abolition of Marriage*. It is difficult to see how same-sex marriage can weaken an institution that has been abolished, nor how a constitutional amendment can protect a contract that is already unenforceable.

Divorce and unmarried childbearing have political consequences we are only beginning to understand since they serve as major engines for the overall expansion of government. Daniels is undeniably correct that family dissolution breeds social ills for governments to solve: violent crime, drug abuse, and truancy are directly attributable to family breakdown and fatherless homes. The obvious political implications are studiously avoided. "If we want less government, we must have stronger families," President Jimmy Carter once remarked, "for government steps in by necessity when families have failed."

Carter may have perceived the cause and effect backward, for it follows that government has a stake in failed families and a motive to step in and declare failure when given the opportunity. As Gallagher points out, this is precisely what divorce courts do: "No-fault divorce gave judges, at the request of one-half of the couple, the right to decide when a marriage had irretrievably broken down."

If marriage is not wholly private, involuntary divorce by its nature requires constant supervision over private life by state officials. Marriage creates a private household, which may or may not necessitate signing some legal documents. Divorce dissolves not only a marriage but the private household formed by it, usually over the objections of one spouse. It inevitably involves state functionaries—police and prisons—to enforce the post-marriage order. Otherwise, one spouse might continue to claim the protections and prerogatives of private life: the right to live in the common home, to possess common property, or to parent the common children. In the roughly 80 percent of divorces that are unilateral, state agents are empowered, without further explanation, to remove innocent people from their homes, confiscate their property, and take away their children. Unilateral divorce dissolves not only marriage but private life.

Politically, no-fault divorce did much more than allow families to self-destruct. It permitted the state to assume jurisdiction over the private lives of citizens who were minding their own business and turn otherwise lawful private behavior into crimes. This obviously carried consequences far beyond family policy. Previously, a citizen could only be incarcerated following conviction by a jury for violating a specific statute, passed with citizen input and after deliberation by elected legislators, that applied equally to all. Suddenly, a citizen could be arrested and jailed without trial for failing to live in conformity with an order, formulated in a matter of minutes from limited information by an unelected judge, that applied to no one but himself and whose provisions might well be beyond his ability to obey. A divorce decree amounted to a personalized criminal code legislated *ad hoc* around each former spouse, subjecting him to arrest for doing what anyone else might lawfully do.

Unilateral divorce thus placed the family in a legal-political status precisely the opposite of the original purpose of marriage. Far from preserving a private sphere of life immune from state intervention, involuntary divorce opened private lives to unprecedented state control.

The logic reaches its conclusion in directives recently published by the American Law Institute (ALI). This influential legal practitioners' group announced on its own authority that family law jurisdiction would henceforth encompass non-marital private arrangements such as cohabiting couples, both heterosexual and homosexual, and indeed all private homes.

Marriage defenders expressed outrage, but they misunderstood the implications. As they now argue with respect to same-sex marriage, traditionalists charged that ALI was undermining marriage by blurring the distinction between legitimate marriage and cohabitation. But ALI was doing much more than this. Family-law practitioners were using the toehold they had established in married households through divorce law to extend government jurisdiction into every household entailing an "intimate relationship," married or not. With breathtaking irony, an "intimate relationship"—which officials reserved for themselves to define—became not a status off-limits to government scrutiny but the exact opposite, one that gives government an *entrée* to exert virtually unlimited supervision over personal life. The abolition of marriage led directly to the abolition of private life.

Compounding the irony, the factor that now invariably justifies state intervention into the private sphere is the very one that had previously required keeping the state out—children. As with same-sex marriage, by ignoring children a plausible case can be made that divorce harms no one beyond the couple. Introducing children changes the dynamic.

Prior to the divorce revolution, authority over children had long been recognized to reside with their parents, absent some infraction. "For centuries it has been a canon of law that parents speak for their minor children," wrote Justice Potter Stewart. "So deeply embedded in our traditions is this principle ... that the Constitution itself may compel a state to respect it." This too has been not only abrogated but directly inverted by divorce law, which proceeds on the opposite principle. As one analysis observes, "The child's best interest is perceived as being independent of the parents, and a court review is held to be necessary to protect the child's interests." Divorce allows one parent to surrender both parents' decision-making rights to the state.

As many have observed of marriage itself, the introduction of children into marital politics brings pressures for gender differentiation. Traditionally, as Allan Carlson points out, governments set the terms of marriage less to provide rights than to impose burdens, and the ones Carlson enumerates all pertain to divorce: "alimony, child custody, and the division of property." Significantly, these burdens were not symmetrical; they all involved removing something from the man. But they were accepted because in return the man derived one vital protection from marriage: the right to have children recognized as his. This too has become a fiction.

Margaret Mead once observed that reinforcing the parent-child bond has always been more necessary for fathers than for mothers. Some modern conservatives insist that marriage serves foremost to control male promiscuity. If so, it does so as a product of its larger function: to protect the father-child bond and with it the intact family. This is evident today, as the weakening of marriage produces fatherless, not usually motherless, homes. This point is overlooked by today's traditionalists, who argue that marriage undergirds civilization, for it is the father's presence that signifies both the intact family and, by the same measure, the civil institution. Thomas Hobbes attributed to married fatherhood a central role in the shift from the state of nature to civil society. In nature, Hobbes argued, "the dominion is in the mother": "For in the condition of mere nature, where there are no matrimonial laws, it cannot be known who is the father, unless it be declared by the mother. And therefore the right of dominion over the child dependeth on her will and is consequently hers."

Only in civil society—where "matrimonial laws" do operate—is custody over children shared with the father. Today, the different but interchangeable labels used for similar family-promotion schemes in the last two administrations implicitly recognize that fatherhood (Clinton) and marriage (Bush) are inseparable.

Traditionally, it has been marriage, not sperm, that determines the father. This was the purpose behind Lord Mansfield's law stipulating that a child born within wedlock is presumed to be that of the husband. It enabled a marriage to survive the wife's adultery. Here too, no-fault divorce has inverted the effect. By supporting what is now known as paternity fraud, Lord Mansfield's law has been transformed into an incentive to dissolve rather than preserve families. By filing for divorce, the adulterous wife, perhaps in collusion with the biological father, can now collect child support from the cuckolded husband for the children produced by the adultery.

Overwhelmingly, therefore, when children are involved, the spouse on whom government power will be brought to bear and who will experience the divorce regime's growing capacity to criminalize the involuntarily divorced is the father. Some believe this is logical, and it would be appropriate if, as popularly believed, the father is the one dissolving the family. In fact, the divorcing parent today is almost invariably the mother.

The failure of policymakers to confront this has further criminalized private life through a panoply of repressive measures against primarily (though not exclusively) fathers. "The advocates of ever-more-aggressive measures for collecting child support," writes Christensen, "have moved us a dangerous step closer to a police state." Devised as part of the welfare system to compel payments by unmarried fathers, penal measures pertaining to child support, domestic violence, and child abuse have now spread to the middle class through divorce. Justified to protect and provide for women and children once the father is gone, they have mushroomed into an elaborate machinery that serves to remove fathers and subsidize fatherless homes.

Contrary to two decades of judicial and feminist propaganda, no scientific data indicate that fathers are, *en masse*, abandoning their families, beating their wives, and molesting their children. On the contrary, the evidence unambiguously establishes that a married household is the least likely setting for these problems.

The family crisis widely accepted on the Right as well as the Left is an optical illusion. What is advertised as an epidemic of dissolute fathers increasingly reveals itself as a power grab by a new class of political operatives who created no-fault divorce and who share an interest in displacing fathers and politicizing children. What makes it diabolically successful is a capacity to silence opposition and co-opt critics by claiming concern for children and distributing largesse ostensibly for their benefit. Thus camouflaged, the champions of other people's children make an end-run around more visible clashes over homosexuality, pornography, abortion, and schooling. But the bottom line remains: never before have governments created a bureaucratic apparatus whose primary purpose is to separate children from their parents.

The family crisis represents a microcosm of the larger crisis of modern politics, for it is driven by a class of political professionals whose livelihoods depend on politicizing everything, including now the most intimate corners of our lives. The government-occupied family is only the beginning of the brave new world we have created.

---

*Stephen Baskerville is a professor at Howard University*

**The No-Blame Game:**  
**Why no-fault divorce is our most dangerous social experiment**  
**Crisis, vol. 23, no. 3 (March 2005), pp. 14-20**  
[www.crisismagazine.com](http://www.crisismagazine.com)

**Stephen Baskerville, ACFC President, 03-01-05**

The nation is in revolt over marriage. Some 17 states have now passed amendments to protect the definition of marriage, and more will follow. The issue is plausibly credited with creating President Bush's margin of victory in the 2004 election and that of some congressional candidates. Same-sex marriage has also shaken the decades-long loyalty of African-Americans to the Democratic Party. Only a short time ago, few would have predicted such a public uprising in defense of marriage and the family.

And this may be only the beginning. Bill Cosby's celebrated remarks last year on family morality -- and the largely positive response -- has placed a once-taboo subject at the top of the African American agenda. And another ballot result has not received the attention it deserves: In liberal Massachusetts, a whopping 85 percent of voters defied the strident opposition of feminists and lawyers to approve a non-binding referendum giving fathers equality in custody decisions.

All this suggests that not only gay marriage but larger questions of family integrity and parenthood are set to convulse our politics. Those who cast their ballots last November on the basis of "moral values" may have had more in mind than just same-sex marriage, which is neither the only threat to marriage nor even the most serious. To truly reverse the decline of the family, the momentum must be carried forward to confront the others. And eventually we must grasp a painful nettle: The most direct threat to the family is divorce on demand. Sooner or later, if civilization is to endure, it must be brought under control.

The most forthright marriage advocates recognize that, as Michael McManus of Marriage Savers writes, "Divorce is a far more grievous blow to marriage than today's challenge by gays." Predictably, this fact has been seized upon by advocates of same-sex marriage. "The weakening of marriage has been heterosexuals' doing, not gays', for it is their infidelity, divorce rates, and single-parent families that have wrought social damage," opines the Economist.

This distinction ignores the fact that the two problems are closely connected. Gay marriage would probably not be an issue in the first place if marriage had not already been weakened by divorce. "Commentators miss the point when they oppose homosexual marriage on the grounds that it would undermine traditional understandings of marriage," writes Bryce Christensen of Southern Utah University. "It is only because traditional understandings of marriage have already been severely undermined that homosexuals are now laying claim to it."

Likewise, though gay activists cite the very desire to marry as evidence that their lifestyle is not inherently promiscuous, Andrew Sullivan acknowledges that that desire arises only because of the promiscuity permitted in modern marriage. "The world of no-strings heterosexual hookups and 50 percent divorce rates preceded gay marriage," he points out in the New Republic. "All homosexuals are saying...is that, under the current definition, there's no reason to exclude us. If you want to return straight marriage to the 1950s, go ahead. But until you do, the exclusion of gays is...a denial of basic civil equality" (emphasis added). Gays do not want marriage in the traditional mold, only the watered-down version that exists today.

### **Blaming the Victim**

While lamenting the high divorce rate is conventional piety among family advocates, most have refused to challenge the divorce laws. The standard rationalization is that to control divorce we must first change the culture. But no one suggests that changing the culture is a prerequisite for preventing, say, abortion. While cultural forces certainly contribute, the divorce epidemic has proceeded directly from a legal system which permits and even encourages it.

No-fault divorce laws were introduced in the United States and other industrialized countries during the 1970s and are being expanded into other regions of the world today. "No-fault" is a misnomer (taken from car insurance), for the new laws did not stop at removing the requirement that grounds be cited for a divorce. But they did create unilateral and involuntary divorce, so that one spouse may end a marriage without any agreement or fault by the other. Moreover, the spouse who divorces or otherwise abrogates the marriage contract incurs no liability for the costs or consequences, creating a unique and unprecedented legal anomaly. "In all other areas of contract law those who break a contract are expected to compensate their partner," writes Robert Whelan of London's Institute of Economic Affairs, "but under a system of 'no fault' divorce, this essential element of contract law is abrogated."

In fact, the legal implications go further, since the courts actively assist the violator. Attorney Steven Varnis points out that "the law generally supports the spouse seeking the divorce, even if that spouse was the wrongdoer." "No-fault" did not really remove fault, therefore; it simply allowed judges to redefine it however they pleased. It introduced the novel concept that one could be deemed guilty of violating an agreement that one had, in fact, not violated. "According to therapeutic precepts, the fault for marital breakup must be shared, even when one spouse unilaterally seeks a divorce," observes Barbara Whitehead in *The Divorce Culture*. "Many husbands and wives who did not seek or want divorce were stunned to learn...that they were equally 'at fault' in the dissolution of their marriages."

The "fault" that was ostensibly thrown out the front door of divorce proceedings re-entered through the back, but now with no precise definition. The judiciary was expanded from its traditional role of punishing crime or tort to punishing personal imperfections and private differences: One could now be summoned to court without having committed any infraction; the verdict was pre-determined; and one

could be found "guilty" of things that were not illegal. Lawmakers created an "automatic outcome," writes Judy Parejko, author of *Stolen Vows*. "A defendant is automatically found 'guilty' of irreconcilable differences and is not allowed a defense."

Though marriage ostensibly falls under civil law, the logic quickly extended into the criminal. The "automatic outcome" expanded into what effectively became a presumption of guilt against the involuntarily divorced spouse (the defendant). Yet the due process protections of formal criminal proceedings did not apply, so involuntary divorcees could become criminals without any action on their part and in ways they were powerless to avoid. In some jurisdictions, a divorce defendant is the only party in the courtroom without legal immunity.

Contrary to the assumptions of "change the culture" thinking, these laws were not enacted in response to public demand: No popular clamor to dispense with divorce restrictions preceded their passage; no public outrage at any perceived injustice provided the impetus; no public debate was ever held in the media. Legislators "were not responding to widespread public pressure but rather acceding to the well-orchestrated lobbying of a few activists," writes Christensen. "Eclipsed in the media...by other issues -- such as civil rights, Vietnam, Watergate, and abortion" -- the new laws rapidly swept the nation "with little publicity and no mass support."

In retrospect, these laws can be seen as one of the boldest social experiments in history. The result effectively abolished marriage as a legal contract. As a result, it's no longer possible to form a binding agreement to create a family.

### **Quiet Legal Maneuvers**

Though the changes were passed largely by and for the legal business, the ideological engine that has never been properly appreciated was organized feminism. Not generally perceived as a gender battle -- and never one they wished to advertise -- divorce became the most devastating weapon in the arsenal of feminism, because it creates millions of gender battles on the most personal level. Germaine Greer openly celebrates divorce as the foremost indicator of feminist triumph: "Exactly the thing that people tear their hair out about is exactly the thing I am very proud of," she tells the Australian newspaper.

This is hardly new. As early as the American Revolution and throughout the 19th century, "divorce became an increasingly important measure of women's political freedom as well as an \_expression of feminine initiative and independence," writes Whitehead. "The association of divorce with women's freedom and prerogatives...remained an enduring and important feature of American divorce."

Well before the 1970s, it was the symbiosis of law and women's rights that created the divorce revolution. The National Association of Women Lawyers (NAWL) claims credit for no-fault divorce, which it describes as "the greatest project NAWL has ever undertaken." As early as 1947, the NAWL convention approved a no-fault bill. Working through the American Bar Association, NAWL convinced the National Conference of Commissioners of Uniform State Laws (NCCUSL) to produce the Uniform Marriage and Divorce Act. "By 1977, the divorce portions had been adopted by nine states," NAWL proudly notes, and "the ideal of no-fault divorce became the guiding principle for reform of divorce laws in the majority of states." By 1985, every state had no-fault divorce.

Today, feminist operatives employ similar strategies to encourage divorce worldwide, often inserting it unnoticed and unopposed into programs for "human rights," and unilateral divorce is now one of the first measures implemented by leftist governments. When Spain's socialists came to power last year, their three domestic priorities were legalized abortion, same-sex marriage, and liberalized divorce. Iranian feminist Emadeddin Baghi writes in the *Washington Post* that "a 20 percent increase in the divorce rate is...a sign that traditional marriage is changing as women gain equality." And Turkey was required to withdraw a proposal to penalize adultery to gain acceptance in the European Union, while divorce liberalization counted in their favor.

### **The High Cost of Divorce**

The damage done by family breakdown -- especially to children -- is now so well known that it hardly needs laboring. Children of divorced parents suffer far more emotional and behavioral problems than do children from intact families. They are more likely to attempt suicide and to suffer poor health. They perform more poorly in school and are more inclined to become involved with drugs, alcohol, gangs, and crime. These problems continue into adulthood, when children of divorce have more trouble forming and keeping stable relationships of their own. Through divorce, they in turn pass these traits to their own children. All this entails social costs for the rest of us, giving the public an interest in family preservation.

It might be one thing if parents were colluding to inflict this on their own children, as divorce defenders like to pretend. Even given the social consequences, a case might still be made that divorce is each couple's "private decision," as Michigan Governor Jennifer Granholm recently claimed when she vetoed a mild reform bill. But in the vast majority of cases, only one of the parents imposes divorce on the children and the other parent. Astoundingly, the parent who inflicts the divorce on the children is also the one most likely to retain custody of them. In such cases, divorce isn't remotely; it amounts to a public seizure of the innocent spouse's children and invasion of his or her parental rights, perpetrated by our governments and using our tax dollars.

Indeed, civil freedom is perhaps the least appreciated casualty of unilateral divorce. G.K. Chesterton once warned that the family is the most enduring check on government power and that divorce and democracy were ultimately incompatible. The repressive measures being enacted against divorced fathers -- most of whom never agree to a divorce and are legally faultless -- now include incarcerations without trial or charge, coerced confessions, and the creation of special courts and forced labor facilities.

### **Recognizing the Problem**

No one should have any illusions that reversing these trends will be easy. The political interests that abolished marriage in the first place have only grown more wealthy and powerful off the system they created. Thirty-five years of unrestrained divorce have created a multibillion-dollar industry and given vast numbers of people a vested interest in it. Divorce and custody are the cash cow of the

judiciary and directly employ a host of federal, state, and local officials, plus private hangers-on. More largely, the societal ills left by broken families create further employment and power for even larger armies of officials. So entrenched has divorce become within our political economy, and so diabolical is its ability to insinuate itself throughout our political culture, that even critics seem to have developed a stake in having something to bemoan. Hardly anyone has an incentive to bring it under control.

In contrast with gay marriage, abortion, and pornography, politicians studiously avoid divorce laws. "Opposing gay marriage or gays in the military is for Republicans an easy, juicy, risk-free issue," Maggie Gallagher writes. "The message [is] that at all costs we should keep divorce off the political agenda." No American politician of national stature has ever challenged involuntary divorce. "Democrats did not want to anger their large constituency among women who saw easy divorce as a hard-won freedom and prerogative," observes Whitehead. "Republicans did not want to alienate their upscale constituents or their libertarian wing, both of whom tended to favor easy divorce, nor did they want to call attention to the divorces among their own leadership." In his famous denunciation of single parenthood, Vice President Dan Quayle was careful to make clear, "I am not talking about a situation where there is a divorce." The exception proves the rule. When Pope John Paul II spoke out against divorce in January 2002, he was roundly attacked from the Right as well as the Left.

Yet politicians can no longer ignore the issue. For one thing, the logic of the same-sex marriage controversy may force us to confront divorce, since the silence is becoming conspicuous and threatens to undermine the credibility of marriage proponents. "People who won't censure divorce carry no special weight as defenders of marriage," writes columnist Froma Harrop. "Moral authority doesn't come cheap."

There is also evidence that the public is becoming not only aware of, but increasingly impatient with, fallout from broken families. A 1999 NBC News/Wall Street Journal poll found that 78 percent of Americans see the high divorce rate as a serious problem, and a Time/CNN poll found that 61 percent believe it should be harder for couples with young children to divorce. David Schramm of Utah State University estimates that divorce costs Americans \$33.3 billion annually. "Taxpayers who have preserved their own marriages through personal integrity and sacrifice," Christensen suggests, "may find it puzzling and offensive that state officials appear so willing to dissolve marriages and to collectivize the costs."

### **Fighting Back**

Thus far, most proposals aimed at addressing the divorce issue have been limited to the least costly -- and least effective. Requirements that divorcing couples undergo waiting periods and counseling have passed in some states (and form the substance of most "covenant marriage" laws). But at best, such provisions merely delay the outcome. At worst, they place psychotherapists on the government payroll or force involuntary litigants to hire them. Either way, the therapists develop a stake in more divorce.

On the other hand, while simply banning groundless divorce shows more determination, it's unlikely to be very effective, since it isn't practical to force people to live together. An Arizona bill introduced in 2003, for example, stipulated that a court "shall not decree a dissolution of the marriage on grounds of incompatibility if: a) the wife is pregnant; or b) the couple has ever had a child." Such measures may discourage break-ups among observant Christians and could provide some legal redress against desertion. But as Chesterton observed, a ban on divorce is mostly, in practice, a ban on re-marriage. Under such a provision a spouse could simply separate (with the children) and live in permanent adultery with a new paramour.

Such schemes lend plausibility to some of the irrelevant arguments of divorce promoters: "No good can come from forcing people to remain in loveless marriages, even in the misguided belief that somehow it is better for the children," runs an editorial in the Daily Herald of Provo, Utah, opposing a mild reform bill recently introduced. "Is it really good for children to be raised in a home by two parents who don't love each other and who fight all the time but who are forced to stay because of the law?"

These questions are red herrings. Divorce today does not necessarily indicate marital conflict and is less likely to be the last resort for a troubled marriage than a sudden power grab. Most divorces are initiated with little warning and often involve child snatchings. In 25 percent of marriage breakdowns, writes Margaret Brinig of Iowa State University, the man has "no clue" there is a problem until the woman says she wants out. A University of Exeter study found that in over half the cases there was no recollection of major conflict before the separation. "The assumption that parental conflict will cease at divorce is not only invalid," writes Patricia Morgan; "divorce itself instigates conflict which continues into the post-divorce period."

Further, as Judith Wallerstein and Sandra Blakeslee found, few children are pleased with divorce, even when severe conflict exists. "Children...can be quite content even when their parents' marriage is profoundly unhappy for one or both partners," they write. "Only one in ten children in our study experienced relief when their parents divorced. These were mostly older children in families where there had been open violence." Divorce and separation almost always have a more detrimental effect on children than even high-conflict marriages. "The misery their parents may feel in an unhappy marriage is usually less significant than the changes [the children] have to go through after a divorce," says Neil Kalter, a University of Michigan psychologist. Surveys of children by Ann Mitchell and J.T. Landis found that most recalled a happy family life before the breakup.

### **How the Law Can Be Reformed**

In any case, limiting no-fault divorce will never force people to live together -- though done properly, it will provide strong incentives to work at their marriages rather than dissolve them. Reforming divorce laws, first of all, means re-introducing fault for violating the marital contract. It will, in effect, restore justice to the legal proceedings. "The alternative to liberal or 'no-fault' divorce is not no divorce," writes Whelan, "but divorce which is granted only...after due legal process to establish fault." The obvious counter-argument, that failed marriages often entail imperfections on both sides, does not justify abandoning all standards of justice. "There is fault on both sides in every human relationship," Fred Hanson acknowledged when the laws were enacted. "The faults, however, are far from equal. No



secular society can be operated on the theory that all faults are equal." Hanson was the dissenting member of NCCUSL, which designed no-fault laws. "To do justice between parties without regard to fault is an impossibility," he warned. "I wonder what's to become of the maxim that no man shall profit by his own wrong – or woman either, for that matter."

Tragically, we now have the answer in today's perversion of the criminal justice system by divorce-related accusations of domestic "abuse." Patently fabricated charges are now rampant in divorce courts, mostly to secure child custody and remove fathers, and the cry of "trapping women in abusive marriages" has become the principal argument against fault-based divorce. The irony is telling, since physical violence obviously is and always has been grounds for divorce. The argument also reveals the totalitarian nature of today's feminism. What feminists object to is being held to the same standards of evidence as everyone else by having to prove their accusations. Fault divorce would entail the "burden of proving that abuse had occurred," argues the Daily Herald. "It's not easy to accumulate medical records detailing injuries, eyewitnesses, and a police record of domestic violence calls to the house." It isn't? But that's precisely what the rest of us must do when we accuse others of vicious crimes. What feminists want -- and already have -- is the power to trample the presumption of innocence and due process of law in order to evict fathers on accusations of ill-defined "abuse" that cannot be proven because, in many cases, it did not take place at all.

This is the inevitable consequence of abolishing objective standards and allowing judges to create infractions out of whatever subjective grievance or "abuse" a tearful spouse invokes. To operate effectively, fault must entail objective, enumerated, and proven grounds that are understood at the time of marriage. These grounds may vary somewhat among jurisdictions, but spouses must have a reasonably predictable expectation of the consequences of specific misbehaviors and violations of the marital contract. This basic principle of justice is required of all other laws in a free society.

Further, to effectively deter divorce, fault must entail substantial consequences. Or stated more positively, innocence must carry substantial protections. While property considerations are not trivial, most important is that marriage must protect an innocent spouse's right to be left in peace with his or her children. Feminists complain that this punishes women for leaving a bad marriage. But strictly speaking (and aside from the question of whose behavior made it a bad marriage), it need entail no punishment at all. It simply allows an innocent spouse to invoke the protections for which he or she originally married.

This is the essential insight provided by the fathers in Massachusetts. Though not all of them question no-fault divorce, their plight illustrates why divorce reform will never succeed unless fault is tied to child custody. Because most divorces are filed by mothers, the fathers' demands could sharply reduce divorce and the stranglehold of the divorce industry.

Yet even this alone will prove insufficient. Divorce and custody are connected with larger problems of judicial activism and corruption, and judges can readily concoct justifications to rule in the best interests of themselves and their cronies. The Massachusetts same-sex marriage decision has unwittingly created common cause between family advocates and judicial reformers. This alliance must be expanded, since divorce reform and judicial reform are inseparable. As Gallagher writes, "People don't trust the legal system to determine who committed a murder, let alone whose conduct destroyed a marriage."

Today's family crisis is being attacked piecemeal by groups that hardly talk to one another, each hacking at branches that proceed from a common root: pro-family groups trying to forestall same-sex marriage, marriage promoters trying to discourage divorce, fathers demanding equal rights, African-American leaders encouraging family responsibility, and judicial reformers pushing for improvement. Alone, none of these will reverse the decline of the family. But taken together, they wield sufficient political strength to challenge the formidable judicial-divorce machinery.

Something like this coalition is emerging in Virginia, where disparate groups have teamed up to propose a "Family Bill of Rights." In addition to a marriage amendment, legislators have introduced an amendment protecting "the God-given rights of parents" to determine the upbringing of their children. Stronger still, Catholic state senator Ken Cuccinelli proposes tying child custody to marital fault, giving children the security of knowing they cannot be torn from a parent unless that parent has already acted to destroy their home. Together, these measures will give Virginia the strongest family protection provisions in the Western world.

## **The Religious Dimension**

But politicians and interest groups can only achieve so much; a central role remains for churches. Family integrity will be secure only when families are depoliticized and when the church, not the state, is both the first recourse at the advent of conflict and the family's principal guarantor against state encroachment. Our present predicament results partly because churches (with only the partial exception of the Catholic Church) abdicated these roles. Failure to intervene in the marriages it consecrated and to exert moral pressure on misbehaving spouses left a vacuum that has been filled by the state judiciary.

Reforming the family judiciary will therefore will create an immediate demand for the services of morally vigorous pastoral communities, even among those who previously viewed the church's role in their marriages as largely ceremonial. No greater challenge confronts the churches today -- nor any greater opportunity to stem the exodus from them, than to reinvigorate and defend their own sacrament and the families created by it.

Stephen Baskerville is political scientist at Howard University and author of *Not Peace but a Sword: The Political Theology of the English Revolution* (Routledge Press 1993). This essay was made possible by a fellowship from the Howard Center for Family, Religion, and Society.

# The Federal Propaganda Machine

[http://www.wnd.com/news/printer-friendly.asp?ARTICLE\\_ID=42657](http://www.wnd.com/news/printer-friendly.asp?ARTICLE_ID=42657)

**Stephen Baskerville, ACFC President, 02-02-05**

More than journalistic ethics is involved in revelations that the Department of Health and Human Services paid columnists to assist with its \$1.5 billion marriage scheme.

Attempts to discredit columnist Maggie Gallagher on partisan and ideological grounds are already receiving the bulk of media attention. But this spin must not be allowed to eclipse more important questions.

Gallagher is less the issue than the HHS officials who hired her, including Assistant Secretary Wade Horn. What we are seeing here is the tip of a massive government propaganda machine that reaches out to co-opt potential critics. Within its staggering half-trillion dollar budget, HHS commands over \$200 billion in pork-and-patronage grants, more than all other federal agencies combined. Purchasing cronies is not an aberration at HHS – it is the basic *modus operandi*.

As with all untruths, one failure to be forthright led to another. Gallagher failed to inform her readers that she was on the government payroll. Horn deceived readers and editors with a ghost-written article. But the seminal dishonesty necessitating these others was the underlying policies they were promoting.

HHS claims to be strengthening marriage. But never are we told precisely how federal bureaucrats can save anyone's marriage. HHS is simply devising another formula for infinite government growth.

Horn's marriage initiative is not the product of any popular demand. No family or citizens' groups have seriously advocated it. The initiative has come entirely from government officials and the government-dependent psychotherapy industry, whose members feed from the federal trough. In fact, the program is more likely to undermine marriage than strengthen it. "Relationship skills," "conflict resolution," "anger management," and "child behavior management" are among HHS' favored tools of family engineering. How far the government should be dabbling in psychotherapy has never been debated, but the program confers upon HHS and its psycho-buddies the power to define – and potentially redefine – marriage.

Equally deceptive and even more counterproductive, disbursements ostensibly for marriage enhancement thus far have gone mostly to fund child-support enforcement agencies. Child support is a subsidy on divorce and single-parent homes. HHS has never confronted the likelihood that, in the words of scholars Kimberly Folse and Hugo Varela-Alvarez, "Strong enforcement ... may, in fact ... lead to the unintended consequence of increasing the likelihood of divorce."

Despite pieties to the contrary, no government has a self-interest in reversing the growth of single-parent homes. "I oversee 65 different social programs at a cost of nearly \$47 billion dollars each year," writes Dr. Horn. "Go down the list of these programs – child welfare, child support enforcement, programs for runaway youth, anti-poverty programs – the need for each of these programs is either created or exacerbated by the breakup of families and marriages." The unstated corollary is that the administrators of these programs have a stake in those breakups. They also command billions to break them up.

Ironically, no writer has been more critical of political hypocrisy on family issues than Maggie Gallagher. In "The Abolition of Marriage" (1996), she forcefully castigated the "political cowardice" of leaders who refuse to confront the true causes of marriage dissolution, such as unilateral divorce. But the federally funded Maggie Gallagher now belittles attempts to change divorce laws.

Gallagher defends the payments because she is less a journalist than an "expert," and experts take government money all the time. "Nor is it considered unethical or shady," she observes. "If anything, government-funded work is considered a mark of an expert's respectability." Precisely the problem. The integrity of scholarship on family policy has been seriously compromised by government money, but this hardly justifies extending that corruption to journalism. That a huge proportion of research on the family is federally funded is precisely why topics HHS does not want raised are not raised.

Consider the impenetrable titles from Princeton's federally funded Bendheim-Thoman Center for Research on Child Wellbeing:

"The Hispanic Paradox and Breastfeeding: Does Acculturation Matter?"

"Documenting the Prevalence and Correlates of Multi-Partnered Fertility in the United States"

"Diversity Among Unmarried Parents: Human Capital, Attitudes, and Relationship Quality"

These studies are devoted to influencing *how* government should administer families rather than *whether* or *why* it should at all.

One searches in vain for research that asks the basic questions: Why precisely do so many children live in single-parent homes without their fathers? How may government programs and policies undermine families? Government-funded scholars seldom bite the hand that feeds them.

By co-opting scholars and now journalists, HHS has been orchestrating all sides of the family and fatherhood debate. The Department Of Justice has similarly manipulated the debate (or lack of debate) on domestic violence, another gravy train for therapists and social workers.

The two come together in another document Gallagher was paid to compose: "Can Government Strengthen Marriage?" a collaboration of Horn's National Fatherhood Initiative, Gallagher's Institute for Marriage and Public Policy, and David Blankenhorn's Institute for American Values. DOJ funded the publication, and not surprisingly the answer was a resounding "yes" (though it turns out the main thing government can do is provide more therapy). Also not surprisingly, DOJ does not fund studies with titles like "Is Government Destroying Marriage?" And why is DOJ (essentially federal prosecutors and police) involved in marriage at all? Perhaps because DOJ

is itself busy undermining marriage by funding dishonest programs to combat domestic "violence" that in most cases is not violent.

This nation is indebted to Dr. Horn. He has done more than anyone to raise awareness about the crisis of fatherless children. But as a public official Dr. Horn has not been fully forthright on the causes of this crisis and on the measures he is asking us to endorse. Before this leads to more deceptions, he must demonstrate the leadership necessary to confront the family crisis honestly, even at a cost to his own agency, or make room for someone who can.

For the Bush administration and incoming HHS Secretary Mike Leavitt, this likewise presents a critical opportunity. They can announce cosmetic reforms, dig in their heels, and concede this scandal to their critics. This will harm true conservatives who must eventually deal with this mess. Alternatively, they can seize the moral high ground, turn the tables on their critics, and demonstrate the statesmanship necessary to bring the HHS behemoth to book. A rogue federal agency is their issue to lose.

# The Doofus Department

<http://www.lewrockwell.com/orig2/baskerville6.html>

## Stephen Baskerville, 12-27-04

Those madcap child support officials are at it again. Ever vigilant in their pursuit of the elusive deadbeat, these Wile E. Coyotes of family policy are devising ever-more outlandish schemes to snare their quarry. It is ironic that a prominent theme in today's media culture is so-called [doofus dads](#), bumbling fools invariably defeated by the superior wisdom of their wives and children. For despite ever greater outlays of taxpayers' money for ever more intrusive incursions into civil liberties, it is not so much the fathers as their pursuers who are [shooting themselves in the foot](#).

Their latest escapade concerns Viola Trevino, who discovered she could obtain a child support order against a man without the inconvenience of actually having a child. Steve Barreras was forced to pay \$20,000 for a child that, it turns out, never existed. Barreras protested for years and produced documentation that no child could possibly exist, but he was ignored by New Mexico's Child Support Enforcement Division. "The child support system in this state is horrible," an Albuquerque woman tells a reporter. "A woman can walk into their office with a birth certificate and a 'sob' story and the man on that birth certificate is hunted down and forced to pay child support." Yet the agency – which ironically claims to be keeping an eye on other people's parental "responsibilities" – claims they were not responsible for the shakedown of Barreras, because they were "merely enforcing child support already ordered by a judge." No automatic provision requires the return of the fraudulently ordered payments, so to recover his money Barreras must hire more attorneys and sue.

Though officials try to dismiss such shenanigans as aberrations, they proceed logically from the child support system, which was created by lawyers and feminists not to provide for children but to plunder fathers and transfer their earnings to other grown-ups. In an increasingly typical decision, a Massachusetts Appeals Court ruled in November that a mother could collect full child support from two men for the same child.

But mothers are not the only ones using children to make a fast buck. Such apparently inane rulings are explicable only by the fact that child support is a moneymaker for lawyers, judges, bureaucrats, and government coffers, plus private hangers-on – all at the expense of fathers and federal taxpayers.

Michigan Attorney General Mike Cox recently hailed the passage of six (!) new laws that he says will help collect child support. But Cox already has egg on his face from his ill-fated scheme to recruit the state's children as government propagandists. Cox offered free Domino's pizzas to children who designed billboards vilifying their own fathers as deadbeats. He even invited mothers to express their feelings about their former husbands through their children's artwork. But far from shaming the supposed scoundrels, it was Cox who was forced to retreat with his tail between his legs. He cancelled the campaign when first the public and then Domino's directed more anger against him than against the fathers. One political cartoonist showed Cox telling a young child that she could not see her father but she could have a pepperoni pizza.

Michigan's enforcement methods have been the subject of federal legal challenges. Attorney Michael Tindall relates in Michigan Lawyers Weekly how he was arrested without warning when his payments were current. Wayne County enforcement agents admitted under oath that they frequently increase accounts without valid court orders. A federal court ruled that Michigan violated Tindall's due process rights under the Fourteenth Amendment. Yet the agency defied the court and even initiated another round of enforcement using the same illegal procedures to collect the same arrearage they had admitted was erroneous. Cox's campaign came as Michigan was set to lose \$208 million in federal funds if it did not meet federal guidelines for organizing its collection system. To comply, the state promised to accelerate the very measures that the federal court had ruled were in violation of the Fourteenth Amendment.

In just the last few months, repeated exposés of mismanagement and fraud throughout the child support system have poured forth from journalists, scholars, and even some officials themselves. These include charges of illegal and [unconstitutional practices that violate basic civil liberties](#).

In *Society*, Bryce Christensen writes, "The advocates of ever-more-aggressive measures for collecting child support... have moved us a dangerous step closer to a police state and have violated the rights of innocent and often impoverished fathers." In [The Law and Economics of Child Support Payments](#), William Comanor and a team of scholars have documented horrific abuses. Ronald Henry's essay calls the system and its rationalization "an obvious sham," a "disaster," and "the most onerous form of debt collection practiced in the United States." The fraudulent and predatory nature of the child support system has been documented in peer-reviewed publications by the [Independent Institute](#), the [National Center for Policy Analysis](#), the [American Political Science Association](#), and repeatedly in *Society*.

In 2002, a Georgia superior court ruled that the state's guidelines "bear no relationship to the constitutional standards for child support" and create "a windfall to the obligee." Characterizing the guidelines as "contrary both to public policy and common sense," the court noted that they bear no connection to any understanding of the cost of raising children. "The custodial parent does not contribute to child costs at the same rate as the non-custodial parent and, often, not at all," the court notes. "The presumptive award leaves the non-custodial parent in poverty while the custodial parent enjoys a notably higher standard of living." The court anticipated the findings of Comanor and his team: "The guidelines are so excessive as to force non-custodial parents to frequently work extra jobs for basic needs.... Obligors are frequently forced to work in a cash economy to survive."

A Wisconsin court likewise found that state's guidelines "result in a figure so far beyond the child's needs as to be irrational." When a court struck down Tennessee's guidelines on similar grounds, the state Department of Human Services (which jails fathers for violating court orders), announced they would not abide by the ruling.

One may disagree with these assessments. Yet despite admitting that the system it oversees is "way out of balance," the federal Department of Health and Human Services (HHS) has never even acknowledged these scathing allegations or made any effort to

correct them.

Last summer, HHS's Office of Child Support Enforcement (OCSE) held an invitation-only meeting for local officials and a few organizations and announced (in a perhaps unfortunate wording) a new "five-year plan" called the National Child Support Enforcement Strategic Plan.

OCSE Director Sherri Heller promised to develop fairer procedures. Yet nothing in the Plan addresses the violations of constitutional rights and civil liberties. In a peculiar example of Orwellian newspeak, the Plan promises to build a "culture of compliance," in which parents support their children "voluntarily" but also says that "severe enforcement remedies" will be used against parents who fail to volunteer.

The Plan includes nothing about the desirability of observing due process of law or respecting constitutional rights. No concern is expressed that guidelines be just and appropriate. Nowhere is the charge addressed that child support may be subsidizing family breakups, nor is the possibility raised of using federal subsidies to encourage shared parenting, which would relieve the overall enforcement load. No concrete measures or incentives are advanced for requiring or encouraging the involvement of non-custodial parents in the decision-making or raising of their children.

None of the scholars who have criticized the system's ethics and methods was invited to speak at this or any other meeting sponsored by OCSE. Instead house academic Elaine Sorensen was trotted out to reinforce the official line. Sorensen dismissed the Georgia Superior Court decision as "only one judge's opinion."

If any public official (plus millions of citizens) is alleging that federal police operations are sending innocent people to prison, one would think this at least a matter for discussion, if not investigation – especially in an agency that acknowledges its operations are "way out of balance." But OCSE have their fingers in their ears. One official acknowledged that in preparing the Plan no solicitation of public comments was ever issued and no systematic citizen input was collected.

The appointment of a new HHS secretary offers the Bush administration the opportunity to honestly confront the sprawling welfare machine in its destructive entirety. Though Mike Leavitt seems to have little experience in these matters, he may also arrive free of the ideological baggage that made his predecessor Tommy Thompson one of the most authoritarian and disliked figures in the administration.

The Associated Press reports that Indiana is losing more than \$57 million a year in state and federal tax dollars to collect child support payments averaging about \$54 a week. Yet in a bold leap of logic, the AP blames the boondoggle not on the legislators who are wasting taxpayers' money but on unnamed malefactors who are about as real as Viola Trevino's baby.



# The Failure of Fatherhood Policy

<http://www.lewrockwell.com/orig2/baskerville5.html>

[Stephen Baskerville](#), 09-03-04

David Blankenhorn is considered by many to be the leading intellectual authority on the crisis of fatherless children. His book *Fatherless America* is justly acknowledged as an authoritative statement of "the most harmful demographic trend of this generation." Its influence on government policy has been immeasurable through the "responsible fatherhood" programs of the Clinton administration and many state and local governments during the 1990's. It continues to influence the marriage promotion schemes now being advocated by the Bush administration.

So it is worth listening when Mr. Blankenhorn laments that "everywhere one looks today for political and social commentary, seriousness is on the wane, intemperance is the favored style, and the barking dogs have taken over the conversation." Yet Mr. Blankenhorn himself may not be immune from his own strictures concerning civil public debate.

In his [web log](#), Blankenhorn launches an attack, not on the substance of any published facts or arguments but on an organization that supports scholarly research with which he disagrees, the respected Howard Center for Family, Religion, and Society. Blankenhorn seems to believe the Howard Center is answerable to him for the scholars they support (in this case the scholar is me) and calls them on the carpet accordingly. While I hesitate to be drawn into discussions of other people's motives, I believe I know the reason for this behavior.

At the outset of his otherwise admirable book, Blankenhorn makes a vitally important but unsubstantiated assertion that lies at the heart of his claim to be an authority on the fatherhood crisis. "Never before in this country have so many children been voluntarily abandoned by their fathers," he writes (p. 1). "Today, the principal cause of fatherlessness is paternal choice...the rising rate of paternal abandonment" (pp. 22-23).

Blankenhorn cites no source and evinces no evidence for these assertions. Aside from the question of how he can be privy to the volition of other people, this statement represents an odd abdication of the scholar's critical function. He seems to take it at face value that because children do not live with their fathers, therefore their fathers have abandoned them. Yet this does not necessarily follow.

In fact, Blankenhorn's statements have been called into serious question by in-depth investigations on precisely this subject. Research published in refereed journals by respected scholars like Sanford Braver, Margaret Brinig, Douglas Allen, Ilene Wolcott, Jody Hughes, Judith Wallerstein, and Sandra Blakeslee, and corroborated by the professional experience of authors as ideologically diverse as Constance Ahrons, Shere Hite, David Chambers, Robert Seidenberg, and Rosalind Miles, indicates that paternal abandonment cannot account for widespread fatherlessness.

After years of defamation, the very parents Mr. Blankenhorn excoriates for abandoning their children are protesting that they have done no such thing. Their protestations are now being heard in reputable current affairs publications and even peer-reviewed academic journals. The last issue of the refereed *Independent Review*, asks "Is There Really a Fatherhood Crisis?" To my knowledge, Mr. Blankenhorn has not responded.

The stakes here are not trivial. Blankenhorn's error goes to the core of our understanding of the fatherlessness phenomenon and by extension of the larger family crisis whose manifestations now appear on the front pages. It is difficult to exaggerate the impact of this misconception in justifying a host of ineffective and counterproductive policies during the last two presidential administrations and by numerous local governments. His undocumented allegation has misled the uninformed and armed the unscrupulous with a weapon to garner political capital by whipping up hysteria against innocent parents, in the process exacerbating the plight of fatherless children.

The untruth that widespread fatherlessness is caused primarily by paternal abandonment disguises the uncontested truth that millions of innocent children are kept in forced separation from legally unimpeachable fathers by court orders that their fathers may breach only on pain of incarceration. The misconception has also been used to justify ever-more repressive police measures and violations of constitutional rights against ever-greater numbers of law-abiding citizens under the guise of collecting child support. Worse, these measures actually contribute to fatherless homes by serving as a subsidy on divorce and by incarcerating parents for circumstances that are beyond their control.

If Blankenhorn is correct about paternal abandonment, then we indeed have a law enforcement problem of massive proportions, against which we must commit vastly more resources for police, courts, prosecutors, and prisons, since the huge expansion of the penal apparatus already implemented over the last decade in response to alleged paternal abandonment has made almost no dent in the problem. On the other hand, if the scholars cited above are correct, then such an expansion of police power will achieve nothing but to increase still further the number of fatherless children. For it is precisely this expansion of government power which is largely responsible for the problem in the first place.

It is no exaggeration to say that this question could determine the future of family policy in America. Indeed, it may not be far-fetched to suggest that this question carries implications far beyond family policy, since – and it is Blankenhorn's own achievement to have established this – fatherlessness is at the root of most larger social pathologies, including poverty, violent crime, substance abuse, and truancy.

The societal ills Blankenhorn links to fatherlessness have driven the government-growth policies of both the left and the right. They have justified the exponential expansion of both the welfare state and the penal apparatus.

If these problems stem from a spontaneous social phenomenon – fathers abandoning their children – then it is difficult to challenge the need for programs to combat them. If, by contrast, the option becomes available that we might control most of our social problems by curtailing the power of government to separate children from their fathers, then most programs expanding government power become superfluous. Anti-poverty programs, expanding law-enforcement powers, the war on drugs, federal education programs – all are

rationalized by "crises" whose roots lay in broken homes and exiled fathers.

It hardly need be added that armies of scholars who dedicate their careers and justify their funding by studying ever-more arcane aspects of these phenomena also become largely unnecessary.

After more than a decade of government programs predicated on this fallacy, the fatherhood crisis continues to grow progressively worse. Rather than continuing to heap blame for our public policy failures on the backs of scapegoats, it may be time to re-evaluate the central misconception upon which they are based.

I challenge Mr. Blankenhorn to confront and refute the facts published by any writer who has questioned his assertion rather than trying to silence others by undercutting the platform from which they speak. If he can show us where we are wrong, then perhaps we can begin to work together to confront the problem, and he will have earned a place as a leader in this vexing problem.

On the other hand, if Mr. Blankenhorn cannot make good his assertion, then it is time for him to acknowledge his error and retract it.

# Child Support Feds Hold Meeting, Announce New "Strategic Plan"

<http://www.mensnewsdaily.com/archive/a-b/baskerville/2004/baskerville082404.htm>

**Dr. Stephen Baskerville, 08-24-04**

The federal Office of Child Support Enforcement (OCSE) held the first part of a two-day, "invitation only" meeting today called the African-American Forum. Invitees included child support enforcement officials, small community groups, and a small number of national organizations, including the American Coalition for Fathers and Children.

OCSE Director Sherri Heller, opening the meeting, announced a new National Child Support Enforcement Strategic Plan, 2005-2009. Dr. Heller acknowledged that the current enforcement system is "way out of balance" and promised to develop procedures that "treat both parents fairly." She began the meeting by saying it would be a "two-way conversation" and said, "We want to listen," though immediately following her remarks she left the meeting.

Dr. Heller said she was excited by the new Strategic Plan, though the document seems to contain little that is substantially new. She promised to prevent the build-up of unpaid arrearages through "early intervention" but did not say precisely what that intervention would be. She also pledged that more payments would go directly to "families" and less to the government. The Strategic Plan says its aim is to build a "culture of compliance," in which parents support their children "voluntarily" but also says that "severe enforcement remedies" would be applied to those who fail to volunteer.

Paige Biava of OCSE claimed that child support enforcement officials and some community groups had been consulted in preparing the document but acknowledged that no solicitation of public comments was ever issued and no systematic citizen input was collected. She said the basic principle of the plan is that "Families come first." She said OCSE defines a "family" as the custodial parent and children but in response to a suggestion accepted that it might be appropriate to include the non-custodial parent as well. The Strategic Plan lists "our customers, partners, and stakeholders" as including children, custodians, child support enforcement agencies, courts, law enforcement agencies, employers, financial institutions, hospitals, departments of corrections, attorneys, prosecutors, interest groups, churches, and legislatures. The list does not include non-custodial parents.

In response to another question, OCSE official Melvin Sutton said his office and local child support offices can provide no assistance with visitation interference and that no federal guidelines govern or encourage visitation.

Perhaps most revealing was what both the Strategic Plan and the agenda of the two-day meeting did not contain. In recent years severe criticism of the child support system has issued forth from journalists, scholars, and even some judges, as well as non-custodial parents. These include charges of illegal and unconstitutional practices that violate constitutional rights. Yet no acknowledgement was made of such allegations nor was any effort made to address them.

In *Society* magazine, Bryce Christensen writes, "The advocates of ever-more-aggressive measures for collecting child support...have moved us a dangerous step closer to a police state and have violated the rights of innocent and often impoverished fathers." *Liberty* magazine has called the child support problem a "myth." Sanford Braver has meticulously debunked it with documentation. A new book, "The Law and Economics of Child Support Payments, edited by William Comanor, contains many essays critical of the child support system. Ronald Henry's contribution to that volume calls the system and its justification "an obvious sham," a "disaster," and "the most onerous form of debt collection practiced in the United States." A Georgia Superior Court judge declared guidelines unconstitutional on "numerous" grounds in 2002. Last December, the ACLU demanded the release of 100 prisoners in a single Pennsylvania county on grounds that they had been incarcerated without due process of law.

One may disagree with these assessments. Yet nowhere in the Strategic Plan, which will govern the operation of the child support system for the next four years, is there any recognition that such serious criticisms have even been raised. Apparently none of the above mentioned scholars who have questioned the ethics and methods of child support enforcement was invited to speak at this or any other meeting sponsored by OCSE. Instead Elaine Sorensen, who has spoken at many such meetings, presented research that was very similar to research she has presented many times before.

The Strategic Plan makes no mention of the desirability of observing due process of law or the constitutional rights of parents and children. No concern is expressed that guidelines be just and appropriate. Nowhere is the possibility raised of using federal guidelines to discourage divorce or encourage shared parenting, both of which would relieve the overall enforcement load. No concrete measures or incentives are advanced for requiring or encouraging the involvement of non-custodial parents in the decision-making or raising of their children.

Finally, the tone of the meeting was highly significant. Speakers and officials were frequently interrupted with questions, which were often direct and even hostile. This was in sharp contrast to the deference display at similar meetings only a few years ago. Bearing in mind that many participants were involved with groups that receive federal money, the critical response was marked.

The meeting continues Tuesday. The contact official for information is:

Ja-Na Bordes, (202) 401-5713, [JBordes@acf.hhs.gov](mailto:JBordes@acf.hhs.gov)

# A Primer Against Gay Marriage

<http://mensnewsdaily.com/archive/a-b/baskerville/2004/baskerville081304.htm>

**Dr. Stephen Baskerville, 08-13-04**

Peter Sprigg begins his new book on same-sex marriage, *Outrage*, with a paradox: Most Americans oppose it, "yet in terms of political action, the pro-family, pro-marriage majority has been strangely muted." Sprigg attributes this to a lack of intellectual ammunition and aims to remedy that deficiency with this book.

He is certainly qualified to do so. Director of the Center for Marriage and Family Studies at the Family Research Council (FRC), Sprigg has also co-authored a more scholarly book published by FRC that assembles the scientific research on homosexuality. Some highlights of that research provide the factual foundation for the present book. So while this is avowedly a polemical work, it is based on solid evidence. The result is a concise, clear, and readable book that provides an excellent introduction to where we now stand on perhaps the most emotional issue on the national agenda.

Sprigg briefly but effectively surveys the major arguments in the controversy. He counters what he regards as his opponents' strongest argument: that gay marriage is a "civil right," a suggestion he says is positively insulting to those who have experienced the brutal denial of true civil rights. He shows that the African-American community, where acute family deterioration precludes the luxury of indulging in fashionable social experiments, opposes same-sex marriage by a larger margin than whites.

Sprigg also confronts the false comparison with anti-miscegenation laws, the allegedly unfair denial of financial benefits to gay partners, and the disingenuous federalist argument. On the other hand, he invokes research showing the impact on children of being raised in homosexual households, the unanswered "slippery slope" argument that same-sex marriage must open the door to further redefinitions of marriage (such as polygamy), and the disturbing extent of promiscuity and even pedophilia within gay culture.

His appeal to libertarians is especially valuable. A superficial libertarianism relegates marriage to private life. But the issue is what marriages the state recognizes. More largely, the erosion of family cohesion may be the single most important factor driving the expansion of government power over private life.

Likewise, his brief note on how official recognition of homosexuality, combined with "hate crime" laws, is already curtailing freedom of worship and speech is of interest not only to Christians and might have been worth expanding.

The larger question concerns the assumption on which he predicates the book: Is opposition to same-sex marriage not only widespread but determined enough to be mobilized by providing the right arguments?

Some evidence suggests it is. Citizens recently shut down the congressional voice mail system with calls opposing homosexual marriage. This campaign has certainly had the merit of placing family policy on the front pages and in the election campaign.

But the potential to actually mobilize sustained opposition may be limited. Indeed, some who agree with Sprigg's position oppose his proffered solution, the Federal Marriage Amendment to the Constitution, which Congress recently rejected.

There are various reasons for weak public mobilization, but the most significant may relate to the one argument Sprigg does not refute: that "Heterosexuals severing the link between marriage and sexual activity, and marriage and childrearing, has done the most damage to the institution of marriage."

This is the central conundrum that activists on both sides of the issue repeatedly point out: that divorce and out-of-wedlock births pose a more serious threat to marriage than do gay unions. Sprigg does not avoid this argument; he embraces it. Moreover, the book seems to recognize that, sooner or later, it must be confronted squarely. The introduction by FRC President Tony Perkins, sponsor of the nation's first covenant marriage law in Louisiana, begins disarmingly by likening same-sex marriage to no-fault divorce and describes the damage no-fault laws have done to families and children.

Indeed, evidence indicates that the real "redefinition" of marriage took place 30 years ago and today's controversy is merely the logical culmination. As scholar Bryce Christensen argues, gay marriage would probably not be an issue were it not for the weakening of marriage through no-fault divorce laws.

This is a huge can of worms, and it is hardly fair to fault Sprigg for not wishing to open it in a short book with a limited purpose. Just tipping the lid as he and Perkins do sends a bold message.

But if family advocates are to take and keep the moral high ground, and maintain the momentum they have developed over gay marriage, they will eventually have to move beyond these arguments to a more comprehensive defense of the family by challenging the larger policy failures that have eviscerated it. This is a nettle to be grasped, not avoided, and the same-sex marriage controversy could be the critical turning point, presenting an opportunity that may not come again.

Sprigg does mention efforts to roll back no-fault divorce, but these have not been pursued with remotely the same determination as opposition to same-sex marriage or abortion. The divorce laws have smoldered too long on the back burner, awaiting changes in the "culture." But no one ignores same-sex marriage or abortion by waiting for cultural change; they are confronted as public policy issues.

This might activate the forces Sprigg finds perplexingly passive. He argues that gay parenting erodes the status of both mothers and fathers. Yet the status of parents has already been seriously eroded. Ask homeschoolers, victims of spurious child-abuse accusations,

or non-custodial parents. (The only error I detected throughout the book was an aside on how "deadbeat dads abandon their kids"--not only an unnecessary concession that has been roundly refuted by recent research but one that extracts the marriage controversy from its larger context: government policy weakening parent-child bonds.) Is it likely that a citizens' revolt against the erosion of parental authority will be motivated by a desire to defend motherhood or fatherhood in the abstract or from parents who need to defend their own motherhood and fatherhood in the concrete?

Sprigg points out that it is the proponents, not the opponents, of redefining marriage who are the public policy innovators. He and his allies are simply responding in defense of traditional marriage. True enough. But having disposed of these issues, Sprigg might consider writing another book, one that widens the debate and takes a morally proactive, rather than reactive, stance.

One might easily be lulled into the illusion that such a fine book puts an end to the conversation. In fact, it is only the beginning.

Originally published in Human Events Online.



# The Fatherhood Crisis:

Time for a New Look?

<http://mensnewsdaily.com/archive/a-b/baskerville/2004/policy070704.pdf>

Stephen Baskerville, Department of Political Science - Howard University, 06-01-04

NCPA Policy Report No. 267

June 2004

Web site: [www.ncpa.org/pub/st/st267](http://www.ncpa.org/pub/st/st267)

National Center for Policy Analysis

12655 N. Central Expressway, Suite 720

Dallas, Texas 75243

(972) 386-6272

## Executive Summary

Fatherhood, marriage and related issues of family structure now dominate the domestic policy agenda. In 1995, President Bill Clinton stated "the single biggest social problem in our society may be the growing absence of fathers from their children's homes, because it contributes to so many other social problems." By 2000, nearly a third of children under the age of 18 lived with only one parent, usually their mother. While Clinton and other politicians attributed the growing absence of fathers from their children's homes to abandonment, there is no evidence that desertion is increasing. The absence of fathers from the home is principally due to the increase in divorce:

- Half of first marriages and 60 percent of second marriages in the United States now end in divorce.
- About 1.2 million divorces occur each year, involving approximately 1 million children.
- More than half of the children who live with one parent do so because of the break-up of a marriage.

Fatherless families is a growing problem, but the principal cause is not bad behavior or the fault of fathers; it is government policies with respect to divorce and child support. Beginning with California in 1969, every state has adopted "no-fault" divorce, which may be more properly called unilateral divorce — one partner can end a marriage without penalty and without the consent of the other party.

President Clinton and others charged that "deadbeat dads" are willfully failing to meet child support obligations. Consequently, new laws were passed to garnish noncustodial parents' wages and tax refunds, and criminal penalties for nonpayment were stiffened. These policies continue under the current administration. However, child support levels are set according to inflexible rules that do not consider individual circumstances and are difficult to adjust. Although most fathers make their child support payments, some are simply unable to do so.

A divorce decree is only the beginning of the government's involvement in a family's life; until the children reach the age of majority, their lives, and their parents', are subject to regulation by a growing apparatus of child support enforcement, family courts and social welfare agencies. This system controls the involvement a noncustodial parent in his children's lives. For example, a father may be denied access to his children if he does not undergo psychological counseling at his own expense.

If couples were able to make their own marriage or divorce contracts, they could increase the welfare of both parents (and the children), compared to court decrees or the straight-jacket of one-size-fits-all legislation. But for contractual solutions to work, the law must specify the parameters of agreements that the courts must enforce. Provisions of private marriage or pre-nuptial agreements governing children are not enforceable under current law. The child custody system could be reformed through joint custody or "shared parenting" provisions. These proposals have to be debated and enacted state by state. On the national level, the problem could be addressed as one of constitutional rights to due process, and parents' right to involvement in their children's lives.

## Introduction: Fatherhood in America <sup>11</sup>

***"The share of children under 18 living in fatherless families has risen continuously since 1970."***

Fatherhood is rapidly becoming the number one social policy issue in America. In 1995, President Bill Clinton stated "the single biggest social problem in our society may be the growing absence of fathers from their children's homes, because it contributes to so many other social problems." In 1997, Congress created a task force to promote fatherhood, and governors' and mayors' conferences followed in 1998. In 2002, President George W. Bush unveiled a \$320 million package of initiatives to promote "responsible fatherhood." Nonprofit organizations such as the National Fatherhood Initiative were formed in the mid-1990s to combat the problem of father absence.

In addition to the growing physical absence of fathers from their children's homes, President Clinton and others charged that "deadbeat dads" were abandoning their court-ordered child support obligations. The lack of financial support from their fathers was said to leave more children in poverty and more mothers dependent on public welfare. Nonsupportive fathers were said to also be otherwise uninvolved in their children's lives, encouraging social pathologies associated with child abandonment. New laws were passed to garnish noncustodial parents' wages and tax refunds, and penalties for nonpayment were stiffened. Federal and state spending on child support collection increased dramatically. And the private sector was enlisted in a growing web of child support enforcement efforts.

Fatherless families is a growing problem, but the principal cause is not bad behavior or the fault of fathers; it is government policies with respect to divorce and child support. In the early 1970s, "no fault" divorce laws replaced the historical fault-based system with unilateral

divorce — in which one partner can end a marriage without penalty and without the consent of the other party. Unilateral divorce thus favors the partner who wants to end a marriage over the one who wants to maintain an intact family. <sup>12</sup> In the decades since, state laws regarding child custody, visitation rights, child support and enforcement have undergone a revolution. A divorce decree is only the beginning of the government's involvement in a family's life; until the children reach the age of majority, their lives may be regulated by the growing apparatus of child support enforcement, quasi-judicial family courts and social welfare agencies.

## The Growing Problem of Fatherlessness

***“Nearly a third of children lived with one parent— usually the mother—in 2000.”***

***“About 1.2 million divorces occur each year, involving approximately 1 million children.”***

***“Fatherlessness is strongly associated with virtually every major social pathology.”***

Federal statistics show an alarming long-term growth in the proportion of children living in fatherless households. Research has shown the negative effects on children and society of living without fathers.

**The Growth of Fatherless Families.** The proportion of children under 18 years living with their mothers only as a result of divorce or lack of marriage has risen continuously since 1970. <sup>13</sup> [See Figure I.] By 2000, nearly a third of children under the age of 18 lived with only one parent, usually their mother. <sup>14</sup> [See Figure II.] Figure III shows the reason why <sup>15</sup>:

- More than half of the children who live with one parent do so because of the break-up of a marriage — of those children living with only one parent, 38 percent live in a single parent household due to divorce, and 19 percent due to parents separating.
- Another third (35 percent) live with a never-married parent, most of whom are single mothers.
- Just 8 percent of children live in single parent households for other reasons, such as widowhood (4 percent).

This increase in single parent households is due to a number of factors, including the availability of welfare, the growing acceptance of single motherhood, childbearing outside of marriage and higher divorce rates. But the increase in divorce is the most important factor

**Divorce and Children.** The number of divorces in the United States involving children doubled from 1960 to the late 1980s as the rate of divorce more than doubled <sup>16</sup>:

- Half of first marriages and 60 percent of second marriages in the United States now end in divorce.
- About 1.2 million divorces occur each year, involving approximately 1 million children.
- More than half of the children who live with one parent do so because of the break-up of a marriage. <sup>17</sup>

By the age of 18, more than 20 percent of American children will experience the divorce of their parents. Most of those children will then live in fatherless homes, with their mother having sole custody.

**Crisis of Fatherless Children.** Virtually every major social pathology — including violent crime, drug and alcohol abuse, truancy, teen pregnancy and suicide — is strongly associated with fatherlessness. <sup>18</sup> For example:

- A majority of prisoners, juvenile detention inmates, high school dropouts, pregnant teenagers, adolescent murderers and rapists all come from fatherless homes. <sup>19</sup>
- The prevalence of delinquency among children from broken homes is 10 percent to 15 percent higher than among children from intact homes. <sup>110</sup>
- Researchers have found that “The likelihood that a young male will engage in criminal activity doubles if he is raised without a father and triples if he lives in a neighborhood with a high concentration of single-parent families.” <sup>111</sup>
- Seventy percent of the juveniles in state reform institutions, 72 percent of adolescent murderers, and 60 percent of America's rapists grew up without fathers. <sup>112</sup>
- After taking into account race, socioeconomic status, sex, age and ability, teenagers from single-parent households are 1.7 times more likely to drop out of high school than their corresponding counterparts living with both biological parents.” <sup>113</sup>

The connection of social pathologies with fatherless homes is so strong that some researchers have concluded that the likelihood of children's involvement in crime is determined by the extent of both parents' involvement in their children's lives, rather than income or race. <sup>114</sup>

## The Myth of the “Deadbeat Dad” <sup>115</sup>

***“There is no evidence that fathers are voluntarily abandoning their children en masse.”***

The conventional wisdom — enunciated by political leaders, media commentators, and scholars on both the left and the right — assumes that the problem of fatherlessness stems from paternal abandonment.

**Conventional Wisdom.** David Blankenhorn writes “the principal cause of fatherlessness is paternal choice...the rising rate of paternal abandonment.” <sup>116</sup> The little work that has been done by political scientists perpetuates this assumption. “Husbands abandon wives and children with no looking back,” writes Cynthia Daniels. <sup>117</sup> “Millions of men walk out on their children,” says Robert Griswold. <sup>118</sup>

Conservatives, who have done the most to call attention to fatherlessness, also accept this explanation. Rutgers University anthropologist Lionel Tiger writes that the abandonment of women by men is responsible for “...much of the 50 percent divorce rate...” and may help “...explain the singlemother rate of over 30 percent of births across the industrial world.” <sup>119</sup> Social philosopher Leon Kass

blames feminism for liberating men from their responsibilities. <sup>120</sup>

“Children should not have to suffer twice for the decisions of their parents to divorce,” U.S. Sen. Mike DeWine (R-Ohio) stated in June 1998, “once when they decide to divorce, and again when one of the parents evades the financial responsibility to care for them.” <sup>121</sup>

**Evidence on Divorced Fathers.** All this may seem intuitively correct, but is it true? In fact, no government or academic study has ever shown large numbers of fathers are voluntarily abandoning their children. Moreover, those studies addressing the question have arrived at a rather different conclusion:

- In the largest federally funded study ever undertaken on the subject, psychologist Sanford Braver found the “deadbeat dad” who walks out on his family and evades child support “does not exist in significant numbers.” <sup>122</sup>
- Braver found women initiate at least two-thirds of divorces, and that the cause of action is rarely desertion, adultery or violence. <sup>123</sup>

Other studies found much higher proportions of divorce proceedings are initiated by women:

- Researcher Shere Hite reports that 91 percent of divorces are initiated by wives. <sup>124</sup>
- And David Chambers claims “the wife is the moving party in divorce actions seven times out of eight.” <sup>125</sup>

Women are almost always awarded custody of the children, leading one research team to conclude that “who gets the children is by far the most important component in deciding who files for divorce.” <sup>126</sup> Conversely, this indicates that it is often fathers who want to keep families intact, and that aspects of unilateral divorce, such as child custody, favors the wife and mother over the husband and father.

**Evidence on Unmarried Fathers.** Compared with divorced fathers, the circumstances of unmarried fathers, usually younger and poorer, are more difficult to document. Yet here too the evidence contradicts the stereotype of the irresponsible father who abandons his children. For example, according to one study of low-income, unmarried, noncustodial fathers aged 16 to 25: <sup>127</sup>

- Young unmarried fathers are not particularly promiscuous — 63 percent had only one child, 82 percent had children by only one mother, 50 percent had been in a serious relationship with the mother at the time of pregnancy, and only 3 percent knew the mother of their child “only a little.”
- They are involved in their children’s lives — 75 percent visited their child in the hospital, 70 percent saw their children at least once a week, 50 percent took their child to the doctor, and large percentages reported bathing, feeding, dressing and playing with their children.
- They want to fulfill their financial responsibilities — 85 percent provided informal child support in the form of cash or purchased goods such as diapers, clothing and toys.

Furthermore, a study of low-income fathers in England found “the most common reason given by the fathers for not having more contact with their children was the mothers’ reluctance to let them. . . . Most of the men were proud to be seen as competent caregivers and displayed a knowledge of child-care issues.” <sup>128</sup>

## The Role of Government

*“Unilateral divorce favors the partner who wants to end a marriage over the one who wants to maintain an intact family.”*

*“The power of family court judges in divorce proceedings is virtually unlimited.”*

*“Family court judges issue about 2 million restraining orders each year.”*

*“A parent has more constitutional rights with respect to his home than to his child.”*

*“A noncustodial parent can pay as much as half of his net income in child support.”*

*“Child support enforcement involves nearly 60,000 agents throughout the U.S.”*

Some 40 percent of the nation’s children and 60 percent of African- American children live in homes without their fathers. <sup>129</sup> If fathers are not abandoning their children in record numbers, why are so many children without fathers? The growth of divorce described above leads to the absence of many fathers from their children’s homes. Through the courts and child welfare agencies, the government regulates the divorced family, controlling the access of divorced and never-married fathers to their children. It can also impose financial obligations that fathers are unable to meet adding to the number of “deadbeat dads.”

**Unilateral Divorce.** Divorce traditionally required finding one marriage partner at fault — adultery, cruelty or desertion were common grounds. But beginning with California in 1969, every state has adopted “nofault” divorce laws that allow the dissolution of marriages with no finding of fault. In 17 states fault is never considered. <sup>130</sup> No-fault divorce might more properly be called unilateral divorce — one partner can end a marriage without penalty and without the consent of the other party. Unilateral divorce thus favors the partner who wants to end a marriage over the one who wants to maintain an intact family. <sup>131</sup>

**Family Courts.** Over the past 40 years, there has evolved a system of federal, state and local bureaucracies responsible for children’s welfare, child protection, child support enforcement and other quasi-police functions related to children. Like the fatherhood problem itself, this apparatus is most highly developed in the English-speaking countries, especially the United States. That is because these countries have a more extensive history of divorce, <sup>132</sup> and their Common Law tradition gives wide discretionary authority to judges. Their legal systems also give attorneys incentives to seek redress through litigation. Today, virtually every democratic country, including those outside of the common law tradition, has special courts and civil service agencies for family issues. <sup>133</sup> Fatherlessness and this

judicial-bureaucratic machinery are growing worldwide.<sup>134</sup> The linchpin of this machinery is the judicial system of family courts.

Although they are set up by the states, family courts are unlike any other government body. Unlike other courts, their hearings are usually closed to the public, they generally leave no record of proceedings, and they keep few statistics on their decisions. In some ways they are closer to administrative agencies than courts; Robert W. Page, Presiding Judge of the Family Part of the Superior Court of New Jersey, describes them as a “social service delivery system.”<sup>135</sup>

*Power of Family Courts.* The jurisdiction of family courts includes divorce, custody, child support, child protection, domestic violence and juvenile crime. Their workload is determined by the existence of these problems, all of which are directly connected with fatherless homes. In terms of their ability to regulate the personal lives of citizens, family courts are regarded by many as the most intrusive and powerful. According to Judge Page, “The family court is the most powerful branch of the judiciary.” Page approvingly cites a judicial commission to the effect that “the power of family court judges is almost unlimited.”<sup>136</sup>

The powers of family courts include removing children from their parents, directing the details of the children’s upbringing, and controlling the movements, finances and other details of the parents’ private lives. The right of a noncustodial parent to remain involved in his children’s lives through visitation is a privilege controlled by family courts and bureaucrats. For example, a father may be denied access to children if he does not undergo psychological counseling at his own expense.<sup>137</sup>

Court-imposed divorce settlements now subordinate the rights of the parents to the “best interest” of the children as determined by the courts. To ensure the children’s interests are protected, they may be represented by a court-appointed advocate. The best interest standard — in which the court represents the children’s interests — gives the government a continuing supervisory role over the family that lasts until the children reach the age of majority.

Family courts describe themselves as courts of “equity” or “chancery” rather than “law.” Like other civil courts, the parties have fewer due process rights and the rules of evidence are not as stringent as in criminal courts.<sup>138</sup> In general, parents are not entitled to counsel and the standard of evidence is a “fair preponderance” rather than “beyond a reasonable doubt.” This is a different standard than the administration of justice or settlement of disputes among parties. In situations that are not covered by statutory law or established common law, family court judges may resort to general principles of fairness or equity to prevent or remedy any alleged wrongdoing toward the child. This gives them wide latitude, with few checks and balances.

Family court judges can find parents in contempt of court if they fail to pay ordered child support or attorneys’ or psychotherapists’ fees. Parents jailed for “civil contempt” have the burden of proof to show that they cannot pay.<sup>139</sup> Parents can also be charged with “criminal contempt” for failure to pay. However, as the National Conference of State Legislatures (NCSL) explains, “The lines between civil and criminal contempt are often blurred in failure to pay child support cases...” In theory, a trial must be held on criminal contempt charges, but “not all child support contempt proceedings classified as criminal are entitled to a jury trial.”<sup>140</sup> Further, in apparent contradiction to the Sixth Amendment guarantee of counsel in criminal cases, the NCSL says that “even indigent obligors are not necessarily entitled to a lawyer.”<sup>141</sup>

*Restraining Orders.* Family court judges may issue restraining orders that limit or prohibit a parent from having contact with their children. Based on counts of restraining orders issued by Colorado family courts, researcher Charles E. Corry of the Equal Justice Foundation, an advocacy group for parents’ rights, estimates that family court judges nationwide issue approximately 2 million restraining orders each year.<sup>142</sup> All that is necessary in most cases is a request by the custodial parent. Claims of threats or abuse need not be investigated in order for a judge to issue such an order. The noncustodial parent must request an evidential hearing and rebut the allegations to have the order lifted.<sup>143</sup>

Based on variations in the number and circumstances of the restraining orders issued by Colorado courts in different jurisdictions, Corry estimates that up to one-third of restraining orders may be issued without an evidential finding of abuse or threats.<sup>144</sup>

*Lack of Appeals.* In theory, family court decisions can be appealed to higher courts, but because family courts are usually not “courts of record,” cases must be re-tried at the next level, and as in other civil proceedings, the appealing party must bear the expense.<sup>145</sup>

Furthermore, federal courts do not exercise constitutional review over family law cases due to a rule known as the “domestic relations exception” established in the 1992 Supreme Court case of *Ankenbrandt v. Richards*. This decision excluded from federal courts cases “involving divorce, alimony and child custody.”<sup>146</sup> This blanket rule has been vigorously enforced, denying access to federal courts for parents questioning the constitutionality of state laws and procedures regarding child custody, support levels and visitation rights of noncustodial parents.

Thus a parent has fewer constitutional protections with respect his child than he does with respect his home or car. If the judge takes property, the parent is entitled to due process of law. But not when the parent’s child is taken.

**Determination of Child Support.** Child support levels once were set individually in each case, but the Family Support Act of 1988 and U.S. Department of Health and Human Services regulations required the states to implement guidelines for determining child support levels that took away much of judges’ discretion. The guidelines were to be specific enough to give judges a formula to compute the amount owed. Since then all 50 states have adopted guidelines based on one of three models. About a dozen states use “percent of obligor income” guidelines that base awards on a fixed percentage of the noncustodial parent’s income but do not consider the custodial parent’s income. About 35 states use “income shares” guidelines which base obligations on a percentage of both parents’ income that is supposed to reflect spending on a child in an intact family. The rest of the states use a hybrid of the two.

State guidelines typically specify the basic support level as a percentage of the noncustodial parent’s adjusted income — or earnings

capacity based on career, education and work experience, rather than actual current income. For example, basic child support in the state of Alaska as a portion of the noncustodial parent's income is 20 percent for one child, 27 percent for two children, 33 percent for three children, and an extra 3 percent for each additional child.<sup>147</sup> Guidelines usually require additional payments for health insurance premiums or child care. For example, in Virginia, a state that uses income shares, court documents show that a noncustodial parent with two children earning \$38,000 annually must pay a custodial parent earning \$28,000, including an add-on for day care, a monthly payment of \$1,137.50 plus health care costs, somewhat over 50 percent of net pay.<sup>148</sup>

Neither the percent of obligator's income nor income shares guidelines take into account child-rearing expenses incurred by the noncustodial parent, significantly understating that parent's support of the child.<sup>149</sup> A 1985 national study projected that the application of these models to existing support cases would have increased the average order by 2.5 times.<sup>150</sup> Economist Mark Rogers says that use of the guidelines significantly increased noncustodial parents' obligations. However, they are not based on studies of what it costs to rear a child. According to Rogers, under these guidelines:

- The noncustodial parent may pay more than the costs of child rearing.
- In some states, the guidelines require the noncustodial parent to pay the same percentage of *pre-tax* income whether he is a minimum wage worker or middle income earner; thus minimum wage workers are pushed below the poverty line.
- With add-ons for such things as medical insurance, the percentage of net income paid in child support may be as high as 38 percent or more for a worker earning \$36,000 a year. (In fact, it may be well above this.)
- These presumptive awards also ignore the custodial parent's income, cost-offsetting child-related tax benefits the custodial parent may receive and the noncustodial parent's direct support of the child when in the noncustodial parent's care.

Due to these factors, a custodial parent with a significantly lower gross income may have a higher standard of living than the noncustodial parent who has a higher gross income, after taxes and child support transfers. These outcomes conflict with the legal principle that both parents have an equal duty (proportional to income) to support the child.<sup>151</sup>

The income shares guidelines were originally formulated in the 1980s by Robert Williams, a consultant to the U.S. Department of Health and Human Services. Williams himself has stated that "there is no consensus among economists on the most valid theoretical model to use in deriving estimates of child-rearing expenditures" and that "use of alternative models yields widely divergent estimates of the percentages of parental income or consumption allocated to the children."<sup>152</sup>

Robert Williams is president of Policy Studies Incorporated (PSI), which has become the dominant firm in the child support enforcement business.<sup>153</sup> Thus, as a bureaucrat he helped develop public policies that created the need for a child support enforcement industry. Once in the private sector, he was able to profit from the policies he helped create.

**Reviewing State Guidelines.** Periodic review of child support guidelines is a process controlled largely by the administrators, judges and attorneys who benefit from a system that creates high levels of obligations, leading to increases in unpaid child support and the need for enhanced collection efforts.<sup>154</sup> For example, a 1999 Virginia commission that reviewed child support guidelines consisted of one part-time member representing fathers and 10 full-time lawyers, judges and child support enforcement agents.<sup>155</sup> A commission of similar composition recently recommended a sharp increase in child support levels.<sup>156</sup> Of the 11 Georgia commission members in 1998, District Attorney Williams C. Akins notes, "two were members of the judiciary, two represented custodial parent advocacy groups, four were either present or former child support enforcement personnel and two were state legislators."<sup>157</sup>

Many noncustodial parents simply may not be able to pay excessive child support, particularly during periods of unemployment. Child support orders may be modified when the noncustodial parent's income falls significantly — typically, by 15 percent or more — but this is not always easy in practice and does not apply to past arrearages.<sup>158</sup> Elaine Sorensen of the Urban Institute writes that "Of the 1 million poor nonresident fathers, a quarter pay more than 50 percent of their gross income in support..."<sup>159</sup> Unrealistically high child support orders may explain why an increasing amount of child support awards remain unpaid, despite increased collection efforts.

**Uncollected Child Support.** Child support enforcement is the largest component of government affecting fatherhood. Nationally, there were 17.4 million child support cases in fiscal year 2000. Enforcement involves nearly 60,000 agents throughout the United States — about 13 times the number in the Drug Enforcement Administration (DEA) worldwide. This does not include employees of the rapidly growing number of private enforcement companies.

Although increased resources are being devoted to enforcement, the amount of uncollected child support claimed by the Department of Health and Human Service (HHS) has grown. Spending on child support enforcement programs grew from \$12 billion in 1996 to \$17.8 billion in 2000.<sup>160</sup> [See Figure IV.] According to HHS, the amount of unpaid child support rose steadily to almost \$84 billion in 2000.<sup>61</sup> [See Figure V.]

The rising cost of welfare was a specific reason for increased collection efforts under the Clinton administration. For example, states are given financial incentives to increase child support collections. Yet child support collections for clients of Temporary Assistance for Needy Families (TANF) remained steady at around \$2.6 billion for the period 1997 through 2001, while non-TANF collections rose from about \$10.5 billion to \$16.4 billion.<sup>62</sup> [See Figure VI.] Also, government figures do not capture cash child support payments by unmarried fathers made directly to mothers.<sup>63</sup>

## Solutions

***"Despite increased enforcement, the amount of unpaid child support has risen."***

***"Divorce by contract would increase the well-being of both parents and children."***

**“Parents can better determine their children’s best interest than family courts.”**

No-fault divorce was supposed to reduce litigation by simplifying the process of suing for divorce and eliminating the need for findings of fault. But for many couples with children, divorce leads to disputes involving lawyers, court proceedings, and intervention by state agencies. Divorced families may be supervised by officials until the children are grown. Initiating divorce proceedings is easier, but the system retains the adversarial aspects of fault-based divorce: The parties have no more incentive (or power) to settle issues without litigation than they did previously.

**Contractual Arrangements.** Parents might want to work out divorce arrangements that suit their circumstances through mediation, rather than going through adversarial court proceedings. But mediation takes place “within the shadow of the law,”<sup>64</sup> which means that the terms of negotiation and the bargaining strength of the parties are circumscribed by law. And no rational party concedes in mediation what they know they can win in court. If couples were able to make their own marriage or divorce contracts, they could increase the welfare of both parents (and the children), compared to the straight-jacket of court decrees or one-size-fits-all legislation.<sup>65</sup> But for contractual solutions to work, the law must specify the parameters of agreements that the courts must enforce. One problem that has bedeviled private marriage or pre-nuptial agreements is precisely that provisions governing children are not enforceable under current law. And child custody has proved to be the most vexatious factor in most modern divorces. Thus we need to address the legal framework within which couples can negotiate. Under the current system, each aspect of the divorce settlement — such as child custody and the level of child support — is subject to dispute in isolation from all other considerations. The law does not assume that parents care more for their children than judges and are more likely than courtappointed *ad litem* attorneys to determine what is in their children’s best interest.

The subject for debate, therefore, is what parameters should be defined by government, after which people may be left alone to arrange their private lives as they see fit. People need to know what they may expect in marriage and divorce. For example, laws could be changed to roll back “no-fault” divorce by making the traditional grounds of “fault” (which varied somewhat, but were generally adultery, desertion, and “cruelty” or violence)<sup>66</sup> a standard or default condition for the dissolution of a marriage. Individual couples could choose to craft their own contractual marriage and divorce agreements to suit their own circumstances. The key factor determining the stability of the solution, whether in traditional fault grounds or private contracts, is that the agreement be enforceable in law.

Similarly, the “winner-take-all” child custody system could be reformed through joint custody or “shared parenting” provisions.<sup>67</sup> By creating a presumption of roughly equal parenting time — all else being equal and absent wrongdoing by one parent — this would preserve the marital environment to the greatest extent possible, with children being raised by both parents and both sharing in decisionmaking. A presumption of equality between parents would also level the playing field in mediation or contract negotiations, giving each party an incentive to negotiate in good faith. All these proposals have merit and deserve a full public airing and debate. However, because divorce and custody law in the United States is a province of the states, these proposals have to be debated and enacted state by state. Other principles are a more likely subject for national dialogue.

**The Federal Role: Enforcing Constitutional Rights.** On the national level, one option is to address the fatherhood/marriage problem less as an issue of family policy and more as one of constitutional rights. Guaranteeing the right of parents and their children not to be forcibly separated without cause carries few financial costs. It would also reduce the need for expensive and invasive federal programs that thrive on family destruction and address its symptoms rather than its cause. Increasing the involvement of the federal judiciary in child support and domestic violence cases contributes to what some see as “activist” tendencies. On the other hand, if the federal courts squarely faced the constitutional implications of removing children from legally innocent parents, they might regain their place as defenders of the Constitution. This would require them to invalidate the “domestic relations exception” and all other barriers to due process in family law. Federal courts would then have to scrutinize family law cases for violations of constitutional rights. However, the federal judiciary is reluctant to engage in such a review. The legislative and executive branches may be willing to exercise leadership. Federal legislation modeled on the Parental Rights and Responsibilities Act of 1995 could assist in reinforcing existing rights without necessarily establishing new ones. That bill declared that a parent’s right to direct the upbringing of their children is a fundamental right which the government can curtail only for a “compelling interest.” It stipulated “No Federal, State, or local government, or any official of such a government acting under color of law, shall interfere with or usurp the right of a parent to direct the upbringing of the child of the parent.”<sup>68</sup> However, the bill specifically exempted parents who lose their children through involuntary divorce. The justification for this exemption is unclear, but given the critical dimensions of divorce and custody today, it may be time to revisit the issue.

## Conclusion

**“Government policies may exacerbate the problems of divorce and child custody.”**

Today’s debate on the family seems to be conducted at cross-purposes. Ironically, conservatives are proposing government programs to address the problems of family breakdown and fatherless children, while liberals insist the family should be free from government intervention. Both avoid the question of the extent to which government policies created the problems in the first place.<sup>69</sup>

While fatherless families lead to social problems, it is not clear that a “fatherhood crisis” exists, other than that created by the government. Elected leaders are proposing to spend hundreds of millions of dollars on federal, state and local programs to promote fatherhood and marriage. But, if fathers are not abandoning their children in record numbers, there would seem to be little justification to discourage them from doing so. Although well-intentioned, it is not clear how government programs can enhance a parent’s relationship with his own children. Those same bureaucracies may have been instrumental in rupturing that relationship in the first place. There are growing indications that such initiatives could instead lead to further government intrusions. At the very least, these issues deserve an open public discussion. If unilateral divorce encourages the breakup of families, and the child protection-legal system is separating divorced fathers from their children, a simpler and more effective approach might be to curtail the power of government.

## References

- 1 The author would like to thank Mark Rogers, Donald Bieniewicz, Melanie Cummings and the staff of NCPA for assistance with the analysis of government statistics.
- 2 Dennis E. Powell, “Divorce-on-Demand” *National Review*, October 27, 2003.
- 3 United States Department of Commerce: U.S. Census Bureau internet site <http://www.census.gov/population/socdemo/hhfam/tabCH-5.txt>; accessed January 9, 2003.
- 4 United States Department of Commerce Economics and Statistics Administration: Bureau of the Census internet site <http://www.census.gov/prod/3/97pubs/cb-9701.pdf>; accessed January 9, 2003.
- 5 Ibid.
- 6 The 1960 divorce rate of 9.2 per 1,000 marriages more than doubled, and stood at 19.8 divorces per 1,000 in 1997. In 1996, according to federal estimates, 15 out of every 1,000 children were involved in a divorce, compared to only 6 per 1,000 in 1951. See Barbara Dafoe Whitehead, *The Divorce Culture* (New York: Knopf, 1997), see Chapter Four, “Divorce ‘for the Sake of the Children,’” available at <http://www.theatlantic.com/unbound/bookauth/divorce/sake.htm>, accessed May 16, 2003.
- 7 Hans P. Johnson and Margaret O’Brien-Strain, “Getting to Know the Future Customers of the Office of Child Support: Projections Report for 2004 and 2009,” Chapter 4, “Underlying Population Trends,” November 2000, Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, Washington, D.C. Available at <http://www.acf.dhhs.gov/programs/cse/pubs/reports/projections/ch04.html>, accessed May 16, 2003.
- 8 David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem* (New York: Basic Books, 1995), page 1.
- 9 *Father Facts* (Lancaster, Pennsylvania: National Fatherhood Initiative, 1996); Cynthia Daniels, ed., *Lost Fathers: The Politics of Fatherlessness in America* (New York: St. Martin’s Press, 1998).
- 10 L. Edward Wells and Joseph H. Rankin, “Families and Delinquence: A Meta-Analysis of the Impact of Broken Homes,” *Social Problems*, vol. 38, no. 1 (1991).
- 11 M. Anne Hill and June O’Neill, “Underclass Behaviors in the United States: Measurement and Analysis of Determinants,” City University of New York, Baruch College, 1993.
- 12 Allen Beck, Susan Kline and Lawrence Greenfield, *Survey of Youth in Custody 1987* (U.S. Bureau of Justice Statistics, September 1988); Dewey Cornell et al., “Characteristics of Adolescents Charged with Homicide,” *Behavioral Sciences and the Law*, vol. 5, 1987, pages 11-23; Nicholas Davidson, “Life Without Father,” *Policy Review*, 1990.
- 13 Ralph B. McNeal, Jr., “Extracurricular Activities and High School Dropouts,” *Sociology of Education*, vol. 68, 1995, pages 62-81.
- 14 Elaine Ciulla Kamarck and William Galston, *Putting Children First: A Progressive Family Policy for the 1990s*, 1990, Progressive Policy Institute.
- 15 Parts of this study previously appeared in Stephen Baskerville, “The Myth of the ‘Deadbeat Dad,’” *Liberty*, July 2002. For an academic version of that paper, see Stephen Baskerville, *PS: Political Science and Politics*, 2002.
- 16 David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem* (New York: Basic Books, 1995), pages 22-23.
- 17 Cynthia Daniels, ed., *Lost Fathers: The Politics of Fatherlessness in America* (New York: St. Martin’s Press, 1998), page 2.
- 18 Robert L. Griswold, “The History and Politics of Fatherlessness,” in Daniels 1998, page 19.
- 19 Lionel Tiger, *The Decline of Males* (New York: Golden Books, 1999), pages 57-58.
- 20 Leon R. Kass, “The End of Courtship,” internet site of the *Public Interest*: <http://www.thepublicinterest.com/>; no date; accessed March 26, 2002.
- 21 *Congressional Record*, June 5, 1998, page S5734.
- 22 Sanford L. Braver, with Diane O’Connell, *Divorced Dads: Shattering the Myths* (New York: Tarcher/Putnam, 1998).
- 23 Ibid.
- 24 Shere Hite, *Women and Love: A Cultural Revolution in Progress* (New York: Knopf, 1987), p. 459.
- 25 David Chamber, *Making Fathers Pay: The Enforcement of Child Support* (Chicago: University of Chicago Press, 1979), p. 29.
- 26 Margaret F. Brinig and Douglas W. Allen, “These Boots Are Made for Walking: Why Most Divorce Filers are Women,” *American Economics and Law Review*, vol. 2, issue 1, Spring 2000, pages 126-27, 129 and 158.
- 27 Pamela Wilson, “Helping Young Dads Succeed,” *Family Life Educator*, Spring 1997.
- 28 Suzanne Speak, Stuart Cameron, and Rose Gilroy, *Young Single Fathers: Participation in Fatherhood – Bridges and Barriers* (London: Family Policy Studies Centre, 1997).
- 29 David Popenoe, “American Family Decline, 1960-1990: A Review and Appraisal,” *Journal of Marriage and the Family*, No. 55,



- August 1993.
- 30 According to Bridget Maher, this change in public policy with respect to divorce contributed to the rise of fatherless families independently of any change in the behavior of fathers toward their children. See Bridget Maher, "Divorce Reform: Forming Ties That Bind," Insight No. 212, February 16, 2000, Family Research Council. Available at <http://www.frc.org/get/is99h1.cfm>; accessed May 16, 2003.
  - 31 Maher, *ibid.*, cites a finding by economist Leora Friedburg that unilateral (or no-fault) divorce was responsible for a nationwide 17 percent increase in the divorce. See Leora Friedburg, "Did Unilateral Divorce Raise Divorce Rates? Evidence from Panel Data," *American Economic Review*, June 1998, pages 608-627.
  - 32 Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991).
  - 33 J. Herbie DiFonzo, *Beneath the Fault Line: The Popular and Legal Culture of Divorce in Twentieth-Century America* (Charlottesville: University Press of Virginia, 1997).
  - 34 Government fatherhood programs exist in Canada, Britain, Australia and New Zealand. In June 1997 the German magazine *Der Spiegel* ran a cover story on "The Fatherless Society." The problem is increasing in countries with such traditional morality as Japan and India (e.g., Bhadra Sinha, "No Time for Each Other," *The Times of India*, December 3, 2000).
  - 35 Robert W. Page, "'Family Courts': An Effective Judicial Approach to the Resolution of Family Disputes," *Juvenile and Family Court Journal*, vol. 44, no. 1, 1993, pages 9 and 11.
  - 36 *Ibid.*, page 11, citing "Pathfinders Committee Report," Committee Report 125, *New Jersey Law Journal* No. 42.
  - 37 See, for example, Leslie Eaton, "For Arbiters in Custody Battles, Wide Power and Little Scrutiny," *New York Times*, May 23, 2004.
  - 38 Equity courts such as Chancery were established in England in the late middle ages, purportedly to provide redress in cases when strict application of Common Law principles would result in injustice. They later became notorious for corruption; Chancery, pilloried mercilessly by Charles Dickens in *Bleak House*, was eventually abolished. Cp. *Black's Law Dictionary*, 6th ed. (St. Paul, Minn.: 1990), s.v. "Equity, courts of": "With the procedural merger of law and equity in the federal and most state courts, equity courts have been abolished." Family courts clearly operate on the assumption that the distinction is still valid. See Page, "Family Courts," note 56.
  - 39 "The burden of proof may be shifted to the defendant in some circumstances." Quotations are taken from Teresa A. Myers, "Case in Brief: Courts Uphold Criminal Penalties for Failure to Pay Child Support," National Conference of State Legislatures, available at <http://www.ncsl.org/programs/cyf/Criminalnon.htm>, accessed August 28, 2001.
  - 40 Citing *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994); *U.S. v. Ballek*, 1999 WL 125955, 9th Cir. (Alaska), Mar. 11, 1999.
  - 41 Citing *Black v. Division of Child Support Enforcement*, 686 A.2d 164 (Del. 1996).
  - 42 National statistics on the issuance of restraining orders are not kept. This figure is based on a study of restraining orders in Colorado. See Charles E. Corry, "Demographics of Restraining Orders in Colorado," 2002, Equal Justice Foundation. Available at <http://www.dvmen.org>, accessed May 16, 2003.
  - 43 There is usually statutory authority for these orders, but some legal experts question the constitutionality of those statutes. "The restraining order law is one of the most unconstitutional acts ever passed," writes Massachusetts attorney Gregory Hession. "A court can issue an order that boots you out of your house, never lets you see your children again, and takes your money, all without you even knowing that a hearing took place." Press release from Law Office of Attorney Gregory A. Hession, J.D., July 30, 2001. Available at <http://www.massoutrage.com/rodirtytricks.html>.
  - 44 Charles E. Corry, "Demographics of Restraining Orders in Colorado," Equal Justice Foundation: <http://www.dvmen.org>; accessed May 16, 2003.
  - 45 Ed Oliver, "Father Proves that Court Tapes Were Altered," *Massachusetts News*, December 2000; press release, Law Office of Gregory A. Hession, J.D., November 16, 2000; Judy Parejko, *Stolen Vows: The Illusion of No-Fault Divorce and the Rise of the American Divorce Industry* (Collierville, Tenn.: InstantPublisher, 2002), p. 101.
  - 46 60 U.S.L.W. 4532 ( June 15, 1992); Judith Resnik, "Naturally Without Gender: Women, Jurisdiction, and the Federal Courts," *New York University Law Review* vol. 66, December 1991, page 1682; Karen Winner, *Divorced From Justice* (ReganBooks, 1996), page xxiii.
  - 47 "2002-2003 Alaska Rules of Civil Procedure," State Child Support Guidelines.
  - 48 Documents in possession of the author.
  - 49 R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," paper presented at the Southern Economic Association Annual Meeting, Alexandria, Va., November 20, 2000, Revised Oct 17, 2003, available at <http://www.guidelineeconomics.com/files/LitigationIssues.pdf>; William C. Akins, "Why Georgia's Child Support Guidelines Are Unconstitutional," *Georgia Bar Journal*, vol. 6, no. 2, October 2000.
  - 50 Chapter 11, "Modification of Child Support Obligations," *Essentials for Attorneys in Child Enforcement, 3rd edition*, Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, Washington, D.C. Available at <http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/essentials/index.html>.
  - 51 R. Mark Rogers, "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, vol. 33, no. 1, Spring 1999, and "Testimony on Hyde-Woolsey Child Support Bill, H.R. 1488, presented to the Human Resources Subcommittee of the House Ways and Means Committee, March 16, 2000." I am grateful to Mark Rogers for assistance on these points.
  - 52 Robert G. Williams, "Implementation of The Child Support Provisions of the Family Support Act," in Irwin Garfinkel, et al., eds., *Child Support and Child Well Being* (Washington, D.C.: Urban Institute Press, 1994), pages 104-105. Donald Bieniewicz, member of an advisory panel to the Federal Office of Child Support Enforcement (OCSE), comments: "This is a shocking vote of 'no confidence' in the ... guideline by its author." Donald J. Bieniewicz, "Improving State Child Support Guidelines," invited testimony to the Virginia Child Support Quadrennial Review Panel, June 22, 1999, page 2.
  - 53 James R. Johnston, "The Father of Today's Child Support Public Policy," *Fathering Magazine*, August 1999, <http://www.fathermag.com/907/child-support/>; accessed October 1, 2001. Williams' guideline, known as "income shares," is today the most widely used throughout the United States. The "Wisconsin-style" guideline, slightly different, was declared unconstitutional in 2002 by a Georgia Superior Court. For a detailed analysis, see Rogers, "Wisconsin-Style and Income Shares Child Support Guidelines."

- 54 Laura W. Morgan, *Child Support guidelines: Interpretation and Application* (New York: Aspen Law and Business, 1998), table 1-2; table, "Which Branch Of Government Establishes Each States' Child Support Guidelines," National Conference of State Legislatures, available at <http://ncsl.org/programs/cyf/BRANCH.HTM>; accessed August 7, 2000.
- 55 Barry M. Koplen, "Minority Report: Virginia's Quadrennial Child Support Guideline Review Commission," July 20, 1999.
- 56 "Review of Child Support Guideline 20-108.1 & 20-108.2," Secretary's Triennial Child Support Guideline Review Panel, Joseph S. Crane, Chair, Richmond, Va., October 31, 2002.
- 57 William C. Akins, "Why Georgia's Child Support Guidelines Are Unconstitutional," *Georgia Bar Journal*, vol. 6, no. 2, October 2000.
- 58 Elaine Sorensen and Helen Oliver, "Policy Reforms Are Needed to Increase Child Support from Poor Fathers," Research Report, April 2002, Urban Institute, pages 13-14.
- 59 Elaine Sorensen, "Helping Poor Nonresident Dads Do More," Short Takes on Welfare Policy No. 3, May 2, 2002, Urban Institute. Available at [http://www.urban.org/UploadedPDF/ShortTakes\\_3.pdf](http://www.urban.org/UploadedPDF/ShortTakes_3.pdf).
- 60 Table 4, "Total Distributed Collections For Five Fiscal Years," United States Department of Health and Human Services, Office of Child Support Enforcement. Available at [http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datareport/table\\_4.html](http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datareport/table_4.html); accessed January 9, 2003.
- 61 United States Department of Health and Human Services, Office of Child Support Enforcement, Annual Statistical Report, Tables 75 and 76. Available at [http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datareport/table\\_75.html](http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datareport/table_75.html) and [http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datareport/table\\_76.html](http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datareport/table_76.html) ; accessed January 9, 2003.
- 62 Table 3, "Program Trends for Fiscal Year 1997, 2000 and 2001," Data Preview Report, September 2002, Office of Child Support Enforcement, U.S. Department of Health and Human Services. Available at [http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datapreview/table\\_3.html](http://www.acf.dhhs.gov/programs/cse/pubs/2002/reports/datapreview/table_3.html).
- 63 See Brian Doherty, "Big Daddy," *Reason*, June 1996. An NCPA summary is available at <http://www.ncpa.org/pi/welfare/wel10a.html>.
- 64 R.H. Mnookin and L. Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal*, 88 (1979), pages 950-997.
- 65 Wendy McElroy, "It's Time to Privatize Marriage," Fox News Channel website, 16 July 2002, <http://www.foxnews.com/story/0,2933,57749,00.html>.
- 66 See Bridget Maher, "Divorce Reform: Forming Ties That Bind," Insight No. 212, February 16, 2000, Family Research Council.
- 67 David L. Levy, ed., *The Best Parent Is Both Parents* (Norfolk, Va.: Hampton Roads, 1993).
- 68 Patrick F. Fagan and Wade F. Horn, "How Congress Can Protect the Rights of Parents to Raise their Children," Issue Bulletin No. 227, July 23, 1996, Heritage Foundation, pages 1 and 2.
- 69 See Stephen Baskerville, "The Federal Bureau of Marriage?" *Liberty*, July 2003.

# Figures

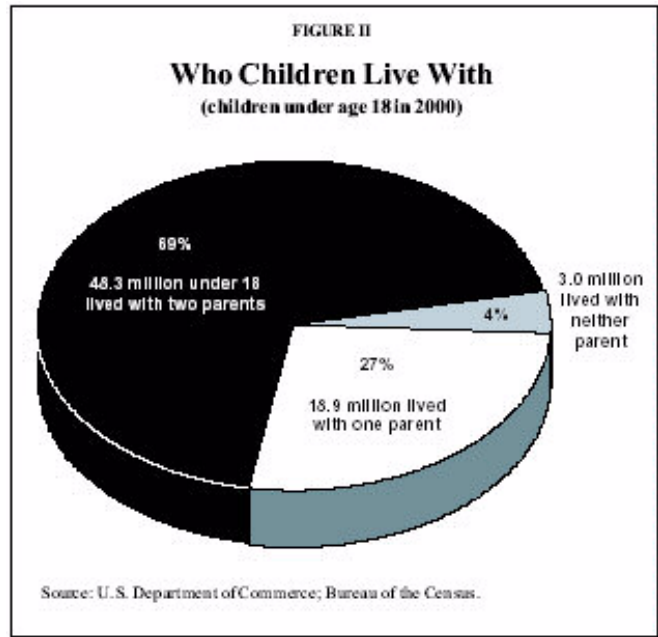
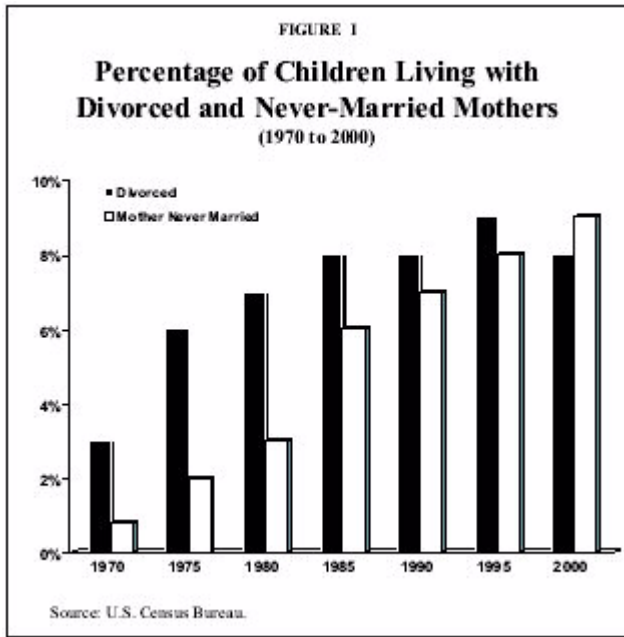
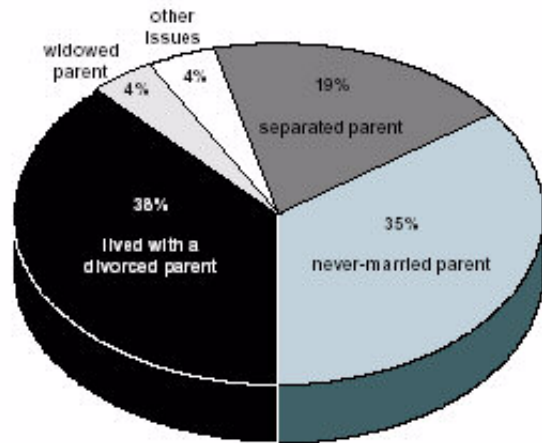


FIGURE III

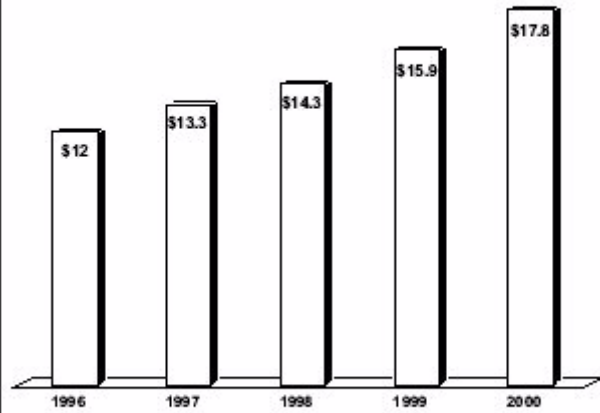
### Reasons Children Live with Only One Parent (children under age 18)



Source: U.S. Department of Commerce; Bureau of the Census.

FIGURE IV

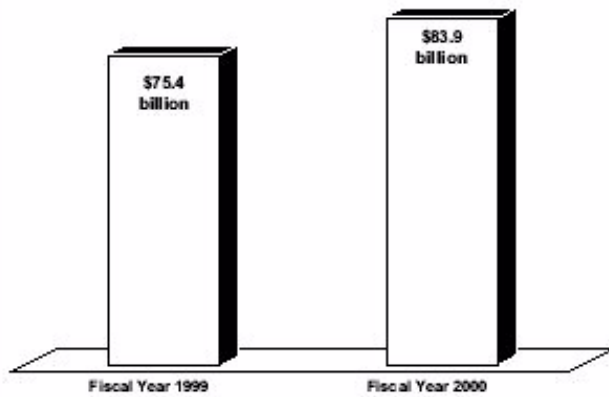
### Total Spending on Child Support Collection in Fiscal Years 1996-2000 (dollar in billions)



Source: Office of Child Support Enforcement, U.S. Department of Health and Human Services.

FIGURE V

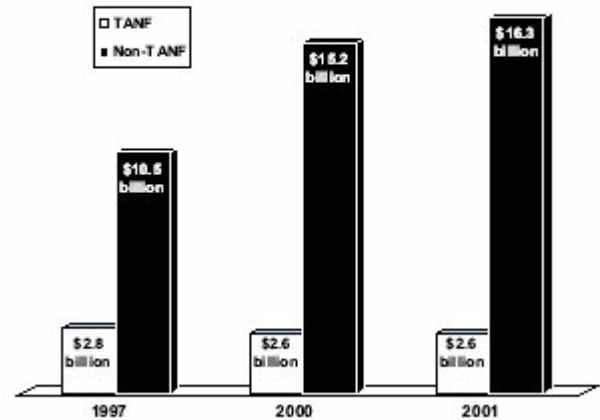
### Unpaid Child Support



Source: Tables 75 and 76, Annual Statistical Report, Office of Child Support Enforcement.

FIGURE VI

### Child Support Collections for Welfare Clients (1997, 2000 and 2001)



## About the Author

**Stephen Baskerville** holds a Ph.D. from the London School of Economics and teaches political science at Howard University in Washington, D.C. His writings on family and fatherhood issues have appeared in the *Washington Post*, *Washington Times*, *Liberty* magazine, *Women's Quarterly*, *Catholic World Report*, *Crisis* magazine, *Insight* magazine, *World Net Daily*, *Family Policy*, the *American Spectator*, *The Spectator*, *American Enterprise* magazine, *Human Events*, the *Sunday Independent*, and other national and international publications, both popular and scholarly.

These writings have led to appearances on national radio and television programs, including *The O'Reilly Factor*, *Hardball with Chris Matthews*, *Court TV with Fred Graham and Katherine Crier*, *Think Tank with Ben Wattenberg*, *Endangered Liberties with Paul Weyrich*, *Legal Notebook with Tom Jipping*, the *Armstrong Williams Show*, *Take Action America*, and others. He is a regular radio commentator for the Free Congress Foundation.

He has been featured in profiles in the Gannett newspapers, *Human Events*, *Enter Stage Right*, *News with Views*, *Men's News Daily*, *Fathering Magazine*, the *Washington Times*, *Townhall.com*, and elsewhere.

He also serves on the advisory boards of several organizations, including advocacy and human rights groups.

## About the NCPA

The NCPA was established in 1983 as a nonprofit, nonpartisan public policy research institute. Its mission is to seek innovative private sector solutions to public policy problems.

The center is probably best known for developing the concept of Medical Savings Accounts (MSAs), now known as Health Savings Accounts (HSAs). *The Wall Street Journal* and *National Journal* called NCPA President John C. Goodman "the father of Medical Savings Accounts." Sen. Phil Gramm said MSAs are "the only original idea in health policy in more than a decade." Congress approved a pilot MSA program for small businesses and the self-employed in 1996 and voted in 1997 to allow Medicare beneficiaries to have MSAs. In June 2002 IRS ruling frees the private sector to have a flexible medical savings account and even personal and portable insurance. A series of NCPA publications and briefings for members of Congress and the White House staff helped lead to this important ruling. In 2003, as part of Medicare reform, Congress and the President made HSAs available to all non-seniors, potentially revolutionizing the entire health care industry.

The NCPA also outlined the concept of using tax credits to encourage private health insurance.

The NCPA helped formulate a bipartisan proposal in both the Senate and the House, and Dr. Goodman testified before the House Ways and Means Committee on its benefits. Dr. Goodman also helped develop a similar plan for then presidential candidate George W. Bush.

The NCPA shaped the pro-growth approach to tax policy during the 1990s. A package of tax cuts, designed by the NCPA and the U.S. Chamber of Commerce in 1991, became the core of the Contract With America in 1994. Three of the five proposals (capital gains tax cut, Roth IRA and eliminating the Social Security earnings penalty) became law. A fourth proposal ó rolling back the tax on Social Security benefits ó passed the House of Representatives in summer 2002.

The NCPA's proposal for an across-the-board tax cut became the focal point of the pro-growth approach to tax cuts and the centerpiece of President Bush's tax cut proposal. The repeal by Congress of the death tax and marriage penalty in the 2001 tax cut bill reflects the continued work of the NCPA. Entitlement reform is another important area. With a grant from the NCPA, economists at Texas A&M University developed a model to evaluate the future of Social Security and Medicare. This work is under the direction of Texas A&M Professor Thomas R. Saving, who was appointed a Social Security and Medicare Trustee. Our online Social Security calculator, found on the NCPA's Social Security reform Internet site ([www.TeamNCPA.org](http://www.TeamNCPA.org)) allows visitors to discover their expected taxes and benefits and how much they would have accumulated had their taxes been invested privately.

Team NCPA is an innovative national volunteer network to educate average Americans about the problems with the current Social Security system and the benefits of personal retirement accounts. In the 1980s, the NCPA was the first public policy institute to publish a report card on public schools, based on results of student achievement exams. We also measured the efficiency of Texas school districts. Subsequently, the NCPA pioneered the concept of education tax credits to promote competition and choice through the tax system. To bring the best ideas on school choice to the forefront, the NCPA and Children First America published an *Education Agenda* for the new Bush administration, policy makers, congressional staffs and the media. This book provides policy makers with a road map for comprehensive reform. And a June 2002 Supreme Court ruling upheld a school voucher program in Cleveland, an idea the NCPA has endorsed and promoted for years.

The NCPA's E-Team program on energy and environmental issues works closely with other think tanks to respond to misinformation and promote common sense alternatives that promote sound science, sound economics and private property rights. A pathbreaking 2001 NCPA study showed that the costs of the Kyoto agreement to halt global warming would far exceed any benefits. The NCPA's work helped the administration realize that the treaty would be bad for America, and it has withdrawn from the treaty.

NCPA studies, ideas and experts are quoted frequently in news stories nationwide. Columns written by NCPA scholars appear regularly in national publications such as the *Wall Street Journal*, the *Washington Times*, *USA Today* and many other major-market daily newspapers, as well as on radio talk shows, television public affairs programs, and in public policy newsletters. According to media

figures from Burrelle's, nearly 3 million people daily read or hear about NCPA ideas and activities somewhere in the United States.

The NCPA home page ([www.ncpa.org](http://www.ncpa.org)) links visitors to the best available information, including studies produced by think tanks all over the world. Britannica.com named the [ncpa.org](http://ncpa.org) Web site one of the best on the Internet when reviewed for quality, accuracy of content, presentation and usability.

### **What Others Say about the NCPA**

*"...influencing the national debate with studies, reports and seminars."* - **TIME**

*"Oftentimes during policy debates among staff, a smart young staffer will step up and say, 'I got this piece of evidence from the NCPA.' It adds intellectual thought to help shape public policy in the state of Texas."* - **Then-GOV. GEORGE W. BUSH**

*"The [NCPA's] leadership has been instrumental in some of the fundamental changes we have had in our country."* - **SEN. KAY BAILEY HUTCHISON**

*"The NCPA has a reputation for economic logic and common sense."* - **ASSOCIATED PRESS**

The NCPA is a 501(c)(3) nonprofit public policy organization. We depend entirely on the financial support of individuals, corporations and foundations that believe in private sector solutions to public policy problems. You can contribute to our effort by mailing your donation to our Dallas headquarters or logging on to our Web site at [www.ncpa.org](http://www.ncpa.org) and clicking "An Invitation to Support Us."