Statement of Purpose

The primary purpose of The Future of Children is to disseminate timely information on major issues related to children’s well-being, with special emphasis on providing objective analysis and evaluation, translating existing knowledge into effective programs and policies, and promoting constructive institutional change. In attempting to achieve these objectives, we are targeting a multidisciplinary audience of national leaders, including policymakers, practitioners, legislators, executives, and professionals in the public and private sectors. This publication is intended to complement, not duplicate, the kind of technical analysis found in academic journals and the general coverage of children’s issues by the popular press and special interest groups.

In this issue of The Future of Children, we examine divorce because of the large and increasing numbers of children in the United States who experience the divorce of their parents. Although our focus is on the process and consequences of divorce, the prevention of divorce through education and counseling before and during marriage would be of benefit to many children as well as their parents. Public policy related to divorce must chart a careful course between the Scylla of creating incentives for divorce, with its untoward effects on children and society, and the Charybdis of unduly restricting the freedom of individuals to determine for themselves when cohabitation should be terminated, because high-conflict marriage also may have untoward effects on children and society. We have tried to put divorce into the perspective of time and of trends, other than divorce, which have contributed to the diversity of family composition in this country, such as remarriage, cohabitation outside marriage, and single, never-married motherhood.

The articles presented here summarize knowledge and experience in selected areas that we believe are relevant to improving public policies in the United States which have an impact on the well-being of children who experience the divorce of their parents. We hope the information and analyses these articles contain will further understanding of the important issues and thus contribute to reasonable changes in policies which will benefit children of divorce.

We invite your comments and suggestions regarding this issue of The Future of Children. Our intention is to encourage informed debate about divorce and related issues. To this end we invite correspondence to the Editor. We would also appreciate your comments about the approach we have taken in presenting the focus topic and welcome your suggestions for future topics.

Richard E. Behrman, M.D.
Editor
Children and Divorce

Contents

Statement of Purpose .................. Inside front cover

Children and Divorce: Overview and Analysis ............... 4
Richard E. Behrman, M.D. and Linda Sandham Quinn, Ph.D.
An analysis of how policy and program changes can better serve the needs of children of divorce.

Epidemiology of Divorce ................. 15
Patricia H. Shiono, Ph.D. and Linda Sandham Quinn, Ph.D.
An analysis of recent changes in marriage, divorce, and remarriage rates and the influence these changes have had on children's living arrangements.

History and Current Status of Divorce in the United States .... 29
Frank F. Furstenberg, Jr., Ph.D.
A description of historical changes in divorce and remarriage and the resulting changes in family experiences of children.

Historical Perspective and Current Trends in the Legal Process of Divorce ............. 44
Sanford N. Katz, J.D.
A historical and current account of changes in the legal process of divorce and a view on future changes in the divorce process.

Financial Impact of Divorce on Children and Their Families ...... 63
Jay D. Teachman, Ph.D. and Kathleen M. Paasch, Ph.D.
An examination of the financial impact of divorce on children and their families and suggestions for policy reform.

Child Support Orders: A Perspective on Reform .............. 84
Irwin Garfinkel, Ph.D., Marygold S. Melli, LL.B., and John G. Robertson, M.S.W.
A description of the U.S. child support system and suggested directions for future reform, including the implementation of an assured child support benefit.

Child Support Orders: Problems with Enforcement .......... 101
Paula G. Roberts, J.D.
An examination of the many flaws inherent in the current child support enforcement system and an analysis of policy changes that would address many of the problems.
<table>
<thead>
<tr>
<th>Chapter Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Determination of Child Custody</td>
<td>121</td>
</tr>
<tr>
<td>Joan B. Kelly, Ph.D.</td>
<td></td>
</tr>
<tr>
<td>A description of child custody determination in the United States and recommendations for policy reform.</td>
<td></td>
</tr>
<tr>
<td>Life-Span Adjustment of Children to Their Parents’ Divorce</td>
<td>143</td>
</tr>
<tr>
<td>Paul R. Amato, Ph.D.</td>
<td></td>
</tr>
<tr>
<td>A review of studies conducted to evaluate various aspects of adjustment in children of divorce and suggestions for intervention.</td>
<td></td>
</tr>
<tr>
<td>High-Conflict Divorce</td>
<td>165</td>
</tr>
<tr>
<td>Janet R. Johnston, Ph.D.</td>
<td></td>
</tr>
<tr>
<td>A review of studies addressing the relationship between high-conflict, violent divorce and adjustment in children and suggested reform aimed at reducing harmful effects.</td>
<td></td>
</tr>
<tr>
<td>A Feminist Perspective on Divorce</td>
<td>183</td>
</tr>
<tr>
<td>June R. Carbone, J.D.</td>
<td></td>
</tr>
<tr>
<td>An overview of feminist views on limitations of existing divorce policy and proposals for reform aimed at improving the circumstances of custodial mothers and their children.</td>
<td></td>
</tr>
<tr>
<td>The Role of the Father After Divorce</td>
<td>210</td>
</tr>
<tr>
<td>Ross A. Thompson, Ph.D.</td>
<td></td>
</tr>
<tr>
<td>A discussion of fathers’ concerns regarding postdivorce outcomes and suggestions for reform aimed at allowing and encouraging fathers to play a more central role in the lives of their children after divorce.</td>
<td></td>
</tr>
<tr>
<td>CHILD INDICATORS: Immunization of Young Children</td>
<td>236</td>
</tr>
<tr>
<td>Eugene M. Lewit, Ph.D. and John Mullaly, Ph.D.</td>
<td></td>
</tr>
<tr>
<td>REVISITING THE ISSUES: Children and National Health Care Reform</td>
<td>248</td>
</tr>
<tr>
<td>Sara Rosenbaum, J.D.</td>
<td></td>
</tr>
<tr>
<td>A Selected Bibliography</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>The next issue of <em>The Future of Children</em> will focus on sexual abuse of children.</td>
<td></td>
</tr>
</tbody>
</table>
Children and Divorce: Overview and Analysis

Over the past two decades, more than one million children each year have experienced a family divorce, and the proportion of children affected by divorce is expected to grow substantially in the twenty-first century. Most of these children experience significant changes in their living arrangements, and the poverty rate for children of divorce is about twice the rate for all children in the United States. We are, therefore, devoting this issue of the journal to divorce because it is a crucial factor in the lives of millions of children in this country.

In the United States during 1990, only 58% of children lived with two biological parents, although more than 79% lived in two-parent households. Most of the remaining children lived in a variety of other types of households headed by one or more adults. Whatever his or her family structure, a child has the best opportunity to thrive only when the household provides a loving, nurturing, stable, and protective environment.

Divorce receives a great deal of attention in the professional and academic literature as well as in other media. The journal’s goal is not to repeat this literature, but rather to highlight key issues in divorce that are particularly significant for the well-being of children. These issues include the actual process of divorce, custody and visitation decisions, and the financial support of children following divorce, all of which we focus on in this Overview and Analysis. However, it is important first to appreciate the dimensions of divorce in this nation: how many children are affected by divorce, who they are, what living arrangements are made for them, and how these arrangements relate to other major trends in domestic situations for children. It is also helpful to put this problem in historic perspective. And of great import is the need to appreciate what is known and not known about the impact of divorce itself on the psychological and emotional development of children.

About 26% of all children under 18 years of age (17 million) live with a divorced parent, a separated parent, or a stepparent, according to the most recent available data (1988) summarized by Shiono and Quinn. In 1990, about 9.5% of all children (6 million) were living with a divorced single parent. In comparison, 7.7% (4.9 million) were living with a single, never-married parent. About 90% of these single parents are mothers. Generally, when single-parent families are compared by race, significantly higher proportions of white children are found to be living with divorced or separated mothers, and African-American children are found to be living with never-married mothers.
The trends in marriage, divorce, remarriage, and out-of-wedlock births which have resulted in these living arrangements for children are analyzed and discussed in the articles by Shiono and Quinn and by Furstenberg. Since the mid-1940s, annual first-marriage rates have declined from about 14% to about 7% of single women. In addition, between the 1960s and 1980s, the proportion of women marrying after becoming pregnant declined by about 50%, and the number of unmarried couples living in the same household increased fourfold. In general, women today are marrying at older ages, and African-American women are less likely to marry than white women.

Divorce rates have been increasing since the 1860s (about 10 per 1,000 married women per year), although there have been considerable fluctuations over the decades. There was a peak after World War II (24 per 1,000), followed by a trough in the 1950s (15 per 1,000). Through the 1970s, the rates rose dramatically to reach an all-time high of 40 per 1,000. Divorce rates have leveled off since the late 1980s (37 per 1,000 in 1988); however, at least 40% of young adult women today are likely to divorce sometime in their lives. An increase in divorce rates during the early years of marriage has resulted in a higher proportion of divorces occurring among parents with young children. Many believe the increased employment of married women outside the home has been a significant concomitant societal change related to the divorce rate (see the article by Furstenberg). This relationship is probably not a causal one in which either divorce or employment outside the home has caused the other, but rather a complex one in which both employment and divorce are influenced by an entire spectrum of social changes as well as by each other. The rate of employment of married women with preschool children has been particularly noteworthy; it rose from 11% in 1949 to 58% in 1988. Economic stress and deprivation also increase the risk of divorce.

Remarriage and the resulting restructured family have important consequences for many children. In the late 1960s, remarriage rates soared to an all-time high. Sixty percent of white women whose marriage ended in divorce between 1965 and 1984 had remarried by 1988. This was almost twice the rate occurring among divorced African-American women. Today, at least 30% of young adult women who divorce are likely to remarry. In general, younger women are more likely to remarry than older women, although this age differential does not occur among divorced men. During the first few years of remarriage, the risk of divorce is increased over that of first marriages.

Similar trends in marriage, divorce, remarriage, and cohabitation have occurred in many population subgroups in this country and Western Europe, although there are some important quantitative differences (see the article by Furstenberg).

About 26% of all children under 18 years of age (17 million) live with a divorced parent, a separated parent, or a stepparent.

Hypotheses for the changing marriage patterns include the breakdown of the traditional gender-based division of labor where men work outside the home for wages and women specialize in domestic activity; the enhanced opportunity for women who enter the labor market to exercise the individual choice and per-
sonal freedom so valued in our society; the “sexual revolution” with increased availability of ways to prevent conception and terminate pregnancy; and changes in the divorce law.

Given that more than a quarter of all children in the United States have experienced the divorce or separation of their parents and that, at current divorce rates, this proportion is expected to grow to 40%, careful attention must be given to the direct effects of divorce on children. Perhaps the most obvious effects are changes in children’s living situations and economic status. In 1991, 39% of divorced women with children lived in poverty, and 55% of those with children under six years of age were poor (see the article by Teachman and Paasch). In this same year, the poverty rate for all children was 22%. These issues are reviewed below in the context of custody and child support. There is also related and crucial concern about the effects of divorce on children’s emotional and psychological well-being, and on their successful development and transition to adulthood.

Divorce and events related to divorce, including marital conflict and separation, are almost universally very stressful events in the life of a child. Most children exhibit a variety of signs of disturbance in the months after the separation, including anxiety, sadness, anger, aggression, non-compliance, sleep disturbances, and disrupted concentration at school. The length of this initial period of distress varies from child to child. Most children adapt reasonably successfully after this initial period, and most apparently evidence no long-term ill effects. However, children who experience divorce, as compared with children in continuously intact two-parent families, are at somewhat greater risk for symptoms of psychological maladjustment, behavior and social problems, negative self-image, and low academic achievement (see the article by Amato). Similarly, when comparing these two groups as adults, those adults who experienced parental divorce as children are more likely to evidence poorer psychological adjustment, lower socioeconomic attainment, and greater marital instability. However, the differences between the two groups, either as children or as adults, with respect to these untoward effects seem, in light of current research, to be small.

Further, there is considerable variation in each individual child’s reaction to divorce: an affected child’s psychological well-being can range from poorer to better than it was before divorce. Variables that are believed to account for children’s adjustment to divorce include the amount and nature of involvement of the noncustodial parent, the custodial parent’s adjustment to divorce and his or her parenting skills, interparental conflict before and after divorce, economic hardship, and other life stresses (for example, moving, changing schools, parental remarriage). Little is known about how these factors interact to affect a child’s response to divorce, what the variations are in the response to divorce among children of different ethnic and racial backgrounds, what the long-term effects are on individual children, and how various legal and therapeutic interventions influence the outcomes for children.

Knowledge about the effects of marital conflict and divorce on children is limited by both the quantity and quality of available research. It is difficult to design and carry out research projects involving these families. Long-term follow-up studies are especially problematic. Further, there is a paucity of funding for such investigations.

Although many children adjust well to divorce without the need for therapeutic intervention, a minority have significant adjustment problems which warrant counseling. Interparental conflict after divorce (characterized by verbal and physical aggression, overt hostility, and distrust) and a high level of custodial parent emotional distress place children at high risk for emotional and behavioral maladjustment and disturbed parent-child relationships (see...
Children and Divorce: Overview and Analysis

the articles by Amato and by Johnston). In general, evaluations of therapeutic intervention programs for children having adjustment problems related primarily to divorce have been favorable, although only a small number of studies are available. There is need for more research to improve the efficacy of treatment of these children.

Marriage and the Process of Divorce

The trends in divorce law, division of labor between husband and wife in marriage, the family’s right to privacy, and the family’s responsibility for children have changed significantly over the past four decades. Laws and public policy relating to marriage and divorce, reflecting some of these changes, have gradually moved away from the concept of marriage as a state-sanctioned, husband-dominated, hierarchical institution, toward the view of marriage as an economic partnership of autonomous individuals, although not necessarily of equals (see the article by Katz). Under the earlier concept, a divorce was granted only after an often adversarial adjudication to find one party at fault for having done something wrong during the marriage, such as being cruel or adulterous. Katz indicates that all 50 states have now enacted some changes in divorce laws to incorporate the more recent concept, that is, over the past 40 years, states have generally expanded the grounds for divorce and simplified the process of terminating a marriage. Most states now grant “no-fault” divorces, but only a few states have entirely done away with fault as a basis for divorce.

There is controversy about some of the effects of these widespread changes in divorce laws (see the articles by Furstenberg and by Katz). To the degree that no-fault divorce has decreased the acrimony and hostility between spouses, as is generally believed to be the case, children have benefitted. There is, however, a difference of opinion as to whether laws permitting no-fault divorce have increased the divorce rate. The advent of no-fault divorce legislation is associated with increased divorce rates in some states but not in others. However, an increase in marital disruption preceded the change in public opinion favoring more liberal divorce laws, and the laws enacted were, in part, a response to public demand and also may have engendered some demand for divorce (see the article by Furstenberg).

Much of the current emphasis in divorce law is on defining the marital assets and determining how they should be distributed to the economic partners of the shared enterprise of marriage when it is terminated. Katz points out that changes in statutory law have, to a certain extent, limited judicial discretion as to this distribution and given more consideration to the noncash contributions of wives and to the financial needs of children. Although there is difference of opinion as to whether no-fault divorce systematically favors one spouse over the other, there is no question that, despite changes in the law, divorce itself has greater negative social and financial effects on women than on men (see the articles by Teachman and Paasch, by Carbone, and by Thompson).

The increased demand for and availability of divorce have focused attention on the dramatic rise in the financial costs of divorce and some of the serious limitations of terminating a family relationship in a court setting using a judicially managed adversarial process (see below). Alternatives to traditional divorce proceedings include summary dissolutions (where children are not involved) and simplified divorce procedures (also called summary process or divorce by mutual consent). These streamlined procedures are being used in a few states because they are more expeditious and less costly for both the parties and the court system than traditional divorce procedures (see the article by Katz).

Divorce through mediation is another alternative for making decisions about property division, spousal maintenance (alimony), child support, and custody.

Knowledge about the effects of marital conflict and divorce on children is limited by both the quantity and quality of available research.
Most states have laws encouraging or requiring mediation to resolve conflicts over child custody and visitation rights. The advantages of mediation over adversarial proceedings are lower costs and, what is more important, the direct involvement of the parties speaking for themselves and actively participating in the decisions affecting children for whom they share concern. However, unfair agreements can result if spouses possess unequal bargaining or negotiating power or skills. All of these alternatives to an adversarial divorce proceeding deserve critical evaluation. Unfortunately, little research on these issues is currently available.

Of primary importance, there is need for education about divorce (see the article by Kelly). Parents need to be educated about the effects of family conflict on children. They need a range of educational and mediational services to diminish rather than escalate conflicts, to focus on what is best for their children at various developmental stages, and to increase the chance for mutual agreement between parents about custody, visitation, and the financial arrangements for their children. Educational and mediational services should be available to prevent divorce. Not only parents, but judges, lawyers, and mediators involved in determining the best interest of a child need a better appreciation of child development, including information about attachment, separation anxiety, the importance of continuity and nurturing relationships between children and adults, and the needs of children during and after divorce. The costs of education about divorce need to be planned for and funded.

**Custody and Visitation**

Because the well-being of a child is critically dependent on parenting received from adults throughout childhood, the issues of custody and of continuing relationships with the noncustodial parent after divorce are of paramount importance (see the article by Thompson). Historically in the United States, custody decisions by colonial courts, following English legal doctrines, were based on a strong paternal preference. This gradually changed over time. By the 1920s, a strong maternal preference was the presumption on which custody decisions were made, and this has continued for many decades (see the article by Kelly).

As Kelly and Furstenberg discuss, this shift in preference to the mother reflected and was reinforced by a number of societal changes. These included a gender-based division of family responsibilities in which the father was viewed as the wage earner and the mother was viewed as the child nurturer, primarily as a consequence of the industrial revolution, which caused fathers to seek work away from home; an improvement in the legal status of women; psychoanalytic theory arguing for the unique role of a mother as love object; and research on the development of infant attachment to mothers.

The maternal presumption for custody remained firm until the 1960s and 1970s when there began a transition to gender-neutral laws (see the article by Kelly). This change was influenced by the entry of large numbers of women into the work force, the gradual realignment of some gender roles within the family, the increased divorce rate, fathers’ claims of sex discrimination in custody decisions, the feminist movement, and psychological research on the importance of a child’s attachment to both parents and the father’s continuing contribution to his child’s development. Kelly further points out that the idea of basing custody decisions on the child’s needs and interests is a relatively new one that emerged about 20 years ago and eventually became embodied in the “best interests” of the child standard. Subsequently, support for the related idea of awarding joint custody to both parents evolved rapidly so that, by 1991, almost all states had recognized this latter concept in some form.

The prevailing standard for courts to determine custody is the “best interests
of the child.” We concur with Kelly that it is the most appropriate legal standard for making decisions in custody disputes because it is “centered on children’s developmental and psychological needs rather than parental demands, societal stereotypes, or legal tradition.” Under this standard, there is a case-by-case determination of the best way to meet the unique needs of each child. This process is also potentially responsive to changing social or legal trends outside custody law. For courts to make the best custody judgment with respect to the child’s needs, this standard should employ multiple variables about the family, such as information about the loving and emotional relationships between parents and child, information about the parents’ mental and physical health, the child’s age and developmental stage, and the pattern and quality of the primary caretaking arrangements. Unfortunately, this approach can result in a lack of uniformity from one case to the next about the weight given to these different variables and how to take into account children’s changing developmental needs. However, on balance, the advantages of using “the best interests of the child” standard appear to outweigh the disadvantages of relying on a single more uniform standard such as a determination of the “primary caretaker” during the marriage (also see the articles by Carbone and by Thompson).

Exactly what custody arrangements are being decided upon and implemented in divorce decrees is difficult to determine nationally because of considerable variation in definition of legal, physical, and joint custody among the states and difficulty in collecting data from individual divorce decrees (see the article by Kelly). Joint legal and sole maternal physical custody is probably the most common legal arrangement, followed by awarding sole legal and physical custody to the mother. Only 10% to 15% of divorced fathers have their children living with them more than half of the time. Thus, mothers continue to be primarily responsible for their children during marriage and after divorce, although shared physical custody arrangements and paternal visitation time are increasing.

The majority of these arrangements are made by private agreement between parents when parents are unable to agree on their own, and nonadversarial mediation is increasingly being utilized. Research does not support the concern of some commentators that mothers are systematically disadvantaged in such forums (see the articles by Katz, by Kelly, and by Carbone). Mediation has significantly reduced the use of adversarial proceedings with their high financial costs and often substantial disruption of the lives of children and parents. Kelly points out that, at whatever level custody decisions are made, they are subject to powerful statutory, judicial, cultural, educational, and research influences. Efforts to educate parents, attorneys, and judges about the impact of divorce and conflict on children and the needs of children for continuity in the relationships with fathers and mothers should be priorities, even though the effectiveness of such efforts is unknown.

As mentioned, access of the noncustodial parent, usually the father, to the children through visitation has increased over the past two decades. Although no general relationship has been found between visit frequency and lack of the adjustment problems of children to divorce in the near term, some studies suggest that continued involvement of fathers with their children after divorce is beneficial to the children under certain circumstances (see the articles by Amato and by Thompson). There is, in addition, a definite economic advantage to continued paternal involvement as it is associated with an increased likelihood of payment of child support. More research, however, is needed on the long-term effects on children of continuing contact with the noncustodial parent.

After the divorce decree and custody award are final, modifications of child custody and visitation arrangements are sometimes needed to adapt to the changing circumstances of parents, and to the chang-
ing developmental needs of children, including their own wishes. Adjustments to custody and visitation arrangements should be able to be made in a timely and inexpensive manner. Custody and visitation arrangements are obviously in the best interest of children when they facilitate effective coparenting.

Mediation should be widely available and mandatory, with certain exceptions, as the initial step for all parents disputing or modifying child custody and access arrangements before continuing adversarial proceedings, but settlement of the disputes via mediation should not be mandatory (see the articles by Katz, by Carbone, and by Thompson). Mediation results in 50% to 75% settlement rates, and the costs are substantially less than with litigation. Those who mediate are more likely to reach an agreement than those who do not mediate (which, in part, reflects self-selection), and both parents are more likely to be satisfied with the agreement than those who litigate. However, exceptions to required mediation are needed for those who are unable or afraid to negotiate on their own behalf, such as women subjected to or at risk of domestic violence, families in which there has been child neglect or abuse, parents who are substance abusers, and parents who are mentally incapacitated. Racial, ethnic, cultural, and socioeconomic factors also need to be taken into consideration in structuring fair and effective mediation policies, procedures, and safeguards. Further, mediators (including attorneys) need specialized training and experience in divorce and custody matters, in assessing domestic violence, and in the process of mediation itself.

Mediation up to this point has not generally been available to resolve the financial disputes of divorce, with most states requiring that financial matters be settled in a separate proceeding. However, as Katz points out, with the adoption of federal guidelines for child support by states, the custody and financial conflicts become more closely linked. These guidelines also reduce the potential for bargaining inequities in which women may feel the need to reduce their child support demands to avoid losing custody. Simple support matters might also lend themselves most appropriately to the mediation process.

The Financial Consequences of Divorce and the Support of Children

The primary social and financial responsibility for children in the United States rests with parents. In marriage or cohabitation, it is assumed that total family income, at whatever level, will be shared in a manner that at least provides for the basic needs of children. This is fundamentally a private matter except when there is child neglect or resources are transferred to the family through public programs. After divorce, initially the same income must be used to pay for the greater fixed costs of maintaining two households as well as legal, relocation, and other expenses related to family dissolution. Further, the basic dynamic of meeting the changing financial needs of children from the income of custodial and noncustodial parents is different than in marriage, and the state becomes significantly involved in the relationship between these parents and children in a variety of ways. First, we will review the financial readjustments and consequences of divorce and remarriage. Then, we will analyze the processes by which child support is determined and awarded, and payment is collected from the noncustodial parent.

Divorce results in a significant decline in the income of women compared with that of men after divorce. However, there is some improvement in the economic well-being of divorced women if remarriage occurs relative to the divorced state (see the article by Teachman and Paasch). Family income after divorce drops on the average by more than 20% and, as previously indicated, a substantial number of divorced women with custody of children live in poverty (39%). Poverty is not only...
more prevalent in these families, but it starts immediately after marital disruption, and it lasts longer than for two-parent families living in poverty.

The substantial increase in the percentage of mother-child families living below the poverty line following divorce results, in part, from the fact that a large fraction of these families were close to the poverty line as intact families before divorce. This situation occurs in a larger proportion of African-American families because they generally have lower income levels.

Conversely, in single-parent families, the substantial increase in family income with remarriage is immediate and significantly reduces the incidence of poverty. The current trend of lower remarriage rates probably increases the duration of poverty, but the countervailing trend for increased cohabitation of unmarried parents may decrease the poverty rate.

Teachman and Paasch point out that employment of divorced mothers may not be "an effective buffer against economic deprivation." The number of mothers with children who are employed outside the home increases after divorce, but the average amount they earn declines, although it constitutes about 60% of women's postdivorce income. Over time the proportion of these working mothers declines to just above what it was before marriage disruption. As discussed by Teachman and Paasch, this decline is probably the result of a number of factors, including lack of prior continuous work experience; employment in low-status and part-time jobs, usually without career advancement opportunities; low wages; discrimination against single mothers in the workplace; the costs and constraints of child care; and the availability of public assistance benefits, especially those that erode with earned income.

Public assistance plays a substantial role in the financial well-being of divorced women and children. Immediately following divorce, the number of children living in families receiving public assistance through the Aid to Families with Dependent Children (AFDC) program doubles and the number receiving food stamps triples. These numbers continue to increase slightly over time. According to Teachman and Paasch, the proportion of average family income constituted by these benefits increases from 18% before divorce to 25% to 30% after divorce. These benefits go to those most in need. Mothers in the lowest third of the income distribution before divorce are 18 times more likely to receive these benefits after divorce than those in the highest third of income distribution before divorce.

Taken together, the major cash (such as AFDC and earned income tax credits) and noncash (such as food stamps, Medicaid, and housing subsidies) public assistance programs are critical to decreasing the effects of poverty on divorced women who are awarded child custody, although many of these families remain in poverty even after these benefits are taken into account. However, these programs were not intended to provide long-term support for raising children. They are based on the premise that this responsibility remains with both parents. Thus, child sup-

Public assistance programs are critical to decreasing the effects of poverty on divorced women who are awarded child custody.
exercise of judicial discretion resulted in considerable variation in the awards from case to case, even given similar family circumstances. Furthermore, these awards have generally been regarded as inadequate to cover a fair share of the reasonable costs of raising the children.

In contrast to this traditional approach to child support, as a result of federal legislation passed in 1984 and 1988, court-ordered child support awards over the past decade have had to conform to standardized numerical formula guidelines or judges have had to provide appropriate reasons for deviation from the standards.

The children of low-income women, whether divorced or never married, are especially disadvantaged under the present system of obtaining support from a noncustodial father.

This federal legislation was enacted, in part, to have more child support (including available medical insurance) provided by the noncustodial parent, usually the father, and to contain the growing costs of the AFDC program. The states were required to adopt a numerical formula guideline to determine the amount of child support awarded as a condition for receiving federal funds for their AFDC programs and were authorized to initiate automatic wage withholding for AFDC cases. States were also authorized to withhold wages of noncustodial parents to provide child support in non-AFDC cases starting in 1994.

Almost all of the states have adopted variants of one of two approaches for income sharing between custodial and noncustodial parents to support their children: either the income shares formula or the percentage of income formula, both of which are discussed in the article by Garfinkel, Melli, and Robertson. Issues which receive special attention are the inclusion of actual child care costs in support awards; the provision for ordinary and extraordinary medical care expenditures; the treatment of higher education costs; the way in which child support orders are updated for changing child needs and parental income; the ways in which remarriage and multiple support obligations are taken into account; and the effect of dual residence on child support obligations.

Even with the implementation of federal guidelines for determining awards, substantial problems persist. Child support awards continue to be small, much less than the reasonable costs of child rearing, and the pattern of payments is often irregular (see the articles by Teachman and Paasch, and by Roberts). The average amount of support received by divorced mothers in 1989 was $3,138 per year for a family with an average of slightly more than 1.5 children. In addition, the receipt of support payments declines over time. Further, a large proportion (28%) of divorced mothers do not have a child support award at all. Of the 72% who do have awards, 25% do not receive any payment. Nevertheless, the receipt of child support payments, even at a low level, can make a significant difference in the economic well-being of divorced low-income mothers with children. In 1989, although child support payments represented 17% of the total income of all divorced mothers who received them, they made up 38% of the total income of divorced mothers and children living in poverty because of their low income.

As discussed by Teachman and Paasch, research to determine how much child support absent fathers can reasonably afford to pay suggests they can afford three to four times the amounts they are currently paying or two to three times what they are currently obligated to pay under child support awards. If this increase were received by custodial parents, children would be benefitted economically and, possibly, by the absent father’s increased involvement in their lives (see the article by Thompson). However, a substantial reduction in welfare cost would not necessarily result because payments would not be distributed equally among divorced mothers; those at higher income levels are more likely to receive a greater proportion of the increased payments.

All mothers, whether divorced or never married, who have custody of their children may be awarded child support.
However, about 42% of all custodial mothers and 56% of all poor custodial mothers are not awarded child support. The reasons for the absence of awards are varied and include a mother’s decision not to pursue an award, often to get custody without dispute; privately arranged settlements for support; inability to establish paternity or locate the known father; and the inability of the father to pay or the mother to afford the costs of legal proceedings to enforce awards. Marital status is the most important factor in being awarded child support; as noted above, 72% of mothers who were married receive child support awards on divorce while only 24% of never-married mothers receive support awards from their children’s biological father. However, having a court-ordered award, which is an important determinant in obtaining payment from many fathers, does not guarantee payment. Payment compliance, which is not public and somewhat insulated from normative and legal pressures, is highly dependent on the father’s motivation and ability to pay. Teachman and Paasch, Garfinkel and colleagues, and Roberts analyze a number of additional factors that have a significant influence on mothers’ obtaining awards and receiving payment. The children of low-income women, whether divorced or never married, are especially disadvantaged under the present system of obtaining support from a noncustodial father.

The enforcement of child support award orders presents additional problems such as locating the noncustodial parent, serving legal papers on the parent, scheduling timely hearings, undertaking discovery, obtaining and implementing health insurance orders, and collecting arrears in payments (see the articles by Roberts, by Carbone, and by Thompson). The inadequacies of the current enforcement system have obvious serious consequences for the specific children who would have been the immediate beneficiaries of the awards that are not paid. They also have broader policy implications by contributing to the increasing number of children who live in poverty and the untoward effect of this trend on our society.  

Roberts makes a number of very specific recommendations to strengthen some aspects of the state system and suggests complementary federal responsibilities. We believe a number of these changes could be beneficial. At the state level, these include offering parents easy means to routinely establish paternity of newborn infants and children by voluntary agreement; streamlining the legal processes for determining contested paternity at low cost, including the provision of appropriate genetic testing; developing a greater capacity to locate parents through access to federal records such as tax returns and a sharing of this database among all the states; having the states continue to be responsible for establishing and modifying custody, visitation, and child support orders but requiring that a national guideline be used as a rebuttable presumption of the level of child support to be paid; and requiring states to deal with interstate cases under the Uniform Interstate Family Support Act (UIFSA) that has been approved by the National Conference of Commissioners on Uniform State Laws.

At the federal level, Roberts recommends adoption of a national guideline, percentage of income, to determine the economic contribution of the noncustodial parent because of its basic fairness and ease of administration and because it does not create work disincentives. In addition, she proposes the creation of a national registry for child support orders within the Internal Revenue Service (IRS); the gradual transfer of responsibility for enforcement of child support orders from the states to the IRS; and the authorization of the IRS to withhold wages for child support, collect quarterly payments from the self-employed for child support, and routinely apply all of the other IRS collection mechanisms against those who do not pay. The IRS would also be charged with the responsibility for keeping records and dispensing payment to custodial parents.
All of the efforts to increase the number of child support awards, have the amount of the awards represent an appropriate contribution toward the costs of caring for children, and assure payment of awards will accomplish little when the noncustodial parent does not earn enough to make the required payments. A direct government payment to make up the difference between what the noncustodial parent can reasonably be required to pay and a basic level of child support has been proposed. This idea is usually incorporated in what is referred to as a Child Support Assurance program (see the articles by Teachman and Paasch, by Garfinkel and colleagues, and by Roberts). This difficult and controversial issue also needs to be considered within the context of providing financial support for never-divorced families who live in or near poverty. Poor divorced families are a special subset of this problem because of the complex state and federal systems which currently exist to provide support for these children. Thus, child support assurance relates closely to a variety of proposals for welfare reform, job training, and creation of employment opportunities. It should not be considered in isolation.

Conclusion

As discussed in this analysis, divorce and separation of parents affect millions of children in the United States. Currently, there are serious problems with the process of obtaining a divorce, in deciding about what custody and visitation arrangements will be in the best interests of children, and in providing financially for children when parents divorce. Further, divorce needs to be considered in a broader context. One of the greatest challenges facing our society in the years ahead is the increasing diversity of the families responsible for raising children. Children will be living in one- and two-parent families of married, divorced, remarried, and never-married individuals from an increasing variety of racial, ethnic, and cultural backgrounds. Whatever the family structure, children will still need a loving, nurturing, stable, economically secure environment for their optimal growth and development. Children are not responsible for who their parents are or for what they do; rather it is the parents and the community who are responsible for who their children are and for what they become.

Richard E. Behrman
Linda Sandham Quinn

1. The number of children and youth who do not live in family settings cannot be accurately estimated. However, some perspective on this group is gained by considering the following information. The foster care population was 442,000 at the end of FY 1992 and the system served an estimated 659,000 children during the course of the year. An additional unknown number of drug-exposed newborn infants were held in acute care hospitals pending foster care placement. The population of children 10 to 18 years of age admitted to custody in juvenile justice confinement facilities in 1988 was 760,644 with an additional 65,263 juveniles held in adult jails. A one-day census in 1989 indicated that 93,945 juveniles were incarcerated. The number of runaway and throwaway children and youth in 1988 totaled 577,800 and at least 192,700 of these children had no familiar and secure place to stay. In 1986, some 44,375 adolescents were admitted to residential treatment centers for mental health services. It has been estimated that about 6% of children 10 to 19 years of age (33,762 in 1990) live in nonfamily situations as emancipated minors.

Abstract

The living arrangements of American children have been strongly affected by revolutionary social changes in the past 30 years. Large decreases in first-marriage rates and an increase in the likelihood of married couples to divorce have resulted in a wide diversity of living arrangements for children. In spite of increasing divorce rates, in 1990, the vast majority (71%) of the 64 million American children lived in two-parent households, and most (58%) lived with their biological parents. Since the 1970s, however, there has been a large increase in the proportion of children living with single or divorced mothers. Today, 7.3% (4.7 million) of children live with an unmarried parent, 9.1% (5.9 million) live with a divorced parent, and 7.4% (4.8 million) live with a separated or widowed parent. In each year since the 1970s, more than one million children were affected by divorce.

The composition of single-parent households has also changed dramatically. The decreasing mortality rates in the past three decades among married individuals have resulted in fewer households headed by widowed parents. However, the decrease in widowed-parent households has been more than replaced by a corresponding increase in households headed by never-married women. Increasing divorce rates have resulted in more children living in stepfamilies and with divorced single mothers. Legal changes in the 1970s have resulted in an increase in the number of children living with divorced fathers. There are large differences in the living arrangements of children by ethnic group. In the past 25 years, there has been an exponential increase in the proportion of African-American children living with never-married mothers. The most common form of living arrangement for African-American children today is one-parent families.

American children have been greatly affected by the revolutionary changes in patterns of marriage, divorce, and remarriage occurring over the past 30 years. Increasing divorce rates in America have resulted in increasing numbers of children who are affected by divorce. In 1988, 9.7 million, or 15% of all children (under 18 years of age), lived with a divorced or separated parent, and an additional 7.3 million, or 11% of children, lived with a stepparent.1,2 Each year since the mid-1970s, more than 1 million children have experienced a family divorce. It is projected that nearly half of all the babies born today will spend some time in a one-parent family which occurred as a result of single parenthood or divorce.1

The social consequences of these changes in the American family structure have been staggering and are discussed in more detail in the accompanying articles in this journal issue. The increasing number of children affected by divorce has added to the growing number of American children living in poverty and the growing number of single-parent families supported by government subsidies. (For
an in-depth discussion of this problem, see the article by Teachman and Paasch in this journal issue.) Compared with children from intact two-parent families, children from divorced families appear to suffer from more adjustment problems, but it is not clear whether or not some of these problems may have occurred prior to the divorce. However, for those children who are directly affected by divorce, the adverse psychological effects appear to be relatively mild. (For an in-depth discussion of this topic, see the article by Amato in this journal issue.) After a divorce, the financial circumstances and psychological adjustment of children are highly dependent upon the living arrangement of the child’s new family. Current research suggests that custodial parents who remarry improve their financial position, but their children’s psychological adjustment becomes slightly worse, as compared with the adjustment of children who remain in one-parent families. Serial marriages (three or more) are likely to lead to financial instability and increased adjustment problems in children because of the repeated disruptions such families undergo.

Informed policy decisions must begin with a reliable quantitative description of the children affected by divorce. Thus, the purpose of this article is to describe the national trends in the number of children experiencing a family divorce and trends in the living arrangements of American children. We begin this article by describing the national trends in marriage, divorce, and remarriage and discuss some demographic factors that are associated with these events. We then focus on changes over time in the family living arrangements of children, the number of children experiencing a family divorce, and the changing composition of single-parent households of children of divorce. We also highlight some of the more recent trends in the living arrangements of children, such as the emergence of single, divorced-father families, the amount of contact children have with their fathers after divorce, and the role of grandparents in the homes with children.

**National Trends in Marriage, Divorce, and Remarriage**

Information about marriages and divorces in the United States is collected on the Standard License and Certificate of Marriage and Standard Certificate of Divorce, Dissolution of Marriage, or Annulment. The information provided by couples on these certificates allows us to monitor the occurrences of marriages and divorces. Long-term trends in marriage, divorce, and remarriage are presented in Figure 1 and represent a cross-sectional or a snapshot look at these events at a given time. Because the actual number of marriages and divorces in a given year is dependent on the size of the population, marriages and divorces are measured as rates making them independent of the size of the population. The rates plotted in Figure 1 depict the number of women experiencing one of these events per year, divided by the number of women at risk for the event. Thus, marriage rates are defined as the number of women marrying in a given year divided by the number of single women, and divorce rates are the number of women divorcing in a given year divided by the number of married women. Three-year running averages are plotted to smooth out individual year fluctuations and to provide a clearer picture of long-term trends.

**Marriage**

To be at risk for divorce, couples must first be married. Rates of first marriages have fluctuated dramatically over the past 70 years. In the 1920s, annual marriage rates were approximately 99 per 1,000 single women. Rates declined during the depression era (early 1930s) to 81 per 1,000 women. Marriage rates then rose to an all-time high of 143 per 1,000 women in the post–World War II era (mid-1940s) and declined steadily for the next 30 years. Rates declined sharply in the mid-1970s to 85 per 1,000 women. In recent years, the rate of first marriage continues to decline and reached an all-time low of 76 per 1,000 women in 1988. Thus, during the marriage peak in the mid-1940s, ap-
approximately 14% of never-married women wed each year, compared with the current low of approximately 7%.

The declining propensity of couples to marry also is reflected in the decrease in the proportion of women who marry to avoid having a child out of wedlock. During the 1960s, approximately half (52%) of all women were pregnant when they married, whereas in the 1980s, only one quarter (27%) of women were pregnant when they married. Although current marriage rates are relatively low, these low rates are somewhat offset by increasing rates of cohabitation (unmarried couples living in the same household), which have risen from approximately 11% in the late 1960s to 44% in the 1980s. Cohabitation largely delays marriage rather than replacing it, as 60% of cohabiting couples eventually marry.

In recent years, there has been a growing difference in marriage rates by age and by ethnic group. Fewer and fewer women are marrying in their twenties. Among women 20 to 24 years of age in 1975, 63% had married, while in 1990, only 39% of women in the same age group had married. For women 25 to 29 years of age, these percentages dropped from 87% in

Figure 1

Rates of First Marriage, Divorce, and Remarriage: 1921 to 1989 (Three-Year Averages)

![Graph showing rates of first marriage, divorce, and remarriage from 1921 to 1989.](image)

- Remarriages per 1,000 widowed and divorced women, 15 to 54 years old.
- First marriages per 1,000 single women, 15 to 44 years old.
- Divorces per 1,000 married women, 15 to 44 years old.
- Data on first marriages and remarriages are not available for 1989. The proportions for 1988 were applied to 1989 marriages (12 months ending in December).

One of the most important effects of the rise in divorce, especially in the early years of the marriage, has been the increase in the proportion of divorces occurring among women with young children.

61% for African-American women in 1990. Moreover, in 1990, only 75% of African-American women in their late thirties had ever married compared with 91% of white women. If this trend continues, less than 75% of African-American women will marry at some point in their lives compared with 90% of white women. This decrease in marriage has led to increased out-of-wedlock births for both African-American and white women, but especially for African-American women (see discussion below). Data about Hispanic women has been available only since 1980, and it appears that their patterns of marriage are similar to those of white women.

Divorce

Since the 1860s, divorce rates have generally been increasing, rising from approximately 10 per 1,000 married women per year and reaching a peak of 24 per 1,000 after World War II. Divorce rates decreased to approximately 15 per 1,000 in the 1950s and more than doubled in the 1970s to an all-time high of 40 per 1,000 married women in the late 1970s. In recent years, the annual divorce rates appear to be decreasing slightly; in 1988, the rate was 37 per 1,000 married women. Each year since the late 1970s, more than one million couples became divorced. Currently, most people who divorce do so early in their marriage so that half of the divorces occur by the seventh year of marriage. One of the most important effects of the rise in divorce, especially in the early years of the marriage, has been the increase in the proportion of divorces occurring among women with young children.

Several important factors are associated with divorce: the age when couples marry, their educational attainment, and the timing of pregnancy. An inverse relationship exists between age at marriage and the likelihood of divorce. Teenage marriages are much more likely to end in divorce than are all other marriages. Women who marry when they are over age 30 are the least likely to become divorced. While there is no clear relationship between a woman’s level of education and divorce, women who appear to have stopped short of obtaining a high school diploma or other advanced degrees have increased rates of divorce, compared with women who attain exact diploma or degree levels. Thus, women who completed high school or a bachelor’s degree were less likely to divorce than women who stopped short of attaining these degrees. Obviously, it is not clear from these statistics if the divorce caused the women to cease their education or if dropping out of school caused the divorce. Women who were pregnant or had a child prior to their first marriage were more likely to divorce than women who become pregnant after marriage.

Demographers point to several societal events that have had major impacts on divorce rates. Divorce rates increased after every major war, decreased during the Great Depression, and decreased during the post–World War II economic boom. The large increase in divorce rates in the 1970s was bolstered by the introduction of no-fault divorce laws, the reduction in fertility as a result of improved methods of contraception, and the legalization of abortion. However, most scholars believe that the single most important social change which made divorce possible was the increase in the employment of women and the corresponding economic independence that employment provided. The rise in employment has been especially pronounced for married women. In 1940, 15% of women who were currently married (with husbands present) were working outside the home or looking for work. This proportion rose to 50% by 1979; in 1989, it was 58%. The change was greatest for married women with children. Since the middle of the 1960s, the rate of increase in employment for women with children has been the highest for women with preschool children. The rate of employment for married
women with preschool children went from 11% in 1949 to 19% in 1959; in 1979, it rose to 43%; and by 1988, it had risen to 58%. Some scholars speculate that, if the economic status of workers in the United States remains at its relatively depressed level, then it is less likely that married women will leave the labor force in large numbers in the near future.\textsuperscript{7}

**Remarriage**

Remarriage is dependent upon the rates of marriage, divorce, and widowhood. Remarriage rates have fluctuated dramatically. The levels of remarriage rates have generally been more extreme, having higher highs and lower lows than first-marriage rates, but have generally tracked the rise and fall of first-marriage rates until the 1960s. As marriage rates were declining slightly in the early 1960s and as divorce rates rose sharply after the mid-1960s, remarriage rates soared to an all-time high in the late 1960s of 166 per 1,000 divorced and widowed women per year. In the 1970s, remarriage rates continued to track the decline in first-marriage rates. The length of time divorced individuals remain unmarried is also increasing. In 1970, the median time between divorce and remarriage was about one year; in 1988, this interval increased to about 2.5 years.\textsuperscript{9}

Rates of remarriage are affected by age, income, education, ethnic group, and the presence of children in the family.\textsuperscript{7} However, these predictors often differ by sex and ethnic group. Younger women are more likely than older women to remarry, but age is not associated with remarriage among men. Men with higher incomes and education are more likely to remarry than men with lower incomes or education. However, increased educational attainment increases the likelihood of remarriage among African-American women but not among white women. The presence of children lowers the likelihood that a woman will remarry but does not affect the probability of remarriage among men. Divorced African-American women are less likely to remarry than divorced white women, and they have a longer interval between marriage. Only 34% of African-American women whose marriage ended between 1965 and 1984 remarried by 1988, compared with 60% of white women.\textsuperscript{9} During the first several years of marriage, the rate of divorce for remarriages is substantially higher than for first marriages; afterward, the rates are similar.\textsuperscript{7} By one estimate, 37% of remarriages among women end in a separation or a divorce within 10 years, compared with 30% of first marriages. The expanded families of remarriage after divorce may complicate the lives of remarried adults and their children.\textsuperscript{7} For children, there may be a substantial financial gain; however, adjustment of children in their first stepfamilies appears to be worse compared with children in single-parent families.\textsuperscript{3}

**Generational Differences in Marriage, Divorce, and Remarriage**

Changes in marriages and divorces are affected by a complex array of several interwoven external factors, including changes in social norms over time, death rates, economic conditions, historical events, and laws. In an attempt to account for these factors, researchers often observe a group of people born during a specific time period and track their lifetime experience with marriage and divorce. When several of these different groups are compared, it is sometimes possible to see the potential effects of these external forces.

The marriage, divorce, remarriage, and redivorce rates for four groups of women born 20 years apart are shown in Figure 2.\textsuperscript{7} These groups represent four generations: women born in the early century, their daughters born during the depression, their granddaughters born during the start of the baby boom, and their great-granddaughters born in the 1970s. Because women who were born in the 1970s are currently in their twenties, lifetime rates for this cohort have been estimated using the 1990 rates of marriage, divorce, and remarriage. Despite revolutionary changes in social norms, economic conditions, wars, and fertility in the past 80 years, nearly all the women in these cohorts have married; 93% of the first generation, 97% of the second, 95% of the third, and 89% of the fourth
Figure 2

Percentage Ever Marrying, Divorcing, Remarrying, and Redivorcing for Four Birth Cohorts of Women: 1908 to 1912, 1928 to 1932, 1948 to 1950, and 1970


generation have or eventually will marry during their lifetime. However, the proportion of women who have married and divorced has increased sharply for each successive generation: lifetime experiences of divorce doubled from 22% in the first generation to 44% in the fourth generation. Remarriage after divorce and second divorces have also increased sharply over the years. Virtually none of the women who were born in the early part of the century experienced a second divorce, whereas 16% of the youngest cohort are expected to experience a second divorce.

Life-table or actuarial rates of divorce have also been calculated for women born in each decade from 1890 to 1950. Life-table analyses follow a group of women who were born in a given year and track their movements over their lifetime to and from several marital states such as never married, presently married, widowed, divorced, and deceased. Unlike simple annual rates of divorce, which represent a snapshot view of the population in a given year, life-table rates of divorce provide an estimate of the likelihood of divorce over one’s lifetime.

Each line on Figure 3 represents the cumulative probability of divorce by age for women who are at risk of divorce (women who have survived to age 15 and were married by ages 20 to 55). For nearly all decades, the lifetime probability of divorce for women has been increasing, and this increase has occurred for women of all ages. For women born in 1920, the likelihood of divorce by age 55 was 27%; this same level of divorce was reached at a much younger age (age 30) for women born in 1950. At least 40% of young adult
women today are likely to divorce, 30% are likely to remarry following a divorce, and 16% are likely to divorce twice if current divorce rates continue.\(^7\)

### Living Arrangements of Children

The changes in the marriage, divorce, and remarriage rates over the past 70 years have had a profound effect on the living arrangements of children. A growing number of children are being raised by single parents or by stepparents. In 1990, there were 64.1 million children under 18 in the United States; the vast majority (45.2 million, or 70.5%) lived in two-parent households (Figure 4).\(^6\) Most children (37 million, or 57.7%) lived with their biological parents, 11.3% (7.2 million) lived in married stepfamilies, and 1.5% (1 million) lived with adoptive parents. Approximately one quarter of the children lived in single-parent households; 9.5% (6 million) with a divorced, single parent, 7.7% (4.9 million) lived with a never-married parent, 7.6% (4.9 million) lived with a separated or widowed parent, and 4.7% (3 million) lived in a house with no parent present.

### Trends in the Living Arrangements of Children

In spite of the changes in family structure in the United States over the past 50 years, the vast majority of children continue to live in two-parent families. In 1940, 85% of children lived in two-parent families, 70% lived in an intact (biological or adoptive) two-parent family, and the remaining 15% lived in two-parent stepfamilies. In spite of the increasing divorce rates in the 1960s and 1970s, a large majority of children in 1988 still lived in two-parent families (71%), and a majority (58%) still lived in intact two-parent families. However, since the 1970s, there has been a large increase in the proportion of children living with never-married mothers (from 1.1% in 1970 to 6.7% in 1988) or divorced mothers (from 3.5% in 1970 to 7.8% in 1988).
Trends in the composition of families for children living with one parent also have changed dramatically over time (Figure 5).  In 1940, approximately 40% of children in one-parent families lived with widowed mothers, and very few children lived with never-married mothers. Between 1940 and 1960, as separation and divorce became more common, so did the number of children in one-parent families with a separated or divorced mother. After 1960, the proportion of children in one-parent families with a never-married mother increased greatly, from 3.4% in 1960 to 28.2% in 1988. At the same time, there were large declines in death rates among married men so, by 1988, only 5% of children in one-parent families lived with widowed mothers. Therefore, as households headed by widowed women decreased over the years, there was a simultaneous increase in the proportion of children living with never-married mothers. The proportion of children in father-only families has decreased slightly over the years, and fathers’ marital status has shifted from mainly widowed to mainly separated and divorced.

**Living Arrangements of Children by Ethnic Group**

There have been large changes in the living arrangements of American children in one-parent families by ethnic group. In the past 50 years, the proportion of white children living with a divorced or separated mother has been increasing. Among white families, the rapidly decreasing proportion of children living with widowed mothers has gradually been replaced by increases in the proportions of children living with single mothers (Figure 6). In contrast, the biggest change in living arrangements for African-American children has been the exponential growth in the proportion living with never-married mothers. Prior to the 1960s, only 4% of African-American children lived with never-married mothers. This proportion increased to 16% in 1970 and in 1988 has
Children Living in One-Parent Families by Parent’s Sex and Marital Status, 1940 to 1988


become the most common form of living arrangement for African-American children (52%). (There are no comparable data about Hispanic families.)

**Number of Children Affected by Divorce**

The trends over time in the number of children affected by divorce generally followed the changes in the divorce rates (Figure 7). However, decrease in family size, the increasing number of births to single women, and the shorter duration of marriage all modify the relationship between divorce rates and the number of children affected by divorce. Each year prior to the 1960s, fewer than 400,000 children were affected by divorce. As the number of divorces rose in the late 1960s, so did the number of children affected by divorce. The number of children affected by divorce during the 1960s and 1970s rose dramatically and was generally higher than the number of divorces because the average families that divorced in that era had more than one child. In later years, the number of children affected by divorce was lower than the number of divorces because of the slight decline in the divorce rates and the smaller number of children in the families. By the late 1970s, more than one million children under age 18 were affected by divorce each year.

**The Emergence of Divorced-Father-Custody Families**

Since the 1970s, there has been an emergence of divorced-father families. Divorced-father families are increasing at a faster rate than divorced-mother families. This phenomenon occurred with the changes in custody laws during the
Figure 6

Children Living in One-Parent Families by Parent’s Sex and Marital Status, 1940 to 1988

Black Children

White Children

1970s which made them more gender neutral. Custody (legal and/or physical) would not be automatically given to the mother, but could also be given to the father. Changes in custody laws have had a major influence in the living arrangements of the children of divorce. During the 1940s and 1950s, of all children in the United States only one or two children per 1,000 lived with their fathers after a divorce. With the changes in child custody laws, there has been a tenfold increase in children living with their fathers after divorce; in 1988, 1.3% (838,000) of children lived with their father after divorce. In contrast, 7.8% (5,031,000) lived with their mother.

**Losing Contact with Fathers After Divorce**

Most children live with their mothers after a divorce. This separation of children from their fathers makes a sustained relationship difficult. National statistics from 1979 showed that, while the majority of divorced fathers (55%) have visitation privileges, only a minority (approximately one-third) of children who live apart from their fathers saw them at least once a month in the previous year; 15% saw their fathers less than once a month, 16% had some contact in the past one to five years, and 36% had not seen their fathers at all in the past five years or did not know where their fathers were living. The amount of contact with the noncustodial father did not appear to differ by the sex or age of the child. Divorced fathers were more likely to see their children in the first two years after the divorce if they had higher educational levels, if they provided higher amounts of child support, and if they lived closer to the child. Recent research suggests that the amount of time fathers spend with their children after divorce has increased in the past decade. For example, in a statewide random sample survey, Seltzer and associates found a visitation pattern that was somewhat higher than results from previous nationally representative samples. These changes, according to Kelly, reflect the effects of social and legal change over the past decade, the goal of which is to allow and encourage fathers to be
more involved with their children after divorce. The number of children or age of the child does not appear to be associated with visit frequency, although frequency decreases with adolescence. Visit frequency also decreases with elapsed time since separation.

**The Declining Presence of Grandparents in Homes with Children**

Grandparents have played an important role in supporting families with children, especially in single-parent families. Grandparents are three times more likely to reside in the homes of children living in one-parent families compared with the homes of children living in two-parent families, and this ratio has generally remained stable over the years. However, it is relatively rare for a child to be raised solely by a grandparent. Only a very small proportion of children (approximately 1.4% to 2.0%) lived with a grandparent rather than a parent, and this proportion has also remained constant over the years. In spite of the increasing rates of divorce and single parenthood, there has been a trend toward fewer and fewer grandparents in the homes of all children over the past 25 years. Prior to the 1960s, approximately one quarter of children in single-parent households lived with a grandparent; by 1980, this percentage dropped to approximately 10%. In intact two-parent (biological and/or adoptive families) or married stepfamilies, the presence of grandparents in homes with children decreased from approximately 8% to 9% in the 1940s and 1950s to 3% in 1980. It is not clear from these statistics what proportion of grandparents might have moved in with their children to help with the grandchildren, to get help from their children because of their own failing health, or for other reasons. The decrease in extended families may also reflect, in part, the increasing proportion of elderly couples who are financially secure enough to live apart from their children and grandchildren.

African-American children have generally been five to nine times more likely to have lived with a grandparent rather than a parent, as compared with white children. In spite of the large increase in the proportion of African-American children born to single mothers, the proportion of African-American children who have lived with a grandparent has also dropped significantly. In 1940, 7.6% of African-American children lived in grandparent-only homes, and this proportion dropped to 4.8% in 1980. In contrast, rates of grandparent-only families for white children have remained stable at approximately 1%.

**Summary**

The living arrangements of American children have been strongly affected by revolutionary social changes in the past 30 years. Large decreases in first-marriage rates and an increase in the likelihood of married couples to divorce have resulted in a wide diversity of living arrangements for children. In spite of increasing divorce rates, in 1990, the vast majority (71%) of the 64 million American children lived in two-parent households, and most (58%) lived with their biological parents. Since the 1970s, however, there has been a large increase in the proportion of children living with single or divorced mothers. Today, 7.3% (4.7 million) of children live with an unmarried parent, 9.1% (5.9 million) live with a divorced parent, and 7.4% (4.8 million) live with a separated or widowed parent. Each year since the 1970s, more than one million children have been affected by divorce.

The composition of single-parent households has also changed dramatically. The decreasing mortality rate in the past three decades among married individuals has resulted in fewer households headed by widowed parents. However, the decrease in widowed-parent households has been more than replaced by a corresponding increase in households headed by never-married women. Increasing divorce rates have resulted in more children living in stepfamilies and with divorced single mothers. Legal changes in the 1970s have resulted in an increase in the number of children living with divorced fathers.

There are large differences in the living arrangements of children by ethnic group.
In the past 25 years, there has been an exponential increase in the proportion of African-American children living with never-married mothers. The most common form of living arrangement for African-American children today is one-parent families.

Most children live with their mothers after a divorce, and contact between the children and the divorced father declines rapidly after the divorce. Most fathers are awarded visitation privileges, but only a small minority of children have regular, sustained contact with their fathers after the divorce. Grandparents often play an important role in supporting families with children and are three times more likely to reside in the homes of children living in a divorced-parent household compared with a two-parent household. However, in spite of increasing rates of divorce and single parenthood, there has been a trend toward fewer and fewer grandparents residing in the homes of their grandchildren.

We are grateful to the following reviewers for their helpful suggestions: Donald J. Hernandez, Ph.D., Paul C. Glick, Ph.D., and Andrew Cherlin, Ph.D.


History and Current Status of Divorce in the United States

Frank F. Furstenberg, Jr.

Abstract

This article explores the remarkable shift in marriage and divorce practices that has occurred in the last third of this century in the United States. Initially, information is presented on trends in divorce and remarriage; commonalities and differences between family patterns in the United States and in other industrialized nations are discussed. The author then identifies some of the factors that have transformed marriage practices in the United States and describes how changes in these practices have altered the family experiences of children. Finally, the author suggests trends in family patterns that might occur in the near future and discusses various policy initiatives and how they may influence the future of the family.

As far back as the nineteenth century, when divorce was still uncommon in the United States, Americans worried about the consequences of marital dissolution for children. Then as now, opinion divided between critics of liberalized divorce practices who worried that reform would undermine the capacity of parents to protect and nurture children and reformers who believed that divorce is a necessary mechanism to ensure matrimonial success. None of the participants in these debates a century or more ago, however, contemplated an era when divorce would become an intrinsic part of our marriage system or a time when close to half of all those who entered marriage would voluntarily end their unions.

This article explores the demographic and social changes that have come about in American families as a result of the “divorce revolution,” a phrase that Weitzman used to characterize the remarkable shift in marriage and divorce practices that occurred in the last third of the twentieth century. This change, dramatic as it sometimes appears, was actually a gradual one that is firmly rooted in American cultural values. True, the divorce revolution has occurred among most developed nations. Nonetheless, the pace of change and the prevalence of marital disruption and family reconstitution is distinctly American. By a considerable margin, the United States has led the industrialized world in the incidence of divorce and the proportion of children affected by divorce. Part of the mission of this article is to understand why this is so.

The first section of this article describes trends in divorce and remarriage (see the article by Shiono and Quinn in this journal issue for a detailed presentation of these and related important demographic changes) and comments on the
Most demographers think that divorce is not likely to continue its upward pattern, at least in the near term.

by comparing the family experiences of different cohorts of children as they have encountered increasing levels of marital instability. In doing so, it highlights the very different types of family patterns that occur among whites, African Americans, and Hispanics. In the final section, some themes that emerge throughout the article are addressed, including what sorts of trends might occur in the near future and whether various policy initiatives can influence the future of the family, the patterns of parenting, and the welfare of children who face high degrees of uncertainty in their family arrangements.

Historical Changes in Divorce and Remarriage

Until the latter part of the nineteenth century, divorce was largely proscribed by law and shunned in practice much as still happens today in many nations including some European countries such as Italy and Ireland. Most marital disruptions occurred not as a result of divorce but from desertion or informal separation. Because population surveys were not available prior to the middle part of the twentieth century, it is difficult to know how often de facto divorce took place in the United States. But, it seems likely that all but a small minority of marriages survived until the death of one or another partner, an event that typically occurred much earlier than it does today. Some have argued that the rise of divorce was partly prompted by increasing survival rates, which placed a greater strain on the ability of couples to manage marital stress or maintain marital contentment. However, there is no firm evidence to support this conjecture.

Divorce rates in the United States began to rise shortly after the Civil War and continued on a steady upward course for more than a century. Over this time rates have fluctuated, often falling in poor economic times and generally surging after major wars. But these short-term variations have been far less consequential to the long-term pattern of constant growth. Nearly two decades ago, Preston and McDonald calculated the likelihood of divorce for each marriage cohort beginning in 1867 and continuing until the mid-1960s. Their results showed a continuous trend of dissolution among successive marriage cohorts. Roughly 5% of marriages ended in divorce just after the Civil War compared with an estimated 36% in 1964. Thus, the pattern of prevalent divorce was firmly in place in this country even before the divorce revolution of the 1960s.

Nonetheless, there was a sharp increase in the incidence of divorce from the mid-1960s to the late 1970s. During a span of a decade and a half, divorce rates for married women more than doubled (from 10.6 per 1,000 in 1965 to 22.8 in 1979), pushing the risk of divorce much higher for all marriage cohorts, especially those who wed after the mid-1960s. Some researchers speculated that a majority of all marriages contracted in the 1970s and after would end, especially when both informal separations and formal divorces were counted. Other researchers reached more conservative estimates but still projected that more than two in every five marriages would end in divorce when divorce rates reached their peaks in the middle 1970s.

Divorce rates began to level off in the late 1970s and actually declined by about 10% during the 1980s. As mentioned earlier, fluctuations of this sort are common historically and do not necessarily signal a reversal in divorce trends. Nonetheless, most demographers think that divorce is not likely to continue its upward pattern, at least in the near term. There are several demographic explanations for the failure of divorce rates to increase after the 1970s which do not necessarily imply...
that Americans today are becoming more committed to staying married than they were in the previous two decades.

The huge cohort of baby boomers, reacting to changing economic opportunities, postponed marriage.\(^9,14\) A larger proportion opted to obtain more schooling and wait to form a family.\(^{15}\) Marriage age for women rose from just above 20 in the mid-1950s to 24.4 in 1992, an increase of more than four years.\(^{16}\) It has long been known that early marriage and lower education are associated with marital instability.\(^{17}\) Thus, the pattern of delayed marriage might have had a role in curbing the rates of divorce.

Another potent source of marital disruption, associated with early marriage, is premarital pregnancy. Fewer marriages today occur as a result of a premarital pregnancy.\(^{18}\) It also seems plausible that the greater availability of contraception and abortion in the 1970s may have discouraged the formation of early unions, reducing the number of ill-considered marriages, though evidence to support this hypothesis is not available.

Furthermore, the population has been getting older as the baby boomers mature. Older couples in long-standing marriages have a lower propensity to divorce.\(^{19}\) Thus, as the baby boomers reach middle age, a larger proportion of those married have passed through the high-risk years, when their marriages are young and relatively more fragile.

Finally, growing rates of cohabitation before marriage may have brought down the rate of divorce. As more and more couples elect to live together prior to marrying, it seems likely that many unions that would have ended in divorce end before marriage occurs. That is, a growing number of Americans are divorcing without marrying, making the official divorce statistics a less reliable barometer of union stability.\(^{20}\)

For all these reasons, it is probable that the modest drop in divorce rates does not indicate a higher propensity toward marital stability. Instead, the composition of those marrying has changed in ways that only make it appear that marriages are becoming more stable.

**Remarriage**

Not so many years ago, it was common for family experts to reassure those who were alarmed at the steady increase in divorce rates by pointing out that divorce typically is not a terminal event but a transition from one marriage to the next. So it was said that couples who separated lost faith in a particular marriage but not in the institution of matrimony.\(^{21}\) In 1975, close to three-fourths of all women in their fifties who had experienced a divorce had remarried. For formerly married men, the occurrence of remarriage was even higher, about four in five eventually remarried, owing to the greater pool of eligible partners. (It is easier for men to attract younger partners than it is for women.) But recently, the rate of remarriage has been declining.\(^{22}\)

In part, the trend toward lower remarriage rates may reflect the greater tendency to postpone second unions as both men and women may be more willing and able to live as single persons. But recent evidence from the National Survey of Families and Households (NSFH) suggests the rate of recoupling has not declined notably.\(^{23}\) Many divorced persons have become more cautious about reentering matrimony, preferring instead to cohabit in informal and more fluid unions. This pattern, discussed below, poses particular problems for children who are, to an increasing extent, being raised by quasi-stepparents who are often transitional figures in their households.

The lower rates of remarriage may reflect a growing reluctance to formalize unions after a failed first marriage. Couples who remarry are known to have a higher risk of divorce than couples entering first marriages. And divorces from second marriages occur more quickly than from first unions. Cherlin has shown that the proportion of couples who will marry, divorce, remarry, and redivorce has risen eightfold during the course of this century, climbing from barely 2% of those who were born in the first decade of the twentieth century to 16% of those born after 1970.\(^{5}\)

Cherlin described the changing patterns of marriage, divorce, and remarriage...
African Americans have a substantially higher risk of divorce. Ten years after marriage, 47% of blacks have separated or divorced compared with 28% of non-Hispanic whites. Blacks are also far less likely to remarry after separating. As a result, African Americans spend far less time in marriage than do whites. 28

Much less information exists on the marriage patterns of other racial and ethnic groups. Census data on Hispanics suggest that their levels of marriage, divorce, and remarriage fall somewhere between those of whites and those of blacks. 13 However, official statistics actually conceal as much as they reveal about the behavior of different Latino groups. There is reason to suspect that as much difference exists between Cubans or Mexican Americans and Puerto Ricans as between whites and blacks in rates of marriage and marital stability. 27 Still, such as it is, the evidence on Hispanic subgroups reveals similar trends to those described for blacks and whites in the United States.

In sum, virtually all population subgroups have experienced a postponement of marriage, a steady increase in divorce, and a decrease in remarriage after divorce. Cohabitation as a prelude, aftermath, and perhaps alternative to marriage has become more common. These patterns are more evident among African Americans.

Childbearing
The declining institution of marriage has important ramifications for patterns of childbearing. Typically, now, marriage no longer regulates the timing of sex, and to an increasing degree, it no longer regulates the timing of first birth. 30 Nonmarital childbearing has become more prominent over the past several decades as rates of marital childbearing have declined and rates of nonmarital childbearing have held steady or increased. In 1960, only 5% of all births occurred to unmarried women; in 1990, this proportion had risen to 28%. 31 The increase for whites has been tenfold, from 2% to 20% in this 30-year period.

Figure 1 depicts the remarkable rise in the number of first births among women between the ages of 15 and 34 which have occurred before marriage for whites, blacks, and Hispanics. Among each of the racial/ethnic subgroups, the increase has been remarkable over the past 30 years. For whites this number rose from 8.5% for births occurring in the early 1960s to 21.6% for those that took place in the late 1980s. The rise for blacks was even more spectacular, going from 42.4% in the early...
1960s to 70.3% in the late 1980s. The proportion for Hispanics doubled during the same period, going from 19.2% to 37.5%. Clearly, out-of-wedlock childbearing has become a far more important source of single parenthood for all Americans and especially so for African Americans, who now have a sizable majority of first births before marriage.18 (See Figure 1.)

International Comparisons

The weakening of marriage as a social institution is not unique to the United States. Most developed countries are witnessing similar demographic trends.32 In some instances, the retreat from marriage is even more pronounced. For example, in Scandinavia cohabitation has become a widely accepted alternative to marriage.33 France and England have higher proportions of out-of-wedlock births than occur in the United States, though a higher proportion of these births occur to parents who are cohabiting than in this country.34

Divorce rates have also risen sharply in a number of European nations, though none equals this country in the prevalence of divorce. Still, about a third of marriages in Northern Europe will end in divorce; in England and Scandinavia, as many as two in five marriages may dissolve.35 Thus, explanations for the de-institutionalization
of marriage cannot reside solely in the special features of American culture or society.

**Explaining Changing Marriage Patterns**

Much recent scholarly activity has been devoted to accounting for the declining strength of the marriage institution. The centrality of marriage and the nuclear family in the middle part of the twentieth century makes it especially puzzling to explain what appears to be the rapid erosion of a high cultural commitment to lifelong monogamy. As we have already seen, the view that change came suddenly and only recently is certainly spurious. Many of the elements that were undermining the particular model of marriage prevalent in the 1950s have been evident for some time.

An explanation does not point to a single source of change. A configuration of many changes, some long-standing and others more recent, have shifted the balance of individual interests away from forming permanent unions to more fluid and flexible arrangements. The most important of these was undoubtedly the breakdown of the gender-based division of labor that led men to invest in work and women to specialize in domestic activity.

In the United States these changes occurred in a culture that has long trumpeted the virtues of individual choice and, more recently, personal freedom and self-actualization. Little wonder that Americans lead other nations in the divorce revolution. Our ideology of individualism may have helped to grease the main engine of change, the movement of women into the labor force which subverted the model of marriage as an exchange of goods and services between men and women.

Other simultaneous developments may have hastened the breakdown of the nuclear family. The sexual revolution in no small measure made marriage seem less attractive. As premarital sex with decreased risk of pregnancy became more accessible in the 1960s, the lure of early marriage lessened. The spread of birth control to unmarried youth and the availability of abortion played a part, but the growing visibility of sex that occurred in the post-Kinsey era was probably as influential as the availability of methods of fertility control in changing sexual practices.

Finally, the shift of public opinion favoring more liberal divorce laws may have fed the process of change. Clearly, the laws were a response to a growing demand for divorce. Increases in marital disruption preceded the legal changes or even the opinion favoring changes. However, the laws, in turn, consolidated opinion institutionalizing alternative marriage forms, replacing the permanent monogamy with conjugal succession and, of late, even more conditional arrangements.

Apart from the development of new norms, marital instability promotes more instability as individuals become more wary about the prospects of permanency. They prepare for the contingency of being alone by spending time alone, and they hedge their bets by entering temporary partnerships. As they do, they develop more resources for independence and a greater commitment to living alone unless they are highly contented in unions. Thus, the standards for what constitutes a gratifying relationship may have been rising to higher levels, some would say to unrealistically higher levels. Whether this is true or not, most Americans, perhaps women especially, are now less willing than they once were to settle for “good enough” marriages because they have the option of seeking more gratifying relationships or of living alone in the event that such relationships prove elusive.

**Divorce and the Changing Family Experiences of Children**

The implications of these new marriage patterns for children has been the subject of enormous attention and mounting concern. Close to a majority of children growing up today are likely to spend some time living in a single-parent family before reaching adulthood. And, at least one in five will acquire a stepparent or surrogate parent. Family instability is not novel to the latter part of the twentieth century.
Uhlenberg calculated that about one quarter of all children growing up in 1900 lost a parent by death.\textsuperscript{46} If another 7\% or 8\% encountered a voluntary separation, then close to one in three spent time in a single-parent household during childhood. By mid-century, families had become more stable: the rapid decline of mortality was offset to some degree by rising voluntary dissolution and slightly higher rates of nonmarital childbearing. Still, the total disruptions probably did not affect more than one quarter of all children.\textsuperscript{47}

Since the 1950s, when rates of stability were at their highest point, the risk of family disruption has more than doubled, owing to much higher rates of divorce and separation and, more recently, an explosion of nonmarital childbearing. Several estimates of children’s probability of experiencing parental separation or divorce conclude that at least two in five children will see their parents separate before their late teens.\textsuperscript{20,48} More than one quarter of children are born to unmarried couples, generally couples who are not living together when the birth occurs. Of course, there is some overlap between these two populations, but still, close to half of all children will spend time in a single-parent household before age 18.

This staggeringly high figure does not even tell the whole story. Among African Americans, the proportion of children who live continuously with two biological parents throughout childhood is certainly less than one in five and may be as low as one in ten.\textsuperscript{49} Although data are unavailable on the experiences of different Latino groups during childhood, based on family composition, it is safe to assume that the difference among Hispanic populations is at least as great as the variation between Hispanics and either whites or African Americans. Puerto Rican patterns resemble those of African Americans while Mexican Americans appear to have even higher stability than white non-Hispanics.\textsuperscript{50}

Marital disruption or nonmarital childbearing for many children initiates a complex family career.\textsuperscript{47} Most are likely to see one or both parents live with a partner for a time. Some of these partnerships eventually in marriage; others dissolve and are succeeded by new relationships. Some remarriages persist while others end in divorce. At least one quarter of all children growing up today are likely to acquire a stepparent by marriage, and others will live with a quasi-stepparent. Beyond their household, children also may see their noncustodial parent enter new relationships. Thus, a high proportion of children growing up today will have more than two parents by the time that they reach age 18. Many more will gain additional parents in adulthood.

There has been considerable debate over the consequence of family flux on children’s development and well-being. Many researchers stress the considerable costs incurred by children who are not raised in a nuclear family. Others cite the fact that most studies show relatively modest effects on children’s adjustment in later life and observe that divorce represents an improvement in family circumstances for some children.\textsuperscript{51} (See the article by Amato in this journal issue for an in-depth discussion of adjustment in children of divorce.)
Given the diversity of experience among children whose parents do not live together, it is difficult to arrive at a simple bottom line when assessing the effects of divorce. The starting point for families is so different, ranging all the way from instances where parents barely are acquainted to those who never live together to those who have lived together but are unsuccessful in collaborating to those who collaborate well before they separate but poorly afterwards to those who continue to collaborate effectively as parents even when they are no longer partners.

A growing body of research has examined how parents manage to raise children when they live apart. More than half of all noncustodial parents effectively drop out, maintaining little or no contact with their children after divorce and providing little in the way of economic support. One survey in 1981 revealed that a majority of noncustodial parents saw their children infrequently or not at all. Reports on child support also confirmed that a majority of noncustodial fathers contributed little or no support to their children—even those with formal support agreements. (See the article by Roberts on child support enforcement in this journal issue.)

Over the past decade, there appear to have been some indications that paternal involvement after divorce may be increasing as laws both permit shared responsibility and enforce paternal obligations. Unmarried fathers, too, may be experiencing the same opportunities and pressures for greater economic and emotional investment. Evidence from several longitudinal studies indicates that fathers who may be disconnected when children are young may become more involved with their offspring later in life. Still, the preponderance of data indicates that a high number of nonresident fathers (and a substantial minority of nonresident mothers) disengage from their children when they do not live in the household. (See the article by Shiono and Quinn in this journal issue for further discussion of paternal involvement with children after divorce.)

At the heart of the problem is that many regard parenthood as part of a “package deal” that is inextricably linked with marriage or a marriage-like relationship. Men, in particular, often relate to their children in large part through their wives or partners. The disintegration of that relationship reduces noncustodial parents’ willingness to invest resources in their children. This is especially so after remarriage, when parents often feel supplanted and disadvantaged by a new figure.

As many studies have shown, the withdrawal of economic support often has devastating effects on the living standards of mothers and children. Though it is clear that stricter enforcement of child support will not lift all children in female-headed families out of poverty, the distributional effects would be substantial. There is ample evidence that women and their children are far worse off after divorce than men and that noncustodial fathers are not paying their fair share.

The effects of paternal participation on children’s emotional development are less clear, though many experts believe that children are better off when their noncustodial parents remain involved. In fact, the evidence for this assumption is equivocal at best. (See the articles by Amato, Kelly, and Thompson in this journal issue for further discussion of paternal participation and children’s adjustment.) It may be that the level of paternal involvement is too low to produce a benefit or that greater involvement is accompanied by more conflict and ineffective collaboration.

Despite a growing pattern of joint custody and shared responsibility, most formerly married and never-married parents do not cooperate effectively: they do not consult with one another, share information, support each other’s efforts, or provide consistent monitoring and discipline. Thus, the general axiom that children are better off when both parents are involved, even if they do not work well together, needs further consideration by researchers and clinicians.

A growing body of evidence also suggests that remarriage can pose complications for children even though they benefit economically when the parent with whom they live remarries. The eco-
economic status of households headed by a remarried couple appears to be similar to that of couples in first marriages though few investigators have given careful consideration to the potentially greater economic demands on parents in second marriages. Still, there is no doubt that remarriage often lifts women and children out of poverty, probably because women are much less likely to reenter marriage if their potential partners have limited resources.

Remarriage not only reverses, to a large extent, the economic slide resulting from divorce but also introduces a new set of challenges for children. Remarriage can upset a stable family situation. It may, at least temporarily, divert attention and time that children may be receiving from their parents and perhaps create frictions between stepparents and nonresident parents. Family life can become more complex, uncertain, and possibly conflict-ridden, especially when households join children from different families. Remarriage creates a new family form that has been described by Cherlin as “incompletely institutionalized.” Family rights and obligations are less clearly defined and understood than in nuclear households. The absence of normative consensus extends beyond the household. A growing body of research suggests that kinship ties among steprelations are more discretionary and probably less enduring. A positive aspect for children in stepfamilies is that they have access to a larger network of kin; a negative aspect is that these relations may be less reliable and committed to extending support and sponsorship.

Several recent studies of the effects of divorce and remarriage on kinship relations in later life indicate that marital disruption may be giving our kinship system a matrilineal tilt. Children are less likely to give and receive time and money from their fathers and their fathers’ kin than from their mothers and mothers’ kin. Remarriage restores a measure of balance between maternal and (step)paternal lines, but only to a limited extent. In sum, divorce truncates the kinship network, and remarriage only partly repairs it.

Despite the evident disadvantages of marital disruption for children—loss of economic status, instability of parenting figures, and the complexity of new family arrangements—it is important to recognize that most studies show that the differences between children who grow up with both biological parents in the home and those who spend some time in non-nuclear families are relatively modest. Unquestionably, marital disruption raises the risks of adverse consequences; but contrary to popular impression, the vast majority of children who experience life in single-parent families and stepfamilies do well in later life (see the article by Shiono and Quinn in this journal issue for further information on stepfamilies and adjustment).

The vast majority of children who experience life in single-parent families and stepfamilies do well in later life.

The implications of marriage family patterns for children’s welfare

Demographers and sociologists have had little success in forecasting family trends. However, there are many reasons for believing that the United States and other Western industrialized nations will continue to experience high levels of marital instability. Western family systems, and the United States in particular, place a high premium on individual choice and marital happiness. The combination of imposing extremely high standards for intimate relationships while providing social and economic alternatives to those who are not achieving the desired standard of marital closeness is a virtual formula for producing high rates of marital instability. The breakdown of the gender-based division of labor accompanied and solidified
the divorce revolution, a revolution that had already begun in the United States owing to Americans’ well-documented taste for conjugal contentment. It created alternatives for couples (women especially) who were discontent in marriage and, in turn, probably helped to change the standards for a satisfactory marital relationship.

If this explanation for why divorce is so prevalent in the West is basically correct, there is reason to be pessimistic about containing divorce, either through moral suasion or public policy measures. Even a generation ago, when severe social and legal sanctions against divorce were still in place, rates of marital dissolution were relatively high in the United States, as high as they are in most European countries today. Restoring those sanctions, reimposing stricter divorce laws, and mobilizing social opinion against those who end their marriages probably would not persuade individuals to remain in unrewarding relationships.

Raising the barriers to divorce might convince some couples to postpone marital dissolution for the sake of their children.

as they are in most European countries today. Restoring those sanctions, reimposing stricter divorce laws, and mobilizing social opinion against those who end their marriages probably would not persuade individuals to remain in unrewarding relationships.

Raising the barriers to divorce might convince some couples to postpone marital dissolution for the sake of their children. Whether the net effect of such efforts would benefit children is very much an open question. Existing research strongly suggests that children in poor quality marriages with high conflict do as poorly, if not worse, than children in marriages that dissolve. On the other hand, children living with parents who are merely disaffected probably benefit from having them remain together. How much children would be protected by a return to the status quo ante, a regime with more restrictive divorce practices, is a matter for speculation.

One likely consequence of restoring stricter divorce laws might be a further decline in marriage and an increase in nonmarital childbearing unless, of course, some effort was made to restigmatize unmarried parenthood. Recently, some attempts have been made to discourage the acceptance of single-parenthood. The most dramatic of these was the discussion initiated by Vice-President Dan Quayle to condemn the fictional character of Murphy Brown for having an out-of-wedlock child. However, long before the public debate over Murphy Brown’s decision, various public campaigns had been mounted to reduce nonmarital childbearing among teenagers. None of these, including national efforts by the Urban League and the Children’s Defense Fund, have been notably successful. This is not to say that public opinion cannot shift as a result of political dialogue. However, moral exhortation, however well-intentioned, is not easily accomplished in a society that is highly diverse and socially segmented. If many devout Catholics cannot be dissuaded from having premarital sex, using contraception, or even obtaining abortions, we should not hold out much hope of raising cultural sanctions against divorce and nonmarital childbearing.

Many have argued that recent efforts to strengthen child support enforcement may increase the men’s sense of family obligations. Part of the rationale of the Family Support Act of 1988 was to shift some of the costs of child care to men, relieving the high burden that women bear for child support and the mounting public costs of programs like Aid to Families with Dependent Children (AFDC). Some have argued that, as legal and social pressures for men to support their children mount, males may be less likely to desert their families because the economic costs of doing so will be greater. Similarly, the knowledge that they will be required to provide child support may make males more careful about impregnating partners with whom they have only casual ties.

Stricter child support obligation is unlikely to have more than a modest effect on increasing marital stability or reducing nonmarital childbearing. On the positive side, these laws—and the publicity surrounding them—convey an ethic of responsibility to children. However, the certainty of child support could make men more hesitant about entering marriage and women less reluctant to leave unsatisfactory unions. The net effect may be to reinforce the current retreat from marriage. Indeed, since the passage of the Family Support Act of 1988, marriage rates have continued to drop, marriage age has continued to rise, divorce rates have remained stable, and nonmarital
childbearing has risen. This is not to say that the Family Support Act has contributed to these trends, but, not surprisingly, this legislation and the publicity surrounding it seem to have had little effect on the family formation patterns of Americans.

Are there ways of stemming the erosion of marriage? At present, most public policy discussion has revolved around ways of discouraging divorce and nonmarital childbearing, largely through public rhetoric, rather than by designing measures to make marriage a more attractive and viable arrangement. Perhaps this emphasis is predictable because it is unclear how much can be done to shore up the institution of marriage. Besides, Americans are generally chary about policies designed to promote particular family arrangements.

At a minimum, most parents support some form of family life education in the schools that involves more careful consideration of the responsibilities and rewards of parenthood, that raises issues of gender roles and the difficulties of managing marriage. Efforts to prepare young people for parenthood, for entering and maintaining stable relationships are not highly controversial, but there is little evidence that family life education fosters commitment to marriage or encourages planned parenthood.

Much more controversial is the growing pressure to extend various welfare measures—common in some European nations—aimed at aiding parents with dependent children. Job security and income supplements for parents who are part-time workers, day care, parental leave, and family support allowances are economic measures designed to relieve strain on overburdened parents. Whether they also help to reduce marital breakup is not known. It might be argued that these types of family support programs make single-parent life more manageable and, thus, do little to reduce the breakup of parental unions.

Assuming that the breakdown of a gender-based division of labor is, at least, partly responsible for the destabilization of marriage from the 1960s to the present, some observers have insisted that a revision of gender roles is required to renew the institution of marriage. Family researchers have noted that considerable resistance exists to changes in the domestic division of labor. Some have seen the surge of divorce as a reflection of the problems of adjusting to changing gender expectations and have argued that, with more egalitarian marriages, marital discontent may decline. How to bring about changes in marital roles through public policy is not obvious.

Clearly, there is a place for public education, but such efforts are likely to be effective only if accompanied by structural change in opportunities. Even if this occurs, it is not certain that changing gender expectations will result in more stable and secure family lives for children. Greater sensitivity to gender inequality may actually continue to raise expectations about equity in marriage. At least in the short term, expectations may continue to rise more quickly than behavior. In other words, men may assume a greater share of the domestic burdens, but their contributions may be judged by more exacting standards if they continue to fall short of true equality.

In sum, it is difficult to identify plausible policies to strengthen the institution of marriage by making divorce and nonmarital childbearing measurably less attractive or marital stability more attractive. Accordingly, it is hard to foresee a rapid reversal of current family patterns in the direction of greater family stability.

Therefore, it may be necessary to consider alternative approaches to strengthening the situation of parents and children who are economically and socially disadvantaged by living in particular family forms. At least part of the deficit associated with growing up in a single-parent household results from rapid income loss and chronic poverty created by the loss of a parent who is both a wage earner and a supplier of unpaid domestic labor.

There are some policies that might help to reduce the huge income spread between two-parent and single-parent families and thereby improve the life chances of children who grow up in a
nonnuclear family. Foremost among these is the provision of an effective child support assurance plan that provides income to children whose parents cannot or do not contribute to their support. Other measures, such as low-cost child care, health care, and workplace benefits to reduce the conflict between work and family roles, could also help overburdened single parents. I noted earlier that all of these measures might also contribute to the formation and preservation of unions between parents or parent surrogates. In short, these supports to parents are proposed to benefit children regardless of whether or not parents marry and stay married.

American citizens generally agree that we share responsibility for protecting our children’s future. Presently, however, there is little public consensus on what that responsibility involves. More than our European counterparts, we Americans are inclined to voice strong moral concerns about the family and the well-being of children. But, our willingness to act on these concerns is undermined both by ideological disagreement and by distrust of government-sponsored interventions. At least for the time being, America’s children are being held hostage to our inability to reach any kind of public consensus on a course for the future.

10. See note no. 7, Preston and McDonald.
17. See note no. 7, Carter and Glick.


25. Cherlin offers a cogent summary of the debate. See note no. 9, Cherlin.


33. See note no. 32, Haskey.


36. See note no. 4, Davis.


42. See note no. 38, Bumpass.


47. See note no. 52, Furstenberg and Nord.


51. See note no. 52, Furstenberg and Nord.


62. This conclusion is surprising, especially in view of the fact that most existing research relies on comparisons of children in single-parent and remarried families instead of carrying out longitudinal analyses of children making the transition from divorce to remarriage. Cross-sectional comparisons often fail to account for differences in families where remarriage does and does not occur. They also frequently ignore the experience of children whose parents have remarried and redivorced, counting them as continually divorced.
Historical Perspective and Current Trends in the Legal Process of Divorce

Sanford N. Katz

Abstract

Over the past 30 years, the legal status of husbands and wives in marriage has undergone major changes with the result that wives are now beginning to have more of an independent legal identity than in the past and, to some extent, more of an equal relationship with their husbands although full equality has not yet been achieved. At the same time, divorce laws and policies have consistently moved toward a view of marriage as an economic partnership and away from the concept of marriage as a status totally regulated by the state and dominated by the husband. This trend has produced significant changes in the statutes, which have, to a certain extent, limited judicial discretion regulating the assignment of marital property and the awarding of alimony upon divorce. These changes have given more consideration to the contribution of wives to the marital enterprise and to the financial needs of children. In addition, recently there has been a movement toward legislating how couples divorce, particularly with regard to their ability—with or without the assistance of counsel—to conclude their divorce with minimal official action. This article explores the trends toward the equality and legal autonomy of husbands and wives in marriage and in the divorce process with particular emphasis on methods of allocating marital property and on new and simplified procedures for divorce.

American divorce laws and the process by which they are implemented have undergone enormous changes during the past half century. The reasons for these changes are complex but essentially have a great deal to do with changes in the nature, idea, and definition of family relationships—especially that of husband and wife—changes in the social mores, shifts in the political climate as a result of the impact of various of the civil rights movements, and changes in the legal profession. Some laws that have changed regarding the process of divorce are mentioned below. Many of the topics that are discussed in this article also receive more in-depth attention in various articles throughout this journal issue. (A topic that is not addressed below is changes in child custody laws. For a complete discussion of this topic, see the article by Kelly in this journal issue.)
Changes in the Definition of Marriage

Today one legal definition of marriage as being an economic partnership, although not necessarily of equals, is quite different from that which considered the relationship one of “status,” totally governed by state laws which favored the husband. Until the past 30 years, no serious thought could be given to a couple’s formally defining the internal workings of their own marriage and family responsibilities with the expectation that the state would sanction them. With regard to legal matters external to the relationship, the state, probably manifesting the hierarchical nature of marriage, treated marriage as “one,” and that one was the husband. Basically, a married woman’s legal identity was submerged in her husband’s. For example, only about 25 years ago, upon marriage, a wife assumed her husband’s domicile (permanent state residence), not because she had any choice in the matter, but because the law required it even if she had never lived in her husband’s state. She assumed his name, again, not because she alone or with her husband chose it, but because of custom and, in some states, by law. Simple matters like acquiring credit through a credit card, taking title to real estate (like the marital home), or registering to vote could not be accomplished unless both husband and wife shared the same last name. Although there may have been no legal basis for some of these rules, the custom was established by the actions of officials (like clerks in courts or in city halls), and these actions took on the appearance of law. To change the official pattern, a woman would have to initiate some legal action like seeking an opinion of the state attorney general on the legality of some official’s conduct or suing the official and requesting the court to order the official to make the necessary changes in a record.

The internal (that is, personal) relations between husband and wife during marriage also reflected a dependent and subordinate role of the wife (which the law sanctioned) rather than one of equality. A wife’s role was to be at home, raise children, contribute to the marital enterprise, and basically obey her husband. Obedience was synonymous with submission. Thus, a married woman could not be raped by her husband because a wife’s body belonged to her husband. The remedy for physical abuse was divorce; yet except for using cruelty as a ground for a divorce (which was not easy to prove), there were few legal opportunities for a wife to obtain relief from her husband’s brutality.

Changes began to occur in the 1960s (with the mandatory child abuse reporting statutes) which limited the notion that family privacy was supreme and not open to public intrusion. That is to say, before the 1960s, relations (namely, how people conducted themselves) between husbands and wives and parents and children were considered to be private, not public, matters. Family violence statutes enacted within the past 25 years changed the private nature of family relations. They provide a wife with a civil remedy to protect her from an abusive husband. Child abuse and neglect statutes of various kinds allow for public intervention into the parent-child relationship to protect children. It can no longer be said that American law so insulates a family from public scrutiny that all forms of violence can occur with legal impunity. Of course, the violence must be discovered and someone must take action by seeking the assistance and cooperation of the appropriate official agency.

Divorce Procedure

The Shift from Adversarial to No-Fault Divorce

Until the introduction of no-fault divorce, American divorce procedure had been and, in instances where the action is for a fault, still is based on the adversarial model. This model assumes protagonists: each party, free of fault, suing the other in
court. American law has never adopted a transactional approach to divorce which would allow a husband and wife to enter into a private divorce agreement without any official involvement (like a judge or a court clerk) at all. With the adversarial model came a body of law based on English equity principles. For example, under a fault system, among other limitations, divorces could not be consensual, and a divorce could be defended and defeated because of the conduct of the plaintiff (the moving or petitioning party). Further, years ago, if both plaintiff and defendant were guilty of fault, theoretically, unless changed by statute, neither could get a divorce. The old English adages applied in divorce: one must do equity to receive equity, and one must come into court with clean hands. Divorce actions have been described as resembling those for torts (civil wrongs). To recover in tort, one must show that one was not at fault or has not contributed to the wrong.

Fault-based divorce . . . not only affected the grounds for obtaining a divorce but also influenced the assignment of children and property.

When a fault-based system of divorce was the exclusive method of obtaining a divorce, evidence for formally proving grounds—for example, cruelty or adultery—was critical. If the ground was not proven, no divorce could be granted. Because of the strict requirements for cruelty and adultery, the grounds were often difficult to prove unless there was secret collaboration with the defendant. In the case of adultery, which was the only ground for divorce in New York until 1967, it was not uncommon for a spouse to fake an adultery scene. The situation was so bad in New York that, as early as 1945, the Committee on Law Reform of the Association of the Bar of the City of New York recommended divorce reform to the state legislature. A portion of the report read: “We . . . urge a liberalization of the divorce laws under proper legal sanctions. We do so in the hope that we may thus eliminate what has come to be recognized as a scandal, growing out of widespread fraud, perjury, collusion, and connivance which now pervade the dissolution of marriages in this State.”

In states where there were a number of divorce grounds and a judge wanted to grant a divorce but was not presented with persuasive evidence, he or she might interpret the ground for divorce broadly, for example by interpreting the ground of cruelty (which customarily required some evidence of physical force) to mean emotional or mental distress without any physical manifestations such as a slap or a punch. The result was that divorce cases were often considered illustrations of two processes occurring at the same time. On the level that could be observed in court, there was the formal process of a divorce case: lawyers and litigants going through the motions of a civil law suit. On another level, there was private understanding between lawyers and litigants that there would be a certain amount of lying and perjury. Because of this mutual pretense, divorce practice was considered to be low level, and judges assigned to hear divorce cases were often thought to be part of the legal charade. Thus, they were not very competent and had little respect for the legal system.

Fault-based divorce, the model that existed in the United States for years and still exists (in some instances side by side with no-fault) in about 30 states, not only affected the grounds for obtaining a divorce but also influenced the assignment of children and property. It was hard to separate the evidence for proving a ground like cruel and abusive conduct or adultery from the litigation over who was assigned custody of what child and how much a spouse would have to be paid in alimony. At least one state, Florida, by statute denied a woman alimony if she was proven to have committed adultery. And appellate case law is filled with cases in which a spouse is denied custodial rights in the first instance or after a modification hearing on the basis of moral turpitude.

During the 1960s and early 1970s, the legal profession and state legislatures came to realize the deplorable state of divorce laws and practice. Respect for divorce law and procedure, if there ever really was any, had declined. Reform was needed not only in terms of changing substantive laws, like grounds for divorce, but also with regard to the process of divorce.
Historical Perspective and Current Trends in the Legal Process of Divorce

The thought was that the law should not mask deception but should, as far as possible, reflect reality. It was at this time that the Governor’s Commission in California found that the fault-based divorce laws in effect in California were no longer viable and should be replaced with laws that allowed a divorce without a showing of fault. Thus, in 1969, California became the first state to implement a divorce law without any fault-based grounds for divorce. Although, because of strong resistance from some segments of society, only a few states have entirely done away with fault as a basis for divorce, all 50 states have enacted some type of no-fault provisions as part of their divorce laws. Whether a client chooses a fault or no-fault divorce depends on the facts of the case and the laws specific to fault and no-fault divorces.

At the same time that no-fault divorce laws were being enacted, a major procedural reform was taking place: changes in residency laws. Prior to 1970, it was not uncommon for a state to have a one- or two-year residence requirement before a person could file for divorce. The idea behind such residence requirements is that a state should have an interest in the status of a marriage before it allows its courts to be used for dissolving that marriage. In addition, residence requirements provide a certain amount of time to consider divorce. Further, for practical reasons, long residence requirements, like two years, act as a deterrent to divorce and reflect a policy of marriage being a serious undertaking, not easily dissolved. Nevada, with a short residency requirement of six weeks, had the dubious distinction of being the “divorce mill” state, and “the road to Reno” became another way of saying “the road to divorce.”

Reducing the length of time a person must live in a state before he or she may petition for a divorce is a reflection of that state’s view of marriage and divorce. The longer the residence requirement, the more likely it is that the state views marriage as a serious institution worth preserving. In addition, a long residency requirement discourages persons not having lived in the state for a certain length of time from seeking a divorce there. The theory, rightly or wrongly, is that a state has an “interest” only in marriages of its domiciliaries. The general view has been that a divorce action should not be like a tort action. A tort action (a transitory action) allows the damaged party (plaintiff) to sue the wrongdoer (tortfeasor) wherever he or she can be found. No state takes the position that divorce should occur in a state that has no contact with the marriage at all, although the statutory trend seems to be clearly in the direction of shortening the time necessary to live in a state before one can sue for a divorce. As more and more states either relax their grounds for divorce or adopt a liberal no-fault system, the need to leave a state to get a divorce—what the law terms (with negative connotations) migratory divorce—becomes less and less important.

**No-Fault Divorce**

It is an oversimplification to say that once a no-fault system of divorce is in place, the idea of fault is abandoned. It is important to note that there are two kinds of no-fault divorce statutes: those that allow one of the spouses to contest the claim that the marriage is “irretrievably broken” or that the spouses are “incompatible,” and those that do not allow any contest. In the first kind, if one spouse claims that her marriage is “irretrievably broken” and her husband claims it is not, the wife must prove her allegation by what amounts to factors that might have been satisfactory to show a fault ground. Where there is no contest, one spouse’s allegation of “incompatibility” might be sufficient for a judge to grant a divorce. The pure no-fault model—that which does not provide for a contest—basically allows one spouse to leave the marriage at will. It also minimizes the role of the judge. But it must be emphasized that no-fault in this context only operates to terminate the marital relationship. It does not affect the assignment of property or the custody of children, both of which are separate issues.

There has been a great deal of discussion in the academic literature as to the effect of no-fault divorce on the divorce process and on society as a whole. It is generally believed that no-fault divorce has decreased the acrimony and hostility between the spouses and civilized the
There is no more need for charades. Two questions have been raised with regard to the social implications of no-fault divorce. The first concerns the rate of divorce: Has the advent of no-fault divorce increased the divorce rate? A second question is whether a pure no-fault divorce economically favors one spouse over another. There is no clear and simple response to the first question. Most researchers have concluded that there is little if any causal relationship between the introduction of no-fault legislation and the rise of divorce even though, during the years in which this legislation was enacted (1970 to 1975), there was a substantial increase in the number of divorces, from 2.5 per 1,000 population in 1965 to 3.5 per 1,000 in 1970 and 4.8 per 1,000 in 1975.

The explanation most frequently given for stating that no-fault legislation had little effect on the divorce rate is that fault laws were ineffectual and were not complied with anyway. Thus, removing fault provisions or adding a no-fault provision would have little impact on the number of divorces rendered. One scholar who has reviewed the significant research in the field and conducted his own inquiry differs from the conventional view. He found that in 31 states there was a correlation between the no-fault divorce legislation and the rate of divorce. However, he could give no clear explanation as to the reason. There are too many variables, including individual states’ residency requirements and the actual no-fault standard in each state, as well as a particular state’s political, social, and cultural make-up. He has written that “it is not feasible to discern why some no-fault laws did and others did not affect the divorce rates. . . . There is a sizable gray area in which individual laws may or may not have impacts.” In other words, it appears that the most accurate statement that can be made is that no-fault divorce laws apparently stimulated divorce in some states but failed to do so in others.

As to whether no-fault divorce favors one spouse or another, again it can be said that it is not absolutely clear whether this is so or not. One researcher has maintained that, at least in California, divorced women are economically worse off than their divorced husbands, perhaps because judges, using their discretion, have awarded inadequate support orders. A more recent study concludes that the effects of no-fault on the economic condition of divorced women “were either modestly benign or neutral.”

While no-fault divorce may not have a major adverse effect on women, this does not mean that the same can be said about divorce itself. There seems to be no dispute in the literature about divorce’s negative effect on women. The reasons for this latter phenomenon have much to do with the fact that the social and financial position of the wife, who usually has custody of the children, tends to be frozen at the time of divorce, while the husband’s position is more fluid. In other words, a working husband may have his alimony and child support payments calculated on the basis of his existing job at the time of divorce. There may be little or no consideration of his future finances such as his working overtime, receiving a promotion, or taking a second job. If any of these eventualities do occur and a divorced wife needs additional support for herself and her child, she must seek a modification of her alimony decree and child support order on the basis of “changed circum-
However, such modification actions would require her to obtain counsel, collect evidence, and secure a hearing date. Doing so takes money and time, namely to pay a lawyer and to obtain a date for a hearing.

If a divorced wife chooses to work outside the home after divorce, she may find that her years out of the commercial work force have put her in an economically disadvantageous position compared with men and women who did not leave the labor force to raise children. Divorced husbands do not necessarily have the same experience. In fact, men who stayed in the work force throughout their marriage may have more opportunities to increase their income by taking advanced training in their particular career and being promoted. In addition, men tend to remarry more quickly than divorced women and may benefit financially from their new wives, especially if they are women working in the commercial world. (For further discussion of no-fault divorce, see the article by Carbone in this journal issue.)

Specific Aspects of Distribution of Economic Resources

With the inclusion of no-fault divorce in American law, the emphasis in a divorce case has shifted from determining and proving fault grounds for divorce to determining what are marital assets and how they should be assigned. For the most part, the economic aspects of divorce constitute the main concern in divorce negotiation in lawyers’ offices and the major time in litigation. Divorce that involves a couple with substantial financial resources has become so complex that, in order to prepare for such a case, lawyers must hire not only accountants but experts in special types of valuations, such as those who specialize in valuing the position (including benefits and advancement possibilities) which a spouse holds and the industry in which a spouse’s business is located. The reason for this change in divorce practice and litigation is that marriage is now considered an economic partnership in which each spouse may have an interest in the other spouse’s business or career.

Property Distribution

Two kinds of marital property systems have existed side by side in the United States: the common law system and the community property system. The common law property system is based on evidence of title. In other words, under the common law property system, the motto “He who holds title takes the property” has a ring of truth to it. Under the community property system, found in nine states in the western and southwestern part of the country, the distribution of marital property (accumulated during marriage) upon divorce is theoretically based on the principle that each spouse owns an undivided one-half interest in each community property item. While four of the community property states seem to conform to the fifty-fifty split (assuming there has not been a prenuptial agreement that assigns property according to a different formula), the other five incorporate equitable distribution principles (that is, a judge considers the equities of a case) which may result in a different formula than an equal split.

In the past 20 years, there has been a major decline in the number of states that either by statute or by case law adhere to the old common law property system. In fact, only North and South Dakota lack a statutory scheme deviating from the title theory of marital property. Now, the prevailing method of assigning marital property upon divorce is called equitable distribution. Basically, equitable distribution has changed the nature of the judicial inquiry when making an assignment of property. Instead of asking who holds title, the questions asked are: What is considered marital property regardless of title? Who has contributed to the acquiring of that property? Who has helped to enhance its value or who has depreciated the property? When should it be valued (for example, at the time of separation, of initial court petition for divorce, or of the divorce trial) and what is its value? Who should be assigned it? A whole body of law has developed to give courts guidance in answering these questions, but the fundamental as-
Economic contributions to the marital enterprise are not limited to those directly created by employment outside the home.

Economic contributions to the marital enterprise are not limited to those directly created by employment outside the home. These include household services, such as caring for the marital house and raising children. The percentage of the marital property awarded to a spouse who performs household services during the marriage and does not work outside the home varies according to the facts of the case. One state considers homemaker services only to the extent that they contributed to "the acquisition, preservation and maintenance, or increase in value of marital property." 44

The nature and provision of equitable distribution statutes vary from state to state. Basically state statutes contain a list of factors that a court must consider to properly determine the assignment of property. 45 One goal of enacting such legislation was to provide guidance to judges. A second was to provide some uniformity in decisions. Although at first blush stating factors that must be considered for making an assignment of marital property might seem to be a method to limit judicial discretion, the history of the application of state statutory provisions has not proved this to be true. In other words, even though judges are governed by statutory provisions, there is still wide discretion in interpreting statutory factors and applying them to a particular situation. In fact, one commentator has gone so far as to label equitable distribution as "discretionary distribution of property." 46

The factors that are considered in the assignment of property are not weighted equally. Nor does an equitable distribution provision provide a formula. The statutes merely state that certain factors are to be considered, thus allowing the judge to set his or her own priority of importance. Some attempts have been made to create either a presumption of equal division or a fifty-fifty starting point for division. A handful of state statutes contain a presumption that marital property will be divided equally. At least two states have provisions which contain presumptions that the contribution of each spouse to the acquisition of property during the marriage is equal or at least substantial. 47

We have had nearly a quarter of a century of experience with some form of equitable distribution. Has the existence of statutory factors reduced judicial discretion? What trends can be discerned? Equitable distribution legislation has limited judicial discretion to some extent but certainly has not eliminated it. 48 A review of the statutes and case law suggests that, absent statutory guidance, courts are generally more likely to divide property equally in long-term marriages (fifteen years and longer) and, conversely, less likely to presume equal division for short-term marriages (one to three years). 49

The assignment of property upon divorce is only part of the economic consequences of divorce. Alimony and child
support are additional financial considerations. Both have undergone major changes in the past 30 years.

**Alimony**

Until the passage of the Married Woman’s Property Acts in the mid-nineteenth century in the United States, a woman’s property became her husband’s upon marriage. A husband, then, had the duty to support his wife during marriage. Upon divorce that duty continued under the legal term *alimony*. It was customary to say that alimony was based on a balance between the husband's ability to pay and the wife's needs. English legal history reveals that the amount of an alimony award was based on the station of life that the wife enjoyed during her marriage and, to some extent, on the value of the property she lost control over and which the husband acquired upon marriage. Unlike today’s equitable distribution laws, which include factors for a judge to consider in assigning property, before the enactment of these laws, there were no standardized statutory guidelines, which resulted in judges’ using their own discretion in making awards. At that time, no thought was given to the now-accepted idea that a wife may have contributed something of value to the economic well-being of the family (as she did in the past, although this is often lost sight of, by bringing her own property into the marriage) by her household services or by giving up certain opportunities in the commercial work force and that the husband’s payment of alimony was really repayment of what was owed to the wife. In other words, today alimony is considered to be a right possessed by a wife, not a privilege that may or may not be judicially recognized.

In reading appellate cases decided more than 30 years ago, it is not unusual to find instances where a wife who divorced her husband after 10 years of marriage (during which time she did not work outside the home) received alimony for the rest of her life. Why was lifetime alimony routinely awarded in the past? One thought is that, if a wife never worked outside the home, she would not have qualified for any benefits like a private pension or Social Security. Thus, if she were divorced without any financial support from her husband and unable to find a job, she would become a public charge. In other words, today long-term permanent alimony is an unusual outcome of a divorce except in a very long marriage (of 20 years or more), where the wife is not in good health or has been out of the commercial work force for so long that she is now unemployable. In its place is short-term alimony (for a few years to help a wife through the difficult period of postdivorce adjustment) or rehabilitative alimony.

Rehabilitative alimony is a phenomenon derived from the application of judicial discretion in alimony cases. The thought is that divorced wives should ac-

As attitudes toward the role of men and women in marriage as well as the definition of marriage itself changed, so did the concept of alimony.
tively attempt to reduce the husband’s alimony obligation by developing skills to become employable. In a way, conceptualizing rehabilitative alimony in this way suggests the idea of mitigation of damages in contract law—that is, that a contracting party should try to reduce the amount owed her under a contract. In divorce, it would mean that the divorced wife eventually would have to seek employment, and if the wife needed additional education to obtain a position, the husband would support his divorced wife to secure the education. In a way, rehabilitative alimony is designed to take into account the spouse’s (usually the wife’s) lost opportunities for either education or employment advancement.

**Child Support**

The process for awarding child support is currently in reform. In the past, the amount of child support awarded was a simple matter of judicial discretion, and court-ordered child support tended to greatly undervalue the true costs of raising children. Today, child support is governed by standardized guidelines to which judges must conform or express reasons for their deviation.

Prior to 1984, when the U.S. Congress passed the Child Support Enforcement Amendments, child support orders very often bore no relationship to the cost of supporting a child, were not complied with after a few years, and were not zealously enforced. For example, child support obligors, mostly fathers, failed to fulfill their support obligation at the rate of $4 billion annually. In addition, half of the divorced custodial parents did not have a support order to enforce. With no other means of support, divorced women turned to departments of public welfare to assist them in raising their children. This placed an unusually severe financial burden on public welfare agencies and the taxpaying public. To reduce divorced women’s dependency (as mothers) on public funds, the federal government’s Child Support Enforcement program provided creative ways of forcing fathers to comply with court orders and, ultimately, to support their families. For example, specific enforcement remedies include wage withholding, imposition of bonds, securities or other guarantees, liens on real and personal property, and interception of federal and state income tax refunds.

Even with the new legal machinery in place and support laws on the books by way of child support guidelines, recent data indicate that a large number of children are still not receiving support from the parent with the obligation. One explanation for this phenomenon is that the custodial parent herself does not seek support because she thinks it would be futile or because she does not want to have to communicate with her former husband. In such cases, if the mother seeks assistance from the welfare department, the department seeks reimbursement from the delinquent father if the father can be found and he has funds. Of course, if the current economic conditions persist and parents with support obligations are unable to find employment, nonsupport of children will continue to be a major social problem as well as a drain on public welfare funds.

In the present economic climate, judges have a difficult time arriving at an economic balance between the divorced spouses when there just are not enough finances to support the reorganized family. Attempts are made to preserve some assets, and where possible and economically practical, the spouse who will be raising the children is assigned title to the family home. Further, child support obligations may not necessarily be abruptly stopped in some states when a child reaches 18 if he or she is in college. (For further discussion of child support awards and enforcement, see the articles by Garfinkel and by Roberts in this journal issue.)

**Divorce and Decision Making**

Throughout this article, judges and lawyers have been referred to as the major decision makers in the divorce process. This is so because, as stated previously, divorce uses a judicially managed adver-
sarial model in a court setting for determining an outcome. The adversarial process for divorce has been subject to major criticisms because it has been thought of as creating antagonists. Use of the term "versus" in the title of a divorce case pits husband against wife. The alternative approach could be to label a divorce case as "In the Matter of the Divorce of Husband (Name) and Wife (Name)."

Is the judicially managed adversarial model always appropriate for divorce? Because, as with other civil matters, the legal costs of divorce have increased dramatically as a result of such factors as attorney’s fees and the costs of hiring experts, there has been a consumer demand both to simplify the divorce procedure and to make divorce available without using a lawyer. In response to that demand, six states (California, Colorado, Indiana, Minnesota, Nevada, and Oregon) have enacted legislation providing for summary dissolution of marriage, a form of divorce that does not require the parties to make a court appearance or to use a lawyer (although they may still do so), but merely to file a form with the appropriate government body. The legislation addresses uncomplicated divorce. Thus, as a general statement, it may be said that summary dissolution provisions apply to cases in which the parties have been married for a short length of time, have limited assets, have no children, and mutually desire a divorce. It should be emphasized that summary dissolution is a formal method of terminating a marriage because public documents must still be completed and officially filed and approved. (Indeed, no American jurisdiction permits a private, informal, unregulated contract of divorce.) But unlike the conventional formal adversarial model managed by a judge who makes the decision, in summary dissolution it is the parties themselves who are the principal actors and decision makers, not lawyers or judges.

A development related to summary dissolution is the simplified divorce procedure. A simplified divorce procedure (called summary process or divorce by mutual consent in some jurisdictions), unlike summary dissolution, requires a court appearance. However, the divorce is granted on the basis of mutual consent of the parties, rendering the court appearance a mere formality. Such a process also lessens or eliminates the need to procure a lawyer. Some form of simplified divorce procedure has been adopted by Alaska, Arizona, Connecticut, Florida, Hawaii, Illinois, Mississippi, Montana, Ohio, Tennessee, Washington, and Wisconsin.

Surprisingly, there has been little commentary or analysis concerning summary dissolution or simplified divorce. Therefore, it is difficult to assess how many couples have used these procedures with or without legal counsel. However, the advantages of summary dissolution and simplified divorce are clear. They decrease the costs of obtaining a divorce by streamlining the divorce process and by rendering it less time-consuming both for the divorcing couple and for court personnel. These procedures may be an attractive model for many states to adopt if the costs of divorce continue to rise out of the reach of an increasing number of people.

Mediation

In complex divorce cases—those in which the custody of children is in dispute and where complicated property issues are to be resolved—divorce by registration or summary dissolution procedures may be inappropriate. A major question is how to resolve complex cases in the most efficient and civilized manner.

**In contrast to decisions imposed by lawyers and judges, mediation promotes party self-determination and decision making by consent.**

There is no question that people tend to respect decisions in which they have had some input or, at least, the opportunity to be heard and to have presented their views. This is true with regard to complying with laws on a broad scale or making decisions on a personal level. Applying this principle to divorce means that spouses who participate in the decisions about their children and about their finances are more likely to comply with those decisions than are those who have a decision imposed upon them without their having had an opportunity to be heard.

In contrast to decisions imposed by lawyers and judges, mediation promotes party self-determination and decision
making by consent. Although mediation has been a major method of resolving disputes in the labor field as well as in family counseling settings, its use in divorce on such a large scale is relatively new. Its focus in divorce is on resolving a variety of family issues which become crucial for a divorce but may continue to exist in some form or another after a divorce decree is issued. Therefore, unlike mediation in other settings, mediation in divorce must take into account that the parties may continue to have a relationship after the divorce judgment.

The mediation process facilitates the effectuation of a formal agreement in a relatively informal atmosphere using a presumed neutral third party as mediator. The mediator, in helping the parties to come to an agreement, may help clarify issues, suggest possible accommodations and alternatives, assist the divorcing couple to develop their own parental, financial, and property agreements, and help promote decision making within the family. Mediation differs from courtroom litigation in that it is not adversarial in nature. Instead of each party’s retaining a lawyer who advocates for him or her, the parties speak for themselves and there is usually only one neutral mediator.

There are several advantages to the mediation process with an experienced mediator. It may be less expensive and more expeditious than protracted courtroom litigation. Mediation may be a more humane process than an adversarial proceeding and, in some instances, may be better able to discover and address the emotional issues that may be having a negative effect on resolving practical legal problems. Lawyers (especially those who specialize in litigation) in an adversarial proceeding are often accused of actually reinforcing conflict between the parties and creating obstacles to settlement. In some instances, this may be true. Because mediation is nonadversarial, many technical legal issues, like procedure and rules of evidence, are set aside.

The mediation process in divorce, however, poses a few potential problems. The leading writers in the field suggest that mediation between people of unequal bargaining power tends to lead to agreements reflecting that inequality. Therefore, mediation is particularly appropriate for parties who have already achieved some independence and have relatively equal bargaining power, but may be less appropriate for parties of unequal bargaining power.

The concept of divorce mediation has not yet gained complete acceptance by the general public because many divorcing couples seek lawyers first, and the lawyer’s initial response may be to rely on traditional litigation strategies. Generally, the highest level of participation is found in compulsory mediation programs such as those found in California which, in 1980, made such mediation mandatory for contested custody and visitation issues. Today, more than 30 states have such a mandatory mediation requirement. Voluntary mediation programs do not attract a substantial number of participants. This has been attributed to the legal community’s somewhat neutral attitude toward mediation and the public’s lack of information about mediation as an alternative to the adversarial process. However, researchers find that those who undergo the mediation process achieve a more successful outcome both in the short term and the long term than do their adversarial counterparts. Because parties are often more satisfied with the agreements which they, themselves, have forged through mediation, they are more likely to follow the terms of those agreements than court ordered settlements. Mediation has not met with unanimous approval from the legal community.

When mediation was first suggested as an alternative conflict resolution mechanism, it was criticized by some lawyers, who saw it as an intrusion by nonprofessionals. It was said that, just at a time when divorce was becoming highly complicated because of the newness of equitable distribution, lay people were becoming involved with decision making in the divorce process. How can a nonlawyer know the complexities of marital property laws when lawyers themselves may be unaware of them was one question. Such criticism has waned...
Historical Perspective and Current Trends in the Legal Process of Divorce

as mediation has matured into a conventional method of resolving disputes, and a mediation industry has developed in the metropolitan areas of the country. Lawyers themselves can be mediators (although they may not act as lawyers in the case if they are), and nonlawyers can be trained in the complexity of the law so as to assist spouses properly.67 (See the article by Kelly in this journal issue for further discussion of mediation.)

Some states have built into their divorce system procedural stoplights in order to attempt to resolve disputes along the way toward an actual trial. For example, in Massachusetts some probate courts have established pretrial conferences which have the effect of trying to reach consensus on divorce matters. These pretrial conferences, led by the judge who will hear the case with lawyers and their clients present, are not meant to mediate the dispute, but are designed to give the judge a fair assessment of where the parties are in their negotiation. The judge can then attempt to have the lawyers reach an agreement on all or certain issues, thus minimizing the length of a trial.

The Future of Divorce

There seems to be no end to legislative activity insofar as divorce law and procedure are concerned. On one hand, there is a feeling that divorces should be prevented or, at least, made difficult because of the belief that divorce results in a number of social ills including juvenile delinquency.68 More than 20 years ago, Professor Max Rheinstein responded to conclusions of this sort by writing that it was not divorce that caused social ills, but marriage breakdown.69 Some legislatures are constantly reviewing substantive laws and procedures in an effort to improve them by making the laws more realistic and the process more efficient.

No-fault divorce is now a part of American jurisprudence. There seems to be no returning to the past when divorce was difficult to obtain because of our reliance on English law that reflected a culture and customs of a different time and place. With no established national church in the United States, where we have a more heterogeneous population than in Great Britain, we are not held hostage to a single religious dogma. Nonetheless, some states in the United States have been dominated by particular religious groups who have influenced divorce legislation. If the immediate past history of divorce is any indication of the future, reforms will most likely be in the direction of further relaxing substantive and procedural laws regarding divorce. However, the requirement of the presence of at least one spouse at the divorce hearing will probably not be abandoned. In other words, divorce by proxy or divorce by mail, either in the United States or in a foreign country, like renewing a license or a passport, will not be attractive alternatives because of our fundamental belief in marriage and family as serious American institutions requiring personal attention and the investment of time and concern. Divorce by registration or summary procedure—the wave of the future—requires the presence of both parties and the involvement of some official who reviews documents and issues a divorce.

Divorce by the conventional adversary method is expensive. The costs of securing a divorce are high because of the present hourly fee of lawyers (in metropolitan areas like New York, Boston, Chicago, Los Angeles, and San Francisco, well-known divorce lawyers charge anywhere from approximately $125 to $350 an hour) and the absence of legal aid lawyers who handle divorces. Reports from judges suggest that, at the present time, an inordinate number of litigants are pursuing their cases themselves, that is, acting as their own attorneys—pro se.70 This practice presents difficulties for the court system (because pro se cases do not move through the system in an orderly fashion as compared with cases handled by lawyers) and for the judges who, according to judicial ethics, must be neutral and are not allowed to act as counsel to litigants, yet are confronted with the reality that the litigants need assistance. Institutional responses for pro se cases are varied. One is to refer the litigants to lawyers who are willing to represent them at a reduced rate. A court in Arizona...
features a video that runs continuously and provides litigants with basic information about divorce procedure. Some courts have volunteer lawyers (in the court building) not to represent litigants but to be available to them as consultants or aides.

Just as important as it is to litigants with uncomplicated divorces to provide them with inexpensive and timely divorces, it is vital to those going through a complex divorce to provide a setting that reduces, to the extent possible, the anxiety of getting a divorce. Currently judges and court staffs, despite their knowledge and experience, are often overwhelmed by both the volume and complexity of divorce cases. In many states, a reform movement is under way to establish integrated family courts that would handle the range of family related matters (divorce, child protection, guardianship, domestic violence, etc.) with both specialized staff and specialized services. Whether or not courts are formally integrated to handle family disputes, the goal of creating a court system that is both more accessible and more helpful to families will likely continue to spur court improvements nationwide.

The tension that exists in divorce is that, on one hand, the economic and child custody aspects of divorce are extremely complex requiring the use of traditional procedural mechanisms for discovering facts. On the other hand, there is a desire to simplify, expedite, and reduce the financial and emotional costs of the divorce process by utilizing as many alternative conflict resolution methods as are appropriate. Additionally, family courts can serve as a community-based institution that coordinates all legal matters dealing with the family in a holistic manner. That is, it can provide necessary social and psychiatric services that may be incident to the divorce on the site of the court. It can be the institution to which divorced spouses as well as children of divorce can turn for future services such as postdivorce counseling.

For years lawyers who handled divorce and judges who heard divorce cases were looked upon by their colleagues at the bar with some disdain. Perhaps the reason for this lack of respect was that family law in general was considered “soft law,” something less than the “hard law” of corporations, property, or taxation. It dealt with the brute facts of life, not its theoretical or intellectual aspects. As substantive family law has become complex, especially those laws dealing with the assignment of marital property, divorce law practice has become extremely complicated. No longer is it the practice of the inexperienced lawyer. Today, to practice divorce law, a lawyer must have a working knowledge of all aspects of pensions, business law, property law, estates, bankruptcy, and taxation. The divorce of spouses with considerable wealth today can take on the attributes of a dissolution of a business partnership.

But, no matter what the economic position of the divorcing spouses, divorce is an emotional experience that can leave lasting scars on husbands, wives, and children. The goal of any divorce procedure should be to lessen the scarring process. This means that those professionals involved in divorce ought to be aware of the impact they will have on the parties involved and approach their task of, in the case of lawyers, helping their clients get through the ordeal or, in the case of judges, deciding cases (knowing their own limitations and their inability to foresee the future clearly) in a fair, just, and timely manner.

As substantive family law has become complex . . . divorce law practice has become extremely complicated.

---


3. Consider, for example, an excerpt from a contract entered into in 1877: “We, the under-
signed, hereby enter into a copartnership on the basis of the true marriage relation.
Recognizing love as the only law which should govern the sexual relationship, we agree to
continue this copartnership so long as mutual affection shall exist, and to dissolve it when
the union becomes disagreeable or undesirable to either party. We also agree that all
property that shall be acquired by mutual effort shall be equally divided on the dissolu-
tion of said copartnership. Should any children result from this union, we pledge our-
selves to be mutually held and bound to provide them support whether the union
continues or is dissolved.”

The Supreme Judicial Court held that, as a marriage contract, it was unenforceable. Since
by 1892 the parties had not gone through a formal marriage ceremony or had lived in a
state that legally recognized their relationship as marriage, they were not married. Peck v.
Peck, 155 Mass. 479, 30 N.E. 74 (1892). It is perfectly possible that now in some American
states such a contract would be enforced not as a marriage contract but as a cohabitation
contract.

4. This requirement was based on English law: “[A] woman acquires the domicile of her hus-
band on marriage, and retains this dependent domicile throughout coverture.” A.J.
Bland. The family and the conflict of laws in a century of family law. R.H. Graveson and F.R.

5. There is conflict in American case law as to whether custom or law is the source of a
woman’s assuming her husband’s surname upon marriage. In State v. Green, 177 N.E. 2d 616 (1961), the Court of Appeals of Ohio stated at p. 619: “It is only by custom, in English
speaking countries, that a woman, upon marriage, adopts the surname of her husband in
place of the surname of her father. The State of Ohio follows this custom but there exists
no law compelling it.” However, in People v. Lipsky, 63 N.E.2d 642 (1945), the Appellate
Court of Illinois stated on page 644: “[I]t is well settled by common-law principles and im-
memorial custom that a woman upon marriage abandons her maiden name and takes the
husband’s surname, with which is used her own given name.”

Later in the opinion, the court quotes Chapman v. Phoenix National Bank of City of New York, 85
N.Y. 437: “For centuries, by the common law among all English speaking people, a
woman, upon her marriage, takes her husband’s surname. That becomes her legal name,
and she ceases to be known by her maiden name. By that name she must sue and be sued,
make and take grants and execute all legal documents. Her maiden surname is absolutely
lost, and she ceases to be known thereby.”

6. As late as 1993, this issue has been litigated. In a May 26, 1993 Nevada Attorney General’s
Opinion (Opinion No. 93-12), it was stated that a married woman does not have to
change her surname to that of her husband and register again to vote under that name.
The facts that led to the conflict involved the Eureka County Clerk, who removed the mar-
rried woman’s name from the voter registration rolls and required her to change her sur-
name to that of her husband and register again to vote under that name. The case is
reported in Family Law Reporter (June 15, 1993) 19:1376.


8. The historical antecedent of this statement seems to be that made by Lord Hale, Chief Jus-
tice of the Court of King’s Bench from 1671 until 1675. Lord Hale wrote in Hale P.C.
1:629, “but a husband cannot be guilty of a rape committed by himself upon his lawful
wife, for by their mutual matrimonial consent and contract the wife hath given up herself
in this kind unto her husband which she cannot retreat.” This statement and cases abolishing
a husband’s immunity from prosecution for the rape of his wife are cited in the Geor-

9. It is interesting to read divorce cases decided before the concept of the battered child and
wife became a recognized phenomenon. Judges limited their opinions to the issues in-
volved and did not comment on even the most outrageous fact pattern that led up to the
court case and appeal. To illustrate this point, see Warner v. Warner, 76 Idaho 399, 283


11. A comprehensive study of all the child abuse and neglect statutes in the United States was
undertaken in the mid-1970s by Katz, S.N., Howe, R.W., and McGrath, M.S. Child neglect
laws in America. Family Law Quarterly (1975) 9:1. Although the data may be out of date
today, the collection serves as a historical document for purposes of comparisons with con-
temporary laws on child abuse and neglect.

13. In the early 1960s, the Children’s Bureau of the U.S. Department of Health, Education, and Welfare set up a working group to study the law’s response to child abuse. It was at this group’s meeting that Dr. C. Henry Kempe presented his findings regarding battered children. This author was a member of the working group which was led by the then chief of the Children’s Bureau, Katherine Oetinger. The result of that group’s work was the Model Mandatory Child Abuse Reporting Act, which required certain professionals to report incidents of child abuse. There were obstacles that we met in proposing the act to states. One concern was family privacy and the confidentiality of the doctor-patient relationship. It is interesting to observe the advancements that have been made in 30-odd years and how there are few questions about privacy and confidentiality today.

14. Nevertheless, some people do assume that they are divorced because they have deserted their spouses or gone through certain motions or signed legal documents in a lawyer’s office. Legally, however, they are not divorced. In a 1961 law review article Professor Henry Foster coined the phrase “common law divorce,” which he defined as “the private termination of marriage, independent of judicial action, which may be relied upon by the parties as carrying with it a privilege to remarry.” There is no such doctrine as “common law divorce” in American law. Foster, H.H. Common law divorce. *Minnesota Law Review* (1961) 46:43,58-62.


17. The Divorce Reform Act of 1966 changed the law to broaden the grounds. The act became effective on September 1, 1967. See New York Law 1966 Ch. 244, Sec. 15.


19. See note no. 18, Wels, p. 326. Wels writes: “Our present laws [referring to the laws of New York], from a lawyer’s viewpoint, are bad because of the corrupting effect which their administration has had upon our courts. The keystone of our Western democracy is the integrity and honesty of our courts, and the knowledge that any citizen who has been aggrieved will obtain just and honest dealing there. Our divorce practice has become an evil in that it has corrupted and degraded those courts.”

20. See note no. 15, Clark, p. 496.

21. For a full discussion of fault and no-fault divorce, see note no. 15, Clark, pp. 496-528.

22. A case that illustrates this point is *Jarrett v. Jarrett*, 78 Ill.2d 337, 400 N.E. 2d 421 (1979), where the Illinois Supreme Court held that a divorced mother who lived with a man to whom she was not married was denied custody of her child because of her immoral conduct. To the Illinois Supreme Court, such conduct “debases public morality.” Mrs. Jarrett appealed the decision to the U.S. Supreme Court, which denied certiorari. 449 U.S. 927 (1980).


24. See note no. 23, Kay, pp. 67.

25. See note no. 18, Wels, p. 306. The same can be said for grounds of divorce. For example, in writing about New York divorce law when adultery was the only ground for divorce, Wels writes: “In establishing adultery at the time [in 1787] as the sole ground for divorce, the Legislature then intended to make divorce as difficult as possible for the purpose of preserving the family unit. For many years this result was attained, and the statute exercised a severe restraint upon divorce actions.”

26. Blake, N.M. *The road to Reno*. Westport, CT: Greenwood Press, 1962. In the 1940s Arkansas, Florida, and Idaho had a reputation of “key[ing] their laws to the revenue of the divorce trade, . . . [seeking] such traffic to compensate for the lack of real gold mines within their boundaries.” See note no. 18, Wels, p. 304. It should be noted that, unless both husband and wife subject themselves to the jurisdiction of a divorce court, that court can only ter-
minimize the marriage. It does not have the power to assign property or custody of children. See Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957).


28. An illustration of this point is the Florida case of McClelland v. McClelland, 318 So. 2d 160 (1975), where the District Court of Appeals permitted the wife to plead adultery as the cause of an irretrievably broken marriage.

29. This was emphasized in the Florida case of Ryan v. Ryan, 277 So. 3d 266 (1973), where the Supreme Court of Florida wrote that a judge is more than a ministerial officer in divorce cases. To the Supreme Court of Florida a judge must make a “proper inquiry” to determine whether a marriage is irretrievably broken (the no-fault basis for divorce in Florida).

30. Deborah L. Rhode and Martha Minow observe that, although decreasing acrimony and hostility between the parties was a worthy goal, the early reforms in no-fault divorce did not pay sufficient “attention to vulnerable groups . . . .” They write: “Early no-fault reforms gave no special attention to the concerns of particularly vulnerable groups such as displaced homemakers with limited savings, insurance, and employment options; families with inadequate income to support two households (a problem disproportionately experienced by racial minorities); or couples with no children, no significant property, and no need for a formal adjudicative procedure. Nor was child support central to the reform agenda; it appeared only as a side issue, buried within custody and other financial topics.


32. See note no. 31, Marvell, p. 543. This statement is attributed to Thomas Marvell who reviews the literature dealing with the impact of divorce rates and the advent of no-fault divorce. He maintains that one cannot make a blanket statement that no-fault divorce has had no effect on the divorce rates. He criticizes the research done in the field, claiming that the methods used (for example, cross-sectional design and time-series analyses) were not well suited for the research. He claims that “the visual observation of graphs” is “unlikely to uncover subtle effects.” Further, he states that some studies used incomplete data (like petitions filed instead of divorces granted) and incorrect dates for the passage of laws. Another view is stated by Herbert Jacob. He writes: “It is true that divorce rates rose sharply during the period that no-fault divorce and the other divorce law changes were being made. However, every study of the impact of these laws on divorce rates has concluded that no relationship existed between the introduction of no-fault and the rise in divorce.” Jacob, H. The silent revolution. Chicago: University of Chicago Press, 1988, p. 162. For another view, see Zelder, M. The economic analysis of the effect of no-fault divorce law on the divorce rate. Harvard Journal of Law and Social Policy (1993) 16:241. Professor Zelder argues that “no-fault divorce law should be expected to increase the divorce rate . . . . The prediction that no-fault divorce law will increase the divorce rate seems obvious; commentators perceived the switch from fault to no-fault as a shift to ‘easier’ divorce laws, so more divorces would be expected to occur. Whether or not divorce became easier, however, the American divorce rate did not increase under no-fault during the 1970s as a consequence of divorce becoming easier.”

33. Weitzman, L.J. The divorce revolution: The unexpected social and economic consequences for women and children in America. New York: Free Press, 1985, p. 366. Weitzman’s research has been both praised and, of late, highly criticized. For example, Herbert Jacob writes: “Weitzman does not distinguish between the effects of no-fault and the new property division rules because an equal division rule was adopted along with no-fault in California, where she obtained most of her data . . . . Another problem is that . . . . the Weitzman . . . analyses focus almost entirely on asset division, alimony, and child support . . . . There are good reasons, however, to surround a discussion of these resources with caveats, because they may reflect changes in the property division and child support statutes as well as the impact of no-fault.” Jacob, H. Another look at no-fault divorce and the post-divorce finances of women. Law and Society Review (1989) 23:95-97.

34. See note no. 32, Jacob, p. 111.

“Changed circumstances” is a legal term. It denotes that important facts unknown or not able to be determined at the time of divorce have arisen, thus justifying a hearing which might result in a modification of the original divorce decree.

There is a distinction between working in the home and working outside the home in the “commercial work force.” Whether a person (usually the wife and mother) works in the home or outside the home, it is still “work.” The difference is that working at home is devalued in our society while working outside the home or in the commercial world is not. See note no. 30, Rhode and Minow, and note no. 23, Sugarman and Kay, pp. 193-94.


See note no. 39, McClanahan, p. 35.

A recent illustration of this principle is the case of *Elkus v. Elkus,* 572 N.Y.S.2d 901 (A.D. 1 Dept. 1991), in which the New York Supreme Court (Appellate Division) held that Mr. Elkus, the husband of Metropolitan Opera star Frederica von Stade, had a property interest in Ms. von Stade’s operatic career.

Professor Mary Ann Glendon was one of the first scholars to bring this phenomenon to the attention of others. Glendon, M.A. *The new family and the new property.* Toronto: Butterworths, 1981. In 1981 she wrote that employment ties (the employer’s inability to fire an employee without cause) were more secure than family ties (because of no-fault divorce, where a spouse may leave another spouse without cause). Professor Glendon’s observations were more true in the 1970s and early 1980s than they would be today. Over the past decade, the employment bond itself has loosened considerably. The employment relationship today appears little more stable than the marital relationship itself. The fastest growing area in the employment sphere is multiple job holding and contingent employment arrangements. On this phenomenon see, Kohler, T.C. Individualism and communitarianism at work. *Brigham Young University Law Review* (1993) 2:727-41. Professor Kohler writes on p. 736: “It may be that instability increasingly characterizes many of the significant relationships among Americans: employment relationships in the U.S. now last an average of 4.5 years, while the average marriage lasts but seven. Trends are not wholly clear, but the average length of both may be on the way down.”


See W. Va. Code Sec. 48-2-32 (Supp. 1985) cited and discussed in Ellman, I.M., Kurtz, P.M., and Bartlett, K.T. *Family law cases, text, problems.* 2d ed. Charlottesville, VA: Michie, 1991, p. 234. Ellman, Kurtz, and Bartlett have written: “It is often said that the homemaker wife may be essential to her husband’s market success. But while it may be clear that her services and support added greatly to his comfort, or to his emotional health, it would be harder to show that her services made a significant contribution to . . . ‘the acquisition, preservation and maintenance or increase in value of marital property.’ Thus such language, if seriously applied, would not leave much for many homemakers. . . . It thus matters greatly whether a ‘homemaker’s economic contribution is equal, or merely to create an opportunity for the homemaker to try to show how her services contributed to the parties’ assets.”

These factors include: duration of the marriage, age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or an addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. Statutes also state that consideration should be given to the contribution or dissipation of each party to the acquisition, preservation, depreciation, or appreciation in value of the respective estates, and as the contribution of a spouse as a homemaker or to the family unit. Uniform Marriage and Divorce Act, Section 307. *Alternative A. Family Law Reporter,* Section 201:0004.

See note no. 38, Glendon, p. 228.
Historical Perspective and Current Trends in the Legal Process of Divorce

47. For a full discussion of the mechanics of the division of marital property, see note no. 43, Golden, pp. 233-82.

48. See note no. 44, Ellman, Kurtz, and Bartlett, pp. 227-42.

49. Indeed, the length of a marriage is one of the factors that judges must consider in making an equitable assignment of marital property. See note no. 44, Ellman et al. Also see Inker, M., Walsh, J., and Perocchi, P. Alimony orders following short-term marriages. Family Law Quarterly (1978) 10:91.

50. See note no. 15, Clark, p. 619.


52. The 1963 Supreme Court of Washington case of Dakin v. Dakin, 62 Wash. 2d 687, 384 P.2d 639 (1963) illustrates this point: “The record shows that the plaintiff [wife] has no children to support or care for; that she was 53 years of age at the commencement of this action; that she was extremely nervous and upset at the time of the trial; but, otherwise she is an able-bodied woman; that, because of her past condition, she has been unable to maintain steady employment; that she attended teacher’s college for two years and taught school for four years thereafter; that she has had considerable experience as a social worker, although no formal training. It is the policy of this state to place a duty upon the wife to gain employment, if possible. * * *

... We think that [the plaintiff] should be encouraged to rehabilitate herself and that, within a reasonable period, she may become self supporting. Although she may have been nervous and upset prior to her decree of divorce, there is no evidence which indicates this condition is of a permanent nature. Except for this condition, she appears to be an able-bodied woman capable of future employment. We conclude that alimony should be awarded which is adequate for the purpose of providing for her during her transitional period.”

53. The following case is cited and discussed in note no. 1, Weyrauch and Katz, pp. 85-90. An early case that illustrates this point is Morgan v. Morgan, 81 Misc. 2d 616, 366 N.Y.S.2d 977 (1975). This New York case involved a wife who had financially helped to put her husband through law school. After divorce, the wife wanted to enter medical school. Her husband refused to support the endeavor. The trial court judge wrote: “In my opinion, . . . under these circumstances, the wife is also entitled to equal treatment and a ‘break’ and should not be automatically relegated to a life of being a well-paid, skilled technician laboring with a life-long frustration as to what her future might have been as a doctor, but for her marriage and motherhood. I am impressed by the fact that the plaintiff [wife] does not assume the posture that she wants to be an alimony drone or seek permanent alimony. Rather she had indicated that she only wants support for herself until she finishes medical school in 5½ years (1½ years more in college and 4 years in medical school) and will try to work when possible. In this regard, she merely seeks for herself the same opportunity which she helped give to the defendant [husband]. Accordingly, I am directing that the defendant shall pay a total sum of $200 weekly for alimony and child support . . . .” The trial court judge’s decision was appealed. On appeal the alimony award of $100 was reduced to $75 a week.


59. See note no. 44, Ellman, Kurtz, and Bartlett, pp. 402-3. The authors report that, “According to the most recent Census Bureau data, only 61% of the 8.8 million mothers living with children under 21 whose fathers were not living in the household report having either a decree or an agreement for child support. . . . While 81.1% of divorced mothers report having an award or agreement, only 43% of separated mothers and 18.4% of never-married mothers report having an order or agreement.”

60. See note no. 44, Ellman, Kurtz, and Bartlett, pp. 403-4.

61. See note no. 43, Golden, p. 201. Golden writes: “Frequently, the marital home (if classified as marital property) will be awarded to the custodial parent. This is so even though the other spouse may have strong family or sentimental ties to the residence. Many states
specifically list the desirability of awarding the marital home to the custodial parent as a factor for the court to consider in making the final equitable distribution.”


65. See note no. 64, Folberg and Milne, pp. 431-49.

66. In Smith v. Lewis, 530 P.2d 589, 11 Cal. Rptr. 621 (1975), the Supreme Court of California held that an attorney who negligently failed in a divorce action to assert his client’s community interest in her husband’s retirement benefits was guilty of malpractice. The court stated, “[E]ven with respect to an unsettled area of the law, we believe an attorney assumes an obligation to his client to undertake reasonable research in an effort to ascertain relevant legal principles and to make an informed decision as to a course of conduct based upon an intelligent assessment of the problem.” Increasingly there are unsettled areas of the law, especially with regard to what is and what is not marital property.


68. This is manifested from time to time when legislatures either refuse or are reluctant to reduce the periods between the time a divorce decree is issued and when it is final. For example, in Massachusetts, 90 days must elapse between the time a decree is granted and when it becomes final. Attempts to reduce the period have been unsuccessful. The reason for the time period is supposedly to give the spouses time to reconcile. It is generally believed (although there are no definitive studies to prove the point) that such a goal is unrealistic.


70. The author has derived this information from his involvement in the past few years in judicial education both in the Commonwealth of Massachusetts and with the Council of Juvenile and Family Court Judges, a national organization that holds educational programs for judges from many states.

Financial Impact of Divorce on Children and Their Families

Jay D. Teachman
Kathleen M. Paasch

Abstract

This article reviews the evidence pertaining to the financial impact of divorce on children and their families. While there is some variance as to the degree of change, the preponderance of evidence suggests that women and children experience substantial financial declines upon divorce while divorced men’s relative income remains stable or even increases. Given this decline in women and children’s economic status, the impact of public assistance programs is next considered followed by a discussion of child support and property settlements. The authors then present a discussion of roadblocks to economic recovery and recommend policies to improve the financial status of divorced mothers with children.

The preponderance of evidence suggests that, following divorce, custodial parents—almost always mothers—suffer considerable decline in economic well-being. Why is this so? To some degree, the economic distress suffered by mothers and children is structural. That is, given the nature of fixed costs (for example, housing and transportation), it is cheaper to live in one household than in two. Because two households are formed when a couple divorces, the same resources must now cover greater fixed costs. Moreover, costs attendant to marital disruption, such as legal fees and relocation costs, can drain either partner’s financial reserves.

The situation for mothers and children is made more precarious by pre-existing differences in earning power. In general, fathers earn more than mothers partly because of greater human capital development and greater returns to this capital. When a man and woman live together, his earnings are shared more or less equally. After divorce, however, fathers are much less likely to share their earnings as equally, dramatically reducing the resources available to mothers and children, even if the mother works.

In this article, we review evidence pertaining to the financial impact of divorce on children and their families. We find that mothers and children often experience a substantial decline in income following a divorce. Fathers are much less likely to experience such a decline and often experience an increase in income, especially if one considers income relative to basic needs based on family size. Indeed, the fact that fathers are substantially less likely to experience a drop in economic well-being following divorce leads...
The Economic Consequences of Divorce

A growing body of literature has developed around the economic consequences of divorce. While this literature is diverse in terms of data, definitions employed, and analytic strategies, a number of conclusions can be reached. First, women and children experience a significant decline in income following divorce. Second, men are much less likely to experience a decline in income following divorce. Third, the event most associated with a rebound in economic well-being following divorce for women and children is remarriage.

Beyond these simple points, though, it is difficult to draw firm conclusions about the magnitude and duration of the economic consequences of divorce, the diversity of economic outcomes, and the reasons for these outcomes. Below we attempt to provide as clear a portrait as possible, while recognizing the need for additional research to provide more complete answers. We do so while discussing some of the most recent data on the economic consequences of divorce for women and children.

One reason we know so little about the economic consequences of divorce is that the data needed to answer our questions are not available. What is needed are longitudinal data on a large number of men, women, and children (families) that are representative of the United States population—data that contain information on the marital transitions experienced by these families, as well as precise information about the economic situation of spouses and children for relatively fine intervals of time. Moreover, these data should span a broad period of time so that both the short-term and the long-term consequences of divorce can be considered.

Unfortunately, such data do not exist. Consequently, all research on the economic consequences of divorce involves tradeoffs concerning data content. For example, the Census Bureau’s Current Population Survey (CPS) provides the most current, nationally representative data on divorced female-headed families. Table 1 presents an overview of their economic situation. CPS data indicate that divorced women with children have a high likelihood of living in poverty: 39% of all divorced women with children and 55% of those with children under six were poor in 1991. (Poverty thresholds by size

---

Table 1

<table>
<thead>
<tr>
<th>Select Characteristics of Divorced/Separated Women</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Divorced or separated women with children under 18 years: 1991</td>
<td>4,815,000</td>
</tr>
<tr>
<td>Living below poverty level</td>
<td>39.4%</td>
</tr>
<tr>
<td>Divorced or separated women with children under 6 years: 1991</td>
<td>1,616,000</td>
</tr>
<tr>
<td>Living below poverty level</td>
<td>54.7%</td>
</tr>
<tr>
<td>Divorced or separated women supposed to receive child support: 1989</td>
<td>4,335,000</td>
</tr>
<tr>
<td>Divorced women receiving child support</td>
<td>75.4%</td>
</tr>
<tr>
<td>Mean child support received: 1989</td>
<td>$3,143</td>
</tr>
<tr>
<td>Child support as percentage of total income</td>
<td>18.5%</td>
</tr>
</tbody>
</table>

## Table 2

<table>
<thead>
<tr>
<th>Size of Family</th>
<th>None</th>
<th>One</th>
<th>Two</th>
<th>Three</th>
<th>Four</th>
<th>Five</th>
<th>Six</th>
<th>Seven</th>
<th>Eight or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>One person</td>
<td>6,451</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Two persons</td>
<td>8,303</td>
<td>8,547</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Three persons</td>
<td>9,699</td>
<td>9,981</td>
<td>9,990</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Four persons</td>
<td>12,790</td>
<td>12,999</td>
<td>12,575</td>
<td>12,619</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Five persons</td>
<td>15,424</td>
<td>15,648</td>
<td>15,169</td>
<td>14,798</td>
<td>14,572</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Six persons</td>
<td>17,740</td>
<td>17,811</td>
<td>17,444</td>
<td>17,692</td>
<td>16,569</td>
<td>16,259</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seven persons</td>
<td>20,412</td>
<td>20,540</td>
<td>20,101</td>
<td>19,794</td>
<td>19,224</td>
<td>18,558</td>
<td>17,828</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eight persons</td>
<td>22,830</td>
<td>23,031</td>
<td>22,617</td>
<td>22,253</td>
<td>21,738</td>
<td>21,084</td>
<td>20,403</td>
<td>20,230</td>
<td></td>
</tr>
<tr>
<td>Nine or more</td>
<td>27,463</td>
<td>27,596</td>
<td>27,229</td>
<td>26,921</td>
<td>26,415</td>
<td>25,719</td>
<td>25,089</td>
<td>24,933</td>
<td>23,973</td>
</tr>
</tbody>
</table>


of family and number of children are provided in Table 2.) From Table 1 it is also evident that, although the average amount of child support received is only $3,143, child support payments comprise almost one-fifth of the total income of divorced mothers with children. Unfortunately, no detailed data are available for father-headed families. However, in 1991, only about 4% of single-parent families were headed by fathers.  

Although CPS data are informative, they provide only a snapshot or cross-sectional picture of divorced families. To better understand the economic dynamics of divorce, longitudinal data are needed. Most of the results we choose to report come from the U.S. Census Bureau’s published reports based on the 1984 Survey of Income and Program Participation (SIPP).  

The 1984 SIPP is a sample of over 20,000 households first interviewed in October of 1983 and interviewed every four months thereafter for a period of two and one-half years. Thus, a large number of households are followed for up to eight panels (four-month periods), or 32 months. While the SIPP cannot provide information on the long-term consequences of divorce, detailed monthly information on sources of income and marital status make it one of the best available sources of longitudinal information on the short-term consequences of marital disruption.  

Table 3 presents four measures of economic well-being based on data from the 1984 SIPP; mean family income, mean per capita family income, mean ratio of family income to the poverty level, and percent of families with incomes below the poverty level. The first measure is simply the average monthly income available to a family. The second measure adjusts for the fact that a given income must be shared by a variable number of family members. The third measure relates family income to the poverty level. The fourth measure indicates the proportion of families living in poverty. Different poverty thresholds are calculated for families of different size and composition. These thresholds rise gradually with increasing family size, reflecting the fact that it is not necessary to increase income proportionately to increases in family size to maintain a family’s standard of living as family size increases. Hence, measures three and four implement control for family size but less dramatically than measure two. A ratio of 1.0 indicates that a family is at the poverty line. Ratios above and below 1.0 indicate the degree to which family income is above or below the poverty line. The fourth measure indicates the proportion of families living in poverty. We use four different measures of economic well-being because, although they are all interrelated, they each provide a slightly different perspective on the magnitude of income loss following divorce. This varied perspective is impor-
### Change in Family Economic Circumstances Between First and Eighth Interviews of 1984 SIPP According to Living Arrangements

<table>
<thead>
<tr>
<th></th>
<th>Mean Family Income</th>
<th>Mean Per Capita</th>
<th>Mean Ratio of Family Income to Poverty Level</th>
<th>Percentage of Families with Income Below Poverty Level</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All children</strong> (n=51,862,000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time 1</td>
<td>$2,453</td>
<td>$575</td>
<td>2.51</td>
<td>21.4</td>
</tr>
<tr>
<td>Time 8</td>
<td>$2,622</td>
<td>$610</td>
<td>2.67</td>
<td>18.8</td>
</tr>
<tr>
<td>Percent change</td>
<td>6.9</td>
<td>6.1</td>
<td>6.5</td>
<td>-12.3</td>
</tr>
<tr>
<td><strong>Continuously married</strong> (n=36,867,000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time 1</td>
<td>$2,834</td>
<td>$649</td>
<td>2.87</td>
<td>12.1</td>
</tr>
<tr>
<td>Time 8</td>
<td>$3,060</td>
<td>$689</td>
<td>3.06</td>
<td>9.7</td>
</tr>
<tr>
<td>Percent change</td>
<td>8.0</td>
<td>6.2</td>
<td>6.6</td>
<td>-19.8</td>
</tr>
<tr>
<td><strong>Father leaves</strong> (n=2,884,000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time 1</td>
<td>$2,346</td>
<td>$530</td>
<td>2.35</td>
<td>21.3</td>
</tr>
<tr>
<td>Time 8</td>
<td>$1,815</td>
<td>$485</td>
<td>2.05</td>
<td>31.0</td>
</tr>
<tr>
<td>Percent change</td>
<td>-22.6</td>
<td>-8.4</td>
<td>-12.6</td>
<td>45.6</td>
</tr>
<tr>
<td><strong>Mother only</strong> (n=8,390,000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time 1</td>
<td>$1,132</td>
<td>$305</td>
<td>1.22</td>
<td>56.2</td>
</tr>
<tr>
<td>Time 8</td>
<td>$1,176</td>
<td>$328</td>
<td>1.3</td>
<td>53.3</td>
</tr>
<tr>
<td>Percent change</td>
<td>3.8</td>
<td>7.5</td>
<td>5.9</td>
<td>-4.9</td>
</tr>
<tr>
<td><strong>Father enters</strong> (n=1,402,000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time 1</td>
<td>$1,164</td>
<td>$395</td>
<td>1.39</td>
<td>47.9</td>
</tr>
<tr>
<td>Time 8</td>
<td>$2,506</td>
<td>$591</td>
<td>2.63</td>
<td>18.2</td>
</tr>
<tr>
<td>Percent change</td>
<td>115.4</td>
<td>49.7</td>
<td>89.8</td>
<td>-62.0</td>
</tr>
</tbody>
</table>

---

* SIPP = Survey of Income and Program Participation
* All income values are per month and are in constant 1986 dollars.
* Mean ratio of family income to poverty level relates family income to the poverty threshold for the size and age composition of a child's family in a given month. A ratio of 1.0 indicates that the family in which the child resides is at the poverty line. A ratio less than 1.0 indicates that the family in which the child resides is below the poverty line. A ratio greater than 1.0 indicates that the family in which the child resides is above the poverty line.
* Children under the age of 15 at the time of the first interview for whom 32 months of data on household income and family composition exist.

tant when there is no commonly accepted cutoff for determining what constitutes a significant change in income. 7

The data from SIPP indicate that, on average, children were better off economically at the end of the SIPP sample period (1986) than they were at the initial interviews in 1983-84 (see Table 3). Mean monthly family income increased by about 6.9%, mean per capita family income increased 6.1%, mean ratio of family income to the poverty level increased 6.5%, and the percent of families with incomes below the poverty line decreased 12.3%. For children whose fathers leave, however, the picture is much different. Family income dropped by about 23% (a figure that is consistent with many of the estimates reported in prior literature). 8 Per capita family income fell, but only by about 8%. The ratio of family income to the poverty level also dropped (about 13%), but the average family remained above the poverty line (approximately 69% had income-to-needs ratios above the poverty level). Note, however, that the percent of families below the poverty line increased by nearly 10 percentage points (about a 46% increase in the total number of families).

It might seem odd that the ratio of family income to the poverty level drops relatively little yet there is such a substantial increase in the percent of families with incomes below the poverty line (a point that illustrates the need to view the data in various ways). This seeming discrepancy is generated by variation in economic well-being preceding father absence. As indicated in prior studies, women and children who are in higher-income families prior to disruption subsequently suffer the most substantial decline in income. 9 Yet, the reduction in income experienced in these families often is not sufficient to leave them below the poverty line following divorce.

The substantial increase in the percentage of families below the poverty line following disruption results from the large fraction of families close to the poverty line prior to disruption. Compared to children in continuously married families, children who lived in families that experienced marital disruption were economically disadvantaged even before their fathers left. Mean monthly family income was 17% lower ($2,346 versus $2,834), and the percent of families below the poverty line was 1.75 times greater (21.3% versus 12.1%). This difference is consistent with an extensive body of research which indicates that economic stress and deprivation are positively associated with subsequent marital dissolution. 10

The economic vulnerability of families without fathers present is further indicated by the desperate financial circumstances of children who lived the entire length of the 1984 SIPP in mother-only families. While these families did not experience any decrease in their financial well-being over the period covered, they remained the group least well-off. More than 50% of the mother-only families were in poverty, and the mean ratio of family income to the poverty level was only slightly greater than 1.0.

The last panel of data in Table 3 indicates the role a father’s income can play in reducing economic distress associated with mother-only families. Family income increased 115% for families into which a father entered, and the increase remains substantial when considering both income per capita (about 50%) and the mean ratio of family income to the poverty level (about 90%). As might be expected, the notable increase in family income associated with gaining a father substantially reduces the incidence of poverty (62%).

When data are considered separately by race, both blacks and whites experience a significant decline in income following marital disruption. Using data from the Panel Study of Income Dynamics (PSID), Corcoran reported that black mothers and white mothers experience a similar decline in the percent change in family income from disruption (comparing the year prior to marital disruption with the year following marital disruption). 11 However, because intact black families generally have lower income levels, a greater proportion of black women fall below the poverty line following marital disruption. Also using the PSID, Duncan and Hoffman found that black women who had been relatively well-off during marriage experienced larger percentage declines in

As indicated in prior studies, women and children who are in higher-income families prior to disruption subsequently suffer the most substantial decline in income.
fathers can leave during any of the eight panels. Thus, one cannot interpret the income levels at time 1 and time 8 in a longitudinal framework for this important group—that is, one cannot obtain a firm, unambiguous idea about how income might change across time following a father’s departure. Table 4 presents a longitudinal representation of the data for families experiencing marital disruption. For children who lived with both parents at the beginning of the 1984 SIPP, the four measures of economic well-being used in Table 3 are shown for five points in time: the panel immediately prior to the father’s leaving and the four panels immediately following the father’s departure (or up to about 12 months after departure). Two different groups are considered. The first group consists of the families of all children who experienced a marital disruption, and the second consists of the families of children who experienced a marital disruption and whose mothers did not remarry or reconcile.

The data in Table 4 show a decline in the income available to families after a father departs, a decline that appears immediately after marital disruption. In particular, note that the percent of families in poverty nearly doubled from the panel immediately prior to marital disruption to the panel immediately following dissolution. If one compares the two sets of figures (for all children and children whose mother did not remarry/reconcile), it is evident that, for the first year following marital disruption, there is no improvement in the economic well-being of families unless the mother remarries or reconciles. Income at time 4 is no higher than at time 1 for women who have not remarried or reconciled, and the proportion of families below the poverty line remains at about 35%.

The data in Table 4 show that the economic consequences of marital disruption are not limited to the immediate turmoil surrounding a divorce and that, without remarriage or reconciliation, there is no clear trend toward improvement in economic well-being for at least the first two to three years after divorce. While these data cannot be construed to provide information on the long-term economic consequences of marital disruption, other research suggests that economic deprivation may be long-term, up to five years or more. In large part, however, the sample sizes in these stud-
Table 4

| Change in Family Economic Circumstances Among Children Who Lived with Both Parents at the Beginning of the 1984 SIPP and Whose Father Subsequently Left |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|                                 | Mean Family Income\(^a\) | Mean Per Capita Family Income | Mean Ratio of Family Income to Poverty Level\(^c\) | Percentage of Families with Incomes Below Poverty Level | Number (1,000s)  |
| All children\(^d\)              | Prior to father absence | $2,435           | $549            | 2.43           | 18.8           | 2,884           |
|                                 | Time 1                | 1,543            | 436             | 1.79           | 35.5           | 2,522           |
|                                 | Time 2                | 1,548            | 447             | 1.77           | 30.9           | 2,194           |
|                                 | Time 3                | 1,739            | 468             | 1.94           | 29.3           | 1,804           |
|                                 | Time 4                | 1,711            | 456             | 1.96           | 30.7           | 1,454           |
| Children whose mother does not remarry/reconcile | Prior to father absence | $2,416           | $540            | 2.39           | 18.5           | 2,225           |
|                                 | Time 1                | 1,452            | 424             | 1.73           | 37.6           | 1,863           |
|                                 | Time 2                | 1,364            | 409             | 1.6            | 32.9           | 1,589           |
|                                 | Time 3                | 1,424            | 409             | 1.67           | 35.6           | 1,301           |
|                                 | Time 4                | 1,432            | 399             | 1.71           | 35.5           | 1,036           |

\(^a\) SIPP = Survey of Income and Program Participation  
\(^b\) All income values are per month and are in constant 1986 dollars.  
\(^c\) The mean ratio of family income to the poverty level relates family income to the poverty threshold for the size and age composition of a child’s family in a given month. A ratio of 1.0 indicates that the family in which the child resides is at the poverty line. A ratio less than 1.0 indicates that the family in which the child resides is below the poverty line. A ratio greater than 1.0 indicates that the family in which the child resides is above the poverty line.  
\(^d\) Children under the age of 15 at the time of the first interview for whom 32 months of data on household income and family composition exist.


Families tend to be quite small, making it difficult to draw firm conclusions.

As indicated above, remarriage or reconciliation is the most immediate mechanism alleviating economic deprivation associated with marital disruption. Over the past decade, though, rates of remarriage have declined (from a high of 166 remarriages per 1,000 divorced or widowed women age 15 to 54 in 1966-1968 to 109 remarriages per 1,000 similar women in 1987-1989). Lower remarriage rates would generally result in longer periods between marriage and thus longer periods of poverty. However, the recent rise in the cohabitation rate of single-parent families and the income sharing this may imply may bring about some economic relief.

The substantial difference in economic well-being between disrupted families according to whether the mother remarries suggests that the employment of divorced mothers is not a particularly effective buffer against economic deprivation. Evidence to that effect is given in Table 5, again using data from the 1984 SIPP.

The difference is probably partly attributable to the facts that most fathers have had prior continuous work experience, whereas at least some proportion of mothers have not, and that most mothers have lower-status jobs and are victims of wage discrimination.

Following the presentation in Table 4, employment and income figures are given for the panel immediately prior to marital disruption and for the four panels immediately subsequent to the father’s departure (covering approximately two years).
Table 5

<table>
<thead>
<tr>
<th>Change in Mother’s Labor Force Activity and Earnings After Departure of Father from the Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to Father Absence</td>
</tr>
<tr>
<td>-------------------------</td>
</tr>
<tr>
<td>All children(^a)</td>
</tr>
<tr>
<td>Percentage with earnings</td>
</tr>
<tr>
<td>Average monthly earnings(^b)</td>
</tr>
<tr>
<td>Children whose mother does not remarry/reconcile</td>
</tr>
<tr>
<td>Percentage with earnings</td>
</tr>
<tr>
<td>Average monthly earnings</td>
</tr>
<tr>
<td>Number (in 1,000s)</td>
</tr>
</tbody>
</table>

\(^a\) Children under the age of 15 at the time of the first interview for whom 32 months of data on household income and family composition exist.

\(^b\) All income values are per month and are in constant 1986 dollars.

Two sets of figures are given: one for all children and one for children whose mothers did not remarry or reconcile.

Prior to marital disruption, about 56% to 58% of children had mothers who were in the labor force and who earned about $930 per month, or about 37% of family income (using family income values reported in Table 4). In the first panel after marital disruption, more than 70% of mothers were working. A first response of many newly divorced mothers to economic stress, therefore, appears to be entry into the labor force. Note, however, that the average amount earned declined from immediately before to immediately after disruption, although the amount earned constituted about 60% of postdisruption family income. This decline occurred because the jobs available to many new entrants into the labor force are often less than full-time employment and/or pay wages below those earned by mothers already in the labor force.

Over time, the proportion of children whose mothers were in the labor force declined to a point only slightly higher than observed just prior to marital disruption. In addition, average income increased as the proportion of mothers working declined. While part of the increase in earnings may be attributed to annual pay increases (in real dollars), it is likely that most of the increment is associated with the fact that many women earning low wages elect to leave the labor force. Thus, while the initial response to economic uncertainty following marital disruption may be to find employment, for many women this shift is short-lived. In the long run, only those women who are successful in the labor market are likely to remain employed.

Because many women are new labor force entrants or are returning to work after being absent for some time, it is difficult for them to find jobs that pay enough to support a family. Many of these women must take shift work to find employment or to be home with their children at least part of the time. Presser reports that unmarried mothers are nearly twice as likely as married mothers to work nonday shifts, often in jobs that are unpleasant and pay the minimum wage. When combined with the costs and constraints of child care and discrimination against single parents in the workplace, low-paying, dead-end jobs force many working single mothers out of the labor market. The availability of welfare benefits, especially those that erode with earned income, acts to reduce the likelihood that divorced mothers will remain active in the labor force.
Marital Disruption and Public Assistance

Given the meager economic resources possessed by women and children in disrupted families compared with married-couple families, it is natural to ask about their participation in public assistance programs. Table 6 shows results from the 1984 SIPP with respect to receipt of Aid to Families with Dependent Children (AFDC) and food stamps, the two largest public assistance programs. Rates of participation and average amounts received are again shown for the panel immediately prior to marital disruption and for the four panels immediately following dissolution. Values are shown for all children and for children whose mothers did not remarry or reconcile.

About 9% of children who experienced marital disruption lived in families receiving public assistance prior to father absence. These figures increased to about 27% for food stamps and 18% for AFDC immediately following marital disruption. Generally, the proportion of children in disrupted families participating in public assistance programs grew slightly over time, probably because more families learned about their eligibility, were processed through the system, and overcame initial misgivings that they may have had about the stigma of receiving welfare. Some of the increase in participation is also due to the fact that mothers leave the labor force because of low wages or because fathers fail to make child support payments. The amounts received for parent(s) and children both range from about $240 to $300 per month for AFDC to $180 to $195 per month for food stamps.

Prior to divorce, AFDC and food stamps constituted about 18% of average family income. Following divorce, these public assistance programs made up about 25% to 30% of average family income (slightly more for children whose mothers did not remarry or reconcile). As one might expect, mothers and children who lived in higher-income families prior to divorce were less likely to receive public assistance following marital disruption. As noted above, the families most likely to fall below the poverty line are those that were relatively less well-off prior to divorce. Using data from the PSID, Weiss reported that, in the first year following a marital disruption, mothers with predisruption incomes that put them in the bottom third of the income distribution were nearly 18 times more likely to receive AFDC payments or food stamps than were mothers with predisruption incomes that put them in the top third of the income distribution.

The overall impact of public assistance on the economic well-being of disrupted families is substantial. If it were not for government cash transfers such as AFDC, the percentage of all female-headed families in poverty (including never-married mothers) would rise from approximately 50 to 57. By race, the percentage of poor,
### Table 6

<table>
<thead>
<tr>
<th>Change in Mother’s Receipt of Public Assistance After Departure of Father from the Household</th>
<th>Prior to Father Absence</th>
<th>Time 1</th>
<th>Time 2</th>
<th>Time 3</th>
<th>Time 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>All children&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage who receive AFDC&lt;sup&gt;b&lt;/sup&gt;</td>
<td>9.0</td>
<td>18.2</td>
<td>21.3</td>
<td>22.0</td>
<td>21.9</td>
</tr>
<tr>
<td>Average monthly receipt&lt;sup&gt;c&lt;/sup&gt;</td>
<td>$268</td>
<td>$255</td>
<td>$285</td>
<td>$272</td>
<td>$286</td>
</tr>
<tr>
<td>Percentage who receive food stamps</td>
<td>9.5</td>
<td>26.6</td>
<td>26.5</td>
<td>24.8</td>
<td>25.5</td>
</tr>
<tr>
<td>Average monthly receipt</td>
<td>$170</td>
<td>$188</td>
<td>$181</td>
<td>$185</td>
<td>$183</td>
</tr>
<tr>
<td>Number (in 1,000s)</td>
<td>2,884</td>
<td>2,522</td>
<td>2,194</td>
<td>1,804</td>
<td>1,451</td>
</tr>
<tr>
<td>Children whose mother does not remarry/reconcile</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage who receive AFDC</td>
<td>11.7</td>
<td>19.4</td>
<td>23.6</td>
<td>24.4</td>
<td>25.8</td>
</tr>
<tr>
<td>Average monthly receipt</td>
<td>$268</td>
<td>$243</td>
<td>$279</td>
<td>$273</td>
<td>$298</td>
</tr>
<tr>
<td>Percentage who receive food stamps</td>
<td>10.3</td>
<td>28.2</td>
<td>29.0</td>
<td>28.7</td>
<td>31.7</td>
</tr>
<tr>
<td>Average monthly receipt</td>
<td>$187</td>
<td>$187</td>
<td>$177</td>
<td>$194</td>
<td>$186</td>
</tr>
<tr>
<td>Number (in 1,000s)</td>
<td>2,225</td>
<td>1,863</td>
<td>1,589</td>
<td>1,301</td>
<td>1,036</td>
</tr>
</tbody>
</table>

<sup>a</sup> Children under the age of 15 at the time of the first interview for whom 32 months of data on household income and family composition exist.

<sup>b</sup> Aid to Families with Dependent Children

<sup>c</sup> All income values are per month and are in constant 1986 dollars.


White, female-headed families would rise from 42 to more than 49, while for blacks it would rise from 63 to 69.

The effect of government programs on poor female-headed families can be further realized by adding the estimated value of noncash transfers, such as food stamps, Medicaid, and housing subsidies, to recipients’ income. Such noncash transfers are not included when calculating official measures of poverty. Using the Census Bureau’s income definition 14—which adds to money income and cash transfers net of income taxes, earned income tax credits and the estimated cash value of Medicare, Medicaid, and other transfers noncash—the percentage of all female-headed families living in poverty declines to about 38. Although both cash and noncash government transfers serve to lessen poverty, their main intent is assistance in the short term, not long-range support for raising children. Moreover, this assistance is aimed at lessening the impact of poverty, not at eliminating it. This fact is reflected in the large percentage of families headed by women that remain in poverty after noncash public transfers are taken into account.

The societal assumption is that financial, as well as social, responsibility for children should rest with parents. Thus, we turn our attention to child support as a means to better the economic well-being of divorced mothers and their children. As we shall see, many mother-headed divorced families receive little or no support from nonresident fathers. Child support is important not only because of its impact on these families but...
Table 7

<table>
<thead>
<tr>
<th>Child Support Awarded and Received for Ever-Married Women, 1989(^a)</th>
<th>Percentage or Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awarded child support</td>
<td>72</td>
</tr>
<tr>
<td>Due child support</td>
<td>62</td>
</tr>
<tr>
<td>Received support among those due support</td>
<td>75</td>
</tr>
<tr>
<td>Received support among all women</td>
<td>48</td>
</tr>
<tr>
<td>Mean child support received(^b)</td>
<td>$3,138</td>
</tr>
<tr>
<td>Mean total income</td>
<td>$16,964</td>
</tr>
<tr>
<td>Child support received as percentage of total income</td>
<td>18.5</td>
</tr>
</tbody>
</table>

\(^a\) Includes currently divorced, separated, and remarried women.
\(^b\) In constant 1989 dollars.


also because of its potential impact on welfare costs. Based on data from Wisconsin, Garfinkel estimates that a child support program which would assure collection would pay for itself.\(^29\)

### Divorce and Child Support

Historically, child support, in the form of a cash transfer from fathers to mothers, has evolved as the primary mechanism whereby nonresident fathers are legally required to support their children.\(^30\) Unfortunately, child support awards are generally small, and often payments arrive irregularly if at all.\(^31\) However, because single mothers have relatively low incomes, the receipt of child support payments can make a difference in their economic well-being. Data from the 1989 CPS indicate that child support payments comprised about 17% of the total income of divorced mothers who received support in 1989. For women below the poverty level, payments made up a much larger proportion, 38% of their total income.\(^32\)

Table 7 shows the percent of ever-married mothers who were awarded and received child support in 1989. Slightly less than three-fourths of divorced mothers had ever been awarded child support. Of these mothers, 62% were due payments. Three-fourths of women due support actually received payments, or less than half of all divorced mothers. The mean amount of child support received among divorced mothers in 1989 was $3,138 per year, and the average number of children per family was a bit over 1.5 children.\(^32\)

The data in Table 7 are striking because they indicate that a large proportion of divorced mothers do not have a child support award. Many of the mothers who do have an award do not receive payment, and if a payment is received, the amount is low. The average annual amount paid in child support is much less than the cost of raising a child.\(^33\)

Because the average annual amount paid in child support is so low, some researchers have sought to determine how much child support absent fathers can afford to pay. Most estimates of this nature assume that all or almost all divorced mothers will receive an award, most or almost all absent fathers will pay child support, and the amount paid will follow some set of guidelines. The guidelines most commonly used are those in place in Colorado, Delaware, or Wisconsin.\(^34\) Virtually all estimates of the amount of child support that could be collected are substantially greater...
than the current amount being collected. For example, by estimating the incomes of noncustodial fathers and then matching these incomes to a simulation of normative standards for how much these parents should contribute, Garfinkel and Oellerich estimated that absent fathers (both divorced and never married) can afford to pay between three and four times the amount of child support that they are currently paying (or about two and one-half to three times more than they are currently obligated to pay). In other words, annual collections of child support would increase from about $6.8 billion nationally to somewhere between $23.8 billion and $30.1 billion annually.

It is interesting to note, though, that increased collection of child support will not necessarily lead to substantial decrements in the proportion of divorced mothers with incomes below the poverty line because an increase in collection will not be distributed equally among divorced mothers. Women who are economically better-off are more likely to receive a greater proportion of the increased child support because they were married to men with greater economic resources.

The factors that determine award of support are not necessarily those that determine receipt of support.

Although increased child support collections may not enable a substantial number of mothers to leave welfare, there is some evidence that child support may help prevent those who exit AFDC from reentry. Because divorced mothers who are below the poverty line were married to the least economically secure men, the modest amount of additional child support due these women is not large relative to AFDC payments received. There is also some evidence indicating that full collection of child support under the Wisconsin system would increase the risk of poverty for the new families of absent fathers. The risk of experiencing poverty in new families could be substantially due to the often low earning power of absent fathers. That is, child support payments under the Wisconsin guidelines are sufficiently high that, if these payments were subtracted from the incomes of absent fathers who have remarried, it would place their new families below the poverty line. This point indicates the nature of the tradeoffs that often must be considered and made when implementing policy.

This is not to say, however, that additional income would not be beneficial to mothers and children. It is true that the more substantial amount of child support accruing to women above the poverty line would materially increase the well-being of their children. It may also be true that increased child support would act to increase the absent father’s involvement in the life of his children.

To obtain a better idea about shifts in receipt of child support following marital disruption, we again present data from the 1984 SIPP. The results are shown in Table 8. Just prior to marital disruption, about 16% of children lived in families receiving child support (average amount, $284 to $294 per month). This figure reflects the fact that a number of families undergoing disruption constitute second or higher-order marriages. Immediately following disruption, the fraction of children whose mothers received child support increased to about 45% (average amount, $334 to $351 per month). For all children, the proportion receiving child support declined over time, probably reflecting the fact that some of the mothers remarried or reconciled. Consistent with this impression, children whose mothers did not remarry or reconcile showed a slower rate of decline in the proportion receiving child support. In both instances, the average amount received increases. This increase is probably the result of a selection process whereby fathers who pay the least are less likely to pay anything as time passes.

In any event, the SIPP data are consistent with other sources in showing that the majority of divorced mothers do not receive child support payments from the absent father. Although the time frame examined is relatively short, it is also evident that the proportion of mothers receiving support declines over time. Interestingly though, more recent studies suggest a possible reversal of this trend with fathers maintaining greater contact with their children.

While it may appear intuitive that the factors influencing awards would affect receipt, the two are only imperfectly correlated. That is, the factors that determine
### Change in Mother’s Receipt of Child Support After Departure of Father from the Household

<table>
<thead>
<tr>
<th></th>
<th>Prior to Father Absence</th>
<th>Time 1</th>
<th>Time 2</th>
<th>Time 3</th>
<th>Time 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All children</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage who receive child support</td>
<td>15.7</td>
<td>43.5</td>
<td>40.9</td>
<td>39.8</td>
<td>36.7</td>
</tr>
<tr>
<td>Average monthly receipt</td>
<td>$284</td>
<td>$351</td>
<td>$338</td>
<td>$360</td>
<td>$378</td>
</tr>
<tr>
<td>Number (in 1,000s)</td>
<td>2,884</td>
<td>2,522</td>
<td>2,194</td>
<td>1,804</td>
<td>1,451</td>
</tr>
<tr>
<td><strong>Children whose mother does not remarry/reconcile</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage who receive child support</td>
<td>14.3</td>
<td>46.3</td>
<td>44.1</td>
<td>40.9</td>
<td>42.5</td>
</tr>
<tr>
<td>Average monthly receipt</td>
<td>$294</td>
<td>$334</td>
<td>$368</td>
<td>$401</td>
<td>$410</td>
</tr>
<tr>
<td>Number (in 1,000s)</td>
<td>2,225</td>
<td>1,863</td>
<td>1,589</td>
<td>1,301</td>
<td>1,036</td>
</tr>
</tbody>
</table>

*Children under the age of 15 at the time of the first interview for whom 32 months of data on household income and family composition exist.*

*All income values are per month and are in constant 1986 dollars.*


...award of support are not necessarily those that determine receipt of support. The most important determinant of whether a mother receives child support from a nonresident father is the presence of a court-ordered award. Only 72% of divorced mothers receive an award of child support.

It is important to note, however, that this proportion varies widely according to the socioeconomic characteristics of both parents, the nature of their relationship, and the characteristics of the legal system.

Perhaps the most important factor in determining whether an award is made is maternal marital status. While 72% of ever-married mothers have received a child support award, only 24% of never-married mothers have been awarded child support.

A number of other background characteristics are also important in determining the award of child support. Beller and Graham found that black mothers are less than half as likely as white mothers to be awarded child support. This is primarily because black mothers are less likely to be married and, even if married, they are more likely to be separated rather than divorced.

Educational attainment, age, place of residence, and number of children are also related to award of child support. Composition differences in these variables help to explain some but not all of the lower rate of awards for black women. Women who are older and have more education are more likely to receive an award. Also, awards are positively associated with having younger children and having been married longer. Teachman reported similar findings but, contrary to Beller and Graham, found that the effect of race becomes insignificant when socioeconomic resources are controlled.

While the award of child support depends on a wide variety of factors including characteristics of parents, children, and the marriage, the determinants of the receipt of support are more select. A few studies have found the receipt of child support to be most affected by characteristics of mothers and children.

Robins and Dickinson, using data from the 1979 Current Population Survey,
found that receipt of child support was positively related to the age and education of the mother and negatively related to having young children and to the time since divorce. Robins and Dickinson included only one characteristic of fathers, income, which they found to be positively correlated with receipt of child support.

Peterson and Nord, using data from the Survey of Income and Program Participation (SIPP), found that having a voluntary child support agreement and the amount of the award positively affected the likelihood of receiving support. However, after controlling for these factors, they found characteristics of the mother (for example, race, education, marital status, and number of children) to have no effect. Father characteristics were not available in this data set. More recently, using data containing information about both fathers and mothers, as well as child support arrangements (the National Longitudinal Study of the High School Class of 1972), Teachman found that the receipt of child support was primarily dependent on the circumstances of fathers. When father characteristics were controlled, the characteristics of mothers and children had no direct impact on receipt of support.

Somewhat unexpectedly, Teachman found that fathers who remarried were more likely to pay child support than other fathers. This finding is consistent with those reported earlier by Hill, who suggested that remarried fathers are more “family-oriented” and so are more motivated to pay support. A closer physical proximity and visits with children are both positively related to the receipt of child support, probably reflecting fathers’ overall involvement with children.

Seltzer also found the receipt of child support to be associated with father characteristics but examined their indirect effects through child custody. Using data from Wisconsin divorce cases, she found that fathers with higher incomes are more likely to acquire joint custody of their children. As such, families with joint custody tend to have higher-than-average amounts awarded because of the higher incomes of fathers. Surprisingly, however, despite higher awards, families with joint legal custody and those with sole custody did not differ in the level of support received. However, it is likely that children in joint custody arrangements probably benefit informally from these arrangements because they have more contact with fathers than children in mother-custody families.

It appears that fathers’ motivation and ability to pay child support are the most important determinants of the receipt of child support. Unlike the award of support, which is decided in a more public environment subject to normative and legal constraints in favor of providing child support, the decision to send child support is less public and rests primarily with the father. Hence, the attributes of the mother have little effect on the actual receipt of support.

Because child support is the primary mechanism by which nonresident parents make contributions to the well-being of their children, most research has focused on the determinants of support awards and the receipt of payments. However, although child support payments are the predominant means of contribution, fathers may also help support their children in other, less formal ways. There has been some speculation that noncustodial fathers may substitute other means of support for more formal child support in order to have more control over the way in which the contribution is utilized.

Working alone, and with Paasch, Teachman has examined other means by which noncustodial fathers may contribute to their children. Both examined whether and with what regularity single mothers receive from noncustodial fathers contributions such as payment for children’s clothes, presents, vacations, dental care, and medical insurance; help with homework; and attendance at school events. Teachman, using the 1986 follow-up data from the National Longitudinal Study of the High School Class of 1972, found that the majority of noncustodial fathers seldom or never made contributions to their children. Among fathers who contributed, the most frequent ways were through child support, medical insurance, and dental care. Fathers were more likely

Although child support payments are the predominant means of contribution, fathers may also help support their children in other less formal ways.
to provide contributions requiring outlays of money rather than time. Very few fathers performed time-intensive activities, such as helping their children with homework or attending school events, which may be influenced by custody arrangements.

In addition, the evidence did not suggest that fathers substituted other forms of assistance for cash payments of child support. That is, a negative correlation between paying child support and providing other forms of assistance did not occur. However, fathers who provided at least one type of assistance were more likely to provide other types of assistance. This pattern indicates the presence of a small group of fathers dedicated to the overall well-being of their children.

**Divorce and Property Settlements**

One might also consider property settlements as a means by which mothers and children are compensated for losses associated with marital disruption. That is, fathers may use property settlements in lieu of child support or other contributions to ensure the economic well-being of their children; however, the evidence suggests that they do not. Because marital disruption is concentrated among couples with few economic resources, there is often very little in the way of tangible assets to divide when parents part. The concentration of divorces among couples with fewer economic resources is compounded by the fact that most divorces occur relatively soon after marriage, reducing the amount of time for significant accumulation of assets. Seltzer and Garfinkel reported that, in a sample of 1,800 divorce cases in Wisconsin occurring between 1980 and 1984, the median value of tangible assets at disruption was only $7,800, with mothers receiving a little over 50% of these assets.48

Our society presumes that the care and support of children rests with their parents. Accordingly, a major thrust of domestic policy over the past two decades has been to strengthen child support programs. And, as shown by several researchers, the amount of money that absent fathers could provide appears to be three to four times the current amount. For a portion of divorced mothers, increased child support payments offer the opportunity for a substantially better standard of living. However, these are the mothers who have greater economic resources in the first place. It is much less likely that increased child support collections will significantly change the economic well-being of mothers at the bottom of the income scale for at least two reasons.

First, AFDC mothers are allowed to keep only the first $50 of any child support collected; any additional money reverts to the state. A possible reform in this area would be to allow mothers to keep all or a substantially greater proportion of child support received. Second, at the time of divorce, fathers of children of AFDC mothers often have very low incomes and economic stress associated with marital disruption.

**Policy Implications**

The economic consequences of divorce are of sufficient magnitude that we may ask ourselves about possible ameliorative measures. What can our society do to lessen the economic burden placed on women and children by the disruption of a household? What hurdles do they face in their attempts to regain economic security? Below we outline some of the roadblocks to economic recovery faced by women and children and some possible policy alternatives to assist them. A first policy prescription would appear to center on the transfer of economic resources from absent fathers to their children. Our society presumes that the care and support of children rests with their parents. Accordingly, a major thrust of domestic policy over the past two decades has been to strengthen child support programs. And, as shown by several researchers, the amount of money that absent fathers could provide appears to be three to four times the current amount. For a portion of divorced mothers, increased child sup-
may be required to pay little or no child support. Interestingly, recent analysis of Wisconsin data indicates that divorced low-income fathers nearly double their predivorce income seven years later.50 Future policy could take advantage of this rise in income, perhaps by reevaluating child support awards at regular intervals following the initial award.

However, on deeper reflection, it is not yet clear how easy it will be to increase child support collections substantially. Some evidence suggests that the Wisconsin system, with strong guidelines for awarding child support and wage withholding, can increase the flow of income to noncustodial parents.29 Secondary evidence pertaining to the Family Support Act of 1988 indicates that the new guidelines may increase child support collections by as much as 50%.51 But a 50% increase in collections is far short of a three- to four-fold increase, and we believe that the evidence that even the lower increment will occur is weak. Additional data are therefore needed concerning appropriate mechanisms for collecting additional child support.

The overall impact of efforts to increase child support payments is also not clear. There is virtually no evidence pertaining to the effect of child support payments on the social and economic behavior of custodial and noncustodial parents. Most researchers have simply assumed that all else will remain the same as efforts to increase child support are put into place. But how will shifts in child support payment and receipt affect migration, marriage, remarriage, and labor force decisions of both parents? Will mothers be more likely to enter the labor force if child support is available to pay for child care? Conversely, will they be less likely to remarry if they fear loss of child support payments? Will fathers be less likely to seek additional income if they must pay more child support? Will they be less likely to remarry if they pay child support? The answers to these questions may change the calculus by which one measures the value of efforts to increase collection of child support, especially if done in isolation from other policy efforts.

Another avenue for providing support to divorced mothers with children is through public assistance. However, the amount of assistance provided has never been sufficient to bring most families above the poverty line. The structure of the current system also provides disincentives to working because of heavy implicit taxes on earned income (that is, through the loss of benefits). In addition, there is little public sentiment in favor of providing public assistance on a long-term basis, and evidence indicates that welfare stigmatizes and creates emotional stress among recipients.52 What is needed, therefore, is a system of public assistance that is structured for the short-term and does not stimulate dependence. Current proposals by the Clinton Administration, such as work training, appear to be based on a similar conclusion. Other alternatives might consist of a slower phaseout of noncash benefits, especially Medicaid, as women move off public assistance. In this vein, other Clinton proposals, such as a national health care program, would likely impact public assistance programs.

Irwin Garfinkel has proposed an assistance program that combines elements of child support and more traditional welfare programs.25 Such child support assurance programs would guarantee a minimum benefit level for custodial parents and their children. If the absent parent contributes less than the minimum benefit, the state would pay the difference. Garfinkel argues that a child support assurance program could be implemented with little cost to the state if child support was ordered and collected more rigorously. While not sufficient to eliminate poverty, a child support assurance program combined with other forms of short-term public assistance or programs such as earned income tax credit could help to alleviate the economic stress associated with divorce.

A third alternative for increasing the economic well-being of divorced mothers and children is to increase the mother’s earning capability in the labor market. As noted above, a first response on the part of divorced mothers to the economic deprivation that often follows divorce is to increase labor market activity. However, as
also noted, many women are unable to sustain employment. The most likely reason for being unable to do so is the high cost of child care, combined with low wages and the threat of losing benefits associated with public assistance. Thus, a national child care program combined with workplace reforms such as flexible work schedules could act to reduce the stress single parents experience when trying to combine work and parenting. Welfare reform should also ensure that important benefits associated with public assistance, such as health care, are not lost until an adequate replacement is found. Again, proposals currently under review by the Clinton Administration may serve this function if adopted.

Perhaps more difficult to achieve but equally important is equality in earnings between men and women. Currently, women earn about 70% of what men make. This difference is reduced when the incomes of men and women with similar jobs are compared, but nevertheless, women earn less. Rectifying this inequality would probably increase female labor force participation and subsequent economic returns. It is also important to recognize that many mothers who enter the labor force after a divorce have not worked for a period of time, have worked part-time, or have worked in areas not related to their training or background. It is therefore likely that programs designed to increase their labor market skills, flexible work schedules, and available and affordable child care would go a long way toward equalizing women's position in the labor market following marital disruption. Such programs would also have to recognize the particularly disadvantaged positions held by black women. As noted earlier, black women are especially susceptible to the negative economic consequences of divorce.

Fourth, the evidence suggests that stable marital unions are beneficial to the economic well-being of children. Obviously, this benefit accrues primarily because of the economic benefits associated with pooling the economic resources of two parents and returns to scale when purchasing housing and other significant consumer items. A variety of evidence also suggests that stable unions reduce potentially negative intergenerational consequences of marital disruption. Given evolution in the meaning and structure of marriage, however, it is not clear how policy could be constructed that would stabilize marriage without penalizing single parents. Alternatively, programs that support single parents may do so at the expense of married parents. As with all policy positions, trade-offs are inevitable.

Finally, it is likely that a program emphasizing one of these alternatives without considering the others would fail or have only a negligible effect. For example, as discussed above, there is little evidence about the consequences of increasing child support on other behaviors such as mothers' labor force participation and fathers' marital transitions. Positive direct effects associated with increasing child support may be offset, at least in part, by negative indirect effects operating through other behaviors. We already have evidence strongly suggesting that public assistance by itself is not sufficient to eliminate the economic suffering associated with marital disruption.

Public policy must therefore be conducted cautiously, with an eye toward unintended consequences. Consideration must also be given to the diversity of family experiences. The economic constraints and opportunities facing whites and blacks are much different, meaning that a single policy may not be equally successful for each group. A proving ground for particular policies may be found in the variety of options offered by different states. Indeed, state policies may provide the experimental proving ground for developing national family policies of the future. Policy conclusions must also await more recent data that cover periods of substantial policy change. Most important, we note that the SIPP data we utilize predate the implementation of the 1988 Family Support Act. More recent SIPP data, which should become available in 1994, may provide us with some idea about the effect of the Family Support Act and whether the economic well-being of divorced women has changed appreciably.

1. This argument assumes that income is distributed equally within two-parent families. If income is not distributed equally, total household income before and after divorce may not be an accurate representation of change in children’s economic well-being.


4. Actually, the SIPP sample consists of four rotations. That is, one-fourth of the sample was interviewed in October of 1983, one-fourth in November of 1983, one-fourth in December of 1983, and one-fourth in January of 1984. Each rotation is then followed up in four-month panels.

5. Unfortunately, there simply are no good data for examining the long-term effects of divorce. The longest duration we are able to study is approximately five years after divorce. Although the Panel Study of Income Dynamics (PSID) contains the sort of detailed information necessary to study longer durations, small sample sizes prohibit its use for the study of long-term consequences. Additionally, even if such long-term information was available, it would be of questionable value. After about five years, say, it would be difficult to justify any economic outcomes because the accumulation of other life course events would muddy causal links.

6. Income includes earnings from employment and assets, as well as income from other sources such as Social Security, Aid to Families with Dependent Children (AFDC), child support, and alimony.

7. Values for each measure of economic well-being are shown for five groups of children in the 1984 SIPP: all children, children who lived with both parents continuously for all eight panels, children in families in which the father left during one of the eight panels, children who lived with only their mother for all eight panels, and children who lived in families into which a “father” (either biological, step, or adoptive) entered during one of the eight panels. Fathers can leave either through separation or divorce and can enter either through reconciliation or remarriage. Note that we do not consider cases in which the mother left the household. There are not enough cases where the father retains custody of the children in the SIPP sample to provide a statistical profile at the present time, although alternatives such as father custody and joint legal custody are becoming more prevalent (Bianchi, S. The changing demographic and socioeconomic character of single-parent families. Forthcoming in Marriage and Family Review; Ghosh, S., Easterlin, R., and Macunovich, D. How badly have single parents done? Trends in economic status of single parents since 1964. Presented at the Population Association Meetings in Cincinnati, Ohio, 1993), mothers continue to retain physical custody of children in the majority of cases (Seltzer, J. Legal custody arrangements and children’s economic welfare. American Journal of Sociology [1991] 96:895-929).

8. See note no. 2, Burkhauser, Duncan, Hauser, and Berntsen; and Hoffman and Duncan.

9. See note no. 2, Mott and Moore; Nestel, Mercier, and Shaw; Weiss; and Weitzman.

10. These data indicate that marital disruption is a significant factor associated with falling into poverty for women and children. A variety of other research supports this point. For example, Burkhauser and Duncan, using data from the Panel Study of Income Dynamics, found that one-quarter of married women ages 26 to 35 who divorce or separate experi-
ence a decrease in their income-to-needs ratio of at least 50% and fall to a ratio of 1.5 or less. Moreover, for women, marital disruption is the most common reason for experiencing a large drop in the income-to-needs ratio that places them within 1.5 times the poverty level. For men, job-related circumstances are by far the most common events leading to subsequent poverty. (See also Conger, R., Elder, G., Lorenz, F., et al. Linking economic hardship to marital quality and instability. *Journal of Marriage and the Family* [1990] 52:643-56; Hernandez, D. *When households continue, discontinue and form*. Current Population Reports, Series P-23, No. 179. Washington, DC: U.S. Government Printing Office, 1992.) However, it is also true that the majority of new spells of poverty are not associated with marital transitions, even for women and children (Bane, M.J. *Household composition and poverty*. In *Fighting poverty: What works and what doesn’t*. S. Danziger and D. Weinberg, eds. Cambridge, MA: Harvard University Press, 1986, pp. 209-31). Two-parent families comprise the majority of new entrants into poverty, usually because of loss of a job by either spouse or a reduction in income.

11. See note no. 2, Corcoran.


13. See note no. 3, U.S. Bureau of the Census. Note also that the 48% figure is somewhat higher than the poverty rate indicated in Table 1 because never-married women are included in the category of female-headed households. These families face even worse economic deprivation than ever-married families headed by women.


17. While data in Tables 4, 5, and 6 are presented for the period immediately preceding divorce, a causal link is not necessarily established because families may implement change prior to divorce in anticipation that disruption will occur.

18. These figures may, in fact, be viewed as worse-case scenarios in that some women who neither reconciled nor remarried may be cohabiting or living in extended families where there is likely to be some income sharing not reflected in these figures. Ghosh and colleagues estimate that approximately one-third of all single parents are cohabiting in some way. (See note no. 7, Ghosh, Easterlin, and Macunovich.)

19. See note no. 2, Corcoran; Duncan and Hoffman; Mott and Moore; Stirling; and Weiss. See also Hoffman, S. Marital instability and the economic status of women. *Demography* (1977) 14:67-76.


26. AFDC is a means-tested cash benefit made available to low-income single mothers. Originally enacted to help widows and their children, AFDC payments have since become the primary support for low-income divorced and never-married mothers. In 1990, 44.1% of single mothers received means-tested cash assistance of which AFDC is the major program. Food stamps are a means-tested noncash benefit that enables low-income house-
holds to purchase food. Virtually all low-income households are eligible to receive food stamps regardless of household composition, making this the largest income support program. In 1990, 47% of single mothers received food stamps. Other forms of public assistance that may supplement single mothers’ income are Medicaid (received by 51.4%), public or subsidized housing (received by 23%), and school lunches (9.5% of single mothers receive school lunches for their children). See note no. 3, U.S. Bureau of the Census.


28. The Census Bureau’s income definition 14, in addition to standard income, includes the earned income tax credit (a refundable tax credit for persons who qualify); the estimated cash value of Medicare, Medicaid, and noncash transfers; and both means- and nonmeans-tested cash transfers. Means-tested cash transfers are based on need (that is, AFDC payments) while non-means-tested transfers are based on other criteria (that is, Social Security payments, Pell grants). See note no. 27, U.S. Bureau of the Census.


30. We recognize that nonresident mothers may also be required to pay child support. However, the vast majority of nonresident parents are fathers, and our terminology reflects this fact.


35. See note no. 34, Garfinkel and Oellerich.


37. See note no. 36, Meyer.


44. Hill, M. PSID analysis of matched pairs of ex-spouses: Relation of economic resources and new family obligations to child support payments. Unpublished manuscript for the Institute for Social Research, University of Michigan.
45. See note no. 7, Seltzer.
Child Support Orders: A Perspective on Reform

Irwin Garfinkel
Marygold S. Melli
John G. Robertson

Abstract

This article presents a brief historical account of child support reform in the United States during this century. Reform in this area primarily reflects a shift from judicial discretion to administrative regularity. The two predominant types of child support guidelines in use today, income shares and percentage of income, are described and compared. The authors then present information on some of the current issues with regard to child support guideline reform. Finally, a Child Support Assurance system, which would provide a publicly guaranteed minimum benefit award to custodial parents under special circumstances, is proposed. Further discussion of child support reform is presented in the Overview and Analysis section of this journal issue.

Never before has the quality of the American child support system been of such vital importance to the nation’s future. During the past 30 years, the proportion of children living with only one parent has increased dramatically, from about 8% in 1960 to 25% in 1990. Of these children, 9.5% live with a divorced parent, 7.7% live with a never-married parent, and 7.6% live with a separated or widowed parent. (See the article by Shiono and Quinn in this journal issue.) By current estimates, more than one-half of all children born during the 1980s will live for a time with only one parent before reaching adulthood.

America’s child support system is in the midst of a profound transformation where judicial discretion is giving way to administrative regularity. Child support payments are routinely withheld from wages in an increasing proportion of cases. Blood tests and voluntary acknowledgments are rapidly replacing trials for establishing paternity. And, most important for our purposes, in less than a decade, the setting of the amount of child support has evolved from a highly discretionary decision with the amount set on a case-by-case basis to a system with federally mandated standards requiring the states to use mathematical formulas in setting the amounts.

We begin this article by examining the evolution of the current child support regime using formula-based guidelines, discuss some unresolved problems with those guidelines, and then look to the future of child support in terms of the proposal for a new Child Support Assurance (CSA) system.

The Traditional System, Its Shortcomings, and Remedial Federal Legislation

Child support, as a part of the family law system, is a province of the states. State
laws establish the duty of noncustodial parents to pay child support but traditionally have left the details to local courts who have handled child support orders on an individual case basis with almost no legislative guidelines. In the past, statutes used very general language, such as the amount should be “just and reasonable.” Lacking legislative guidance, courts developed rules that focused on two elements: the needs of the child, assessed on the basis of a budget submitted by the custodial parent; and the ability of the noncustodial parent to pay, assessed on the basis of that parent’s living costs and available income. The results were highly individualized and offered little guidance for other cases. Consequently, there were great inequities in child support awards. Research showed that, between judges in the same court and even between cases decided by the same judge, noncustodial parents in similar circumstances were treated very differently.¹

Equally important, the case-by-case system resulted in child support awards that were generally regarded as very inadequate. Although there are many poor noncustodial fathers, this is only part of the problem. Based on estimates of the incomes of noncustodial fathers and the share of income that should be devoted to child support according to the two most widely used child support guidelines (described below), in 1983 noncustodial fathers should have been paying between $25 and $32 billion in child support; in fact they owed only $10 billion and paid only $7 billion.⁶

The major impetus for change in the manner in which child support was set came from the system for public support for children in single-parent households—the Aid to Families with Dependent Children (AFDC) program. That program was established in 1935 as part of the Social Security Act to provide support for children whose primary supporting parent was absent from the home, in most instances because of death. It was assumed that AFDC would shrink as more and more children were protected by the survivor’s benefits of Social Security. Instead, as divorce, separation, and births outside marriage grew, so did AFDC. In 1950, congressional concern about the cost of AFDC resulted in the first federal child support legislation.⁷ In 1975, Congress enacted the Child Support Enforcement program as Title IV-D of the Social Security Act.⁸ (For further description of this act, see the article by Roberts in this journal issue.)

Some researchers⁹ interested in welfare reform began studying the private child support system to determine why it was so inadequate and placed such a heavy burden on the public. One of the failures they identified was the inadequacy and inequity of child support awards. They advocated abandonment of the existing system of individualized assessment of awards. The proposal that emerged was the use of a general numerical formula that would be applicable to the great majority of cases. In 1984, Congress amended the federal Child Support Enforcement program (Title IV-D of the Social Security Act) to require the states, as a condition of receiving federal funds for their AFDC programs, to adopt non-binding mathematical guidelines for setting child support.¹⁰ In 1988, the Family Support Act required that these mathematical formulas be used as rebuttable presumptions in all cases except where the court determined in writing or on the record¹¹ in the child support proceeding that the departure was justified. In addition, child support agencies were required to perform systematic reviews of awards every three years for AFDC cases (unless it is not in the best interest of the child), and for all non-AFDC IV-D cases where either parent requests a review. (See Box 1.)

Despite a decade and a half of child support reform, some indicators suggest there has been little progress. In both 1978 and 1989, only 6 of 10 eligible mothers had child support awards.¹² The proportion of awards paid increased
Box 1

The Family Support Act of 1988

On October 13, 1988, President Ronald Reagan signed the Family Support Act of 1988 into law. The primary purposes of this act were to reform the child support system and to expand work programs and requirements for Aid to Families with Dependent Children (AFDC) recipients. Closely related to the topic of this journal issue are the federal requirements for reform of the child support system as they relate to children of divorce. In this area, the act was written to achieve three specific goals: (1) to increase the number of awards among children who are eligible for support, (2) to develop fair and uniform guidelines for determining the amount of these awards, and (3) to strengthen procedures for collecting the money that is owed to custodial parents.

The act requires states to implement specific procedures for accomplishing these goals. For example, states must

- establish guidelines for judges and other state officials to use in setting the amounts of child support awards;
- implement a computerized tracking and monitoring system for child support enforcement; and
- withhold child support payments from the wages of a noncustodial parent unless there is a good reason not to require withholding or a satisfactory written agreement between the parents.

General explanations of these requirements follow.

GUIDELINES FOR CHILD SUPPORT AWARD AMOUNTS. All states have established child support guidelines but use various formulas for determining award amounts. Judges and other officials are required to follow these guidelines when determining child support award amounts unless the guidelines are rebutted by a written finding that following them would be unjust or inappropriate in a particular case.

States must review guidelines for awards every four years. In addition, beginning five years after enactment, states must review and adjust individual awards in AFDC cases every three years and must review support orders in non-AFDC cases at the request of either parent and adjust the order if appropriate.

COMPUTERIZED TRACKING AND MONITORING. By October 1, 1995, every state must have in operation an approved computerized system for tracking and monitoring support payments. States without a system of this kind were required to submit a design for such a system by October 1, 1991. Individual state systems will interface with CSENet, a nationwide child support enforcement communication network. In early Fiscal Year 1993, the CSENet host and hotline were activated, and the CSENet specific software and work stations were installed in all states. Automated interface with CSENet, a requirement for a certified system, must be in place by September 30, 1995. States will use this network to request or report information about location, paternity and support establishment, and/or collection and enforcement.

AUTOMATIC WAGE WITHHOLDING. Nationally, wage withholding brings in the largest percentage of child support collections. Because of the effectiveness of this process, the Family Support Act required immediate wage withholding for all orders being enforced by state child support enforcement agencies which were issued or modified on or after November 1, 1990. The act also required immediate wage withholding for all support orders issued on or after January 1, 1994, whether or not parents applied for public child support services. Wage withholding can be rebutted if one of the parents demonstrates—and the court finds—that there is a good reason not to require such withholding or if there is a written agreement between the parents providing for an alternative arrangement.) As of September 30, 1992, some 40 states had received either interim or final approval for their wage withholding procedures.

Although the amount of child support collected nationwide has increased since the implementation of this act, there is still room for improvement. For example, although every state uses guidelines to determine the amount of the support obligation, the noncustodial parent’s income typically increases after the award is set, inflation reduces the value of the award, and awards, once set, are seldom adjusted. In addition, the costs of implementing a computerized tracking and monitoring system for child support enforcement may diminish the effectiveness of this program in some states. Finally, even though more child support orders are being awarded to custodial parents, many of these parents do not receive the full amount they are owed. These persistent problems need to be addressed.

—LSQ

only from 64% to 69%. Worst of all, the real value of child support awards declined by 22% between 1978 and 1985, from $3,680 to $2,877. By 1989, average awards increased to $3,293, still 10% lower than awards in 1978.

Do these trends indicate that the reforms were ineffectual or counterproductive? Previous research suggests that the answer to this question is no. Like Alice in Wonderland, the U.S. child support system has had to go faster just to stay in place.13 For example, while there was an improvement in paternity establishment and award rates for children born out of wedlock during the 1980s—from 1 in 10 to nearly 3 in 10—there was also an increase in the proportion of children in this high-risk group. In 1978, unmarried mothers accounted for only 19% of mothers potentially eligible for child support; by 1989, they constituted about 30% of the eligible population.12 Thus, part of the decline in the real value of awards was the result of a shift in the demographic composition of children potentially eligible for support. Even more important was the substantial increase in the earnings of divorced mothers during the past 20 years. Because most courts take the mother’s earnings into account when setting child support awards, the increase in earnings led to a reduction in the value of the average awards.14

The real value of child support awards declined by 22% between 1978 and 1985, from $3,680 to $2,877. By 1989, average awards increased to $3,293, still 10% lower than awards in 1978.

Child Support Guidelines: Income Shares and Percentage of Income

In response to the 1984 and 1988 federal legislation, states have adopted numerical formulas or child support guidelines for determining child support awards. All but four states have adopted variants of two models, known respectively as income shares and percentage of income, which are based on the principle of income sharing.15 This section describes the principle of income sharing and the calculation of support under these two guidelines. Also, the major differences between the two guidelines are examined, and some problem issues for both types of guidelines are discussed.16

Principle of Income Sharing

Both guidelines share the same conceptual basis, which is the principle of income sharing.17 This principle is based on the theory that, by parenting a child, parents take on the responsibility to share income with that child in approximately the same proportion as they would have if the family had not separated.

The rationale for using income sharing as the basis for setting child support consists of two points. First, it is fair to both the parent and the child. It orders a parent to pay based on the parent’s income and also allows the child to share in the increases, or decreases, in the parent’s income just as if the parent and child lived together. Second, it allows the courts to set child support without the necessity of a review of individual costs of care. The amount of child support is based on how much the parent would share with the child if the parent and child lived together. Consequently, income sharing lends itself to the development of a general formula.

Income Shares Formula

Income shares is the most widely used of the two formulas. It is used by about 33 jurisdictions. Under income shares, the income of both parents is combined, and a basic child support obligation is established using a percentage of income. The percentage of income reflects the portion of family income the given number of children would have received if the family lived together. The support obligation is 18% to 24% of net income for one child, 28% to 37% for two children, 35% to 46% for three children, and up to 46% or 61% for six children. The percentage is based on an estimate of the percentage of family income that is spent on children in two-parent households and varies according to family income level. Percentages decline as family income rises. Child care and extraordinary medical care expenditures may be added to the basic obligation, and the total child support obligation is then prorated between the parents according to their respective incomes. The non-custodial parent pays child support, and
the custodial parent is assumed to spend that amount on the child.

**Percentage of Income Formula**

The percentage of income formula is used in about 17 jurisdictions. The amount of the child support obligation is calculated based on the income of the noncustodial parent, using a percentage based on the same considerations as in income shares. The award amount for one child is 17% of noncustodial parent gross income, 25% for two children, 29% for three children, 31% for four children, and 34% for five or more children. Both child care and medical costs are included in the basic award and so are not added separately. The calculation is independent of the income level of the custodial parent. However, this does not mean that the income of the custodial parent is not considered. The custodial parent is assumed to spend as much or more on the child as the noncustodial parent; however, a payment is not calculated.

**A Comparison of Income Shares and Percentage of Income Guidelines**

Two major differences between the income shares and the percentage of income guidelines result from the effects that increased income by each parent has on the percentage of noncustodial parent income owed in child support. Both guidelines start with the notion that noncustodial parents should share the same percentage of income with their child as they would have if they lived with the child. Yet, with the income shares formula, the percentage of income obligated to child support declines as noncustodial parent income increases; with the percentage of income formula, it remains the same at all income levels. The authors of both guidelines appealed to different economic studies on the costs of children to justify their differing recommendations.

---

Under the income shares formula, child support owed by the noncustodial parent declines as the custodial parent’s income increases.

---

A recent review of the evidence commissioned by the federal government finds that the percentages in both guidelines are consistent with the large range of estimates in the economic literature on the costs of children. Whether the percentages should be flat or decline is a value judgment.

In addition, under the income shares formula, child support owed by the noncustodial parent declines as the custodial parent’s income increases. Advocates of the income shares standard argue that ignoring the income of the custodial parent is inequitable. Advocates of the percentage of income standard argue that conditioning awards on the income of the custodial parent undermines the principle of income sharing. When the parents live together, the child benefits from the extra income if both parents work. A child in a single-parent household with two income-producing parents should enjoy the advantages of that situation as well.

(It should be noted here that state child support guidelines make special provisions for families in poverty. A discussion of how states apply child support guidelines to these families is a complex issue and beyond the scope of this article.)

**Issues in Developing Child Support Guidelines**

A variety of issues with regard to child support guidelines are currently in debate. Some of these issues are discussed below.

**Including Actual Child Care Costs in Awards**

Child care is a major expense for a single parent, and it is directly related to the child. Most of the income shares jurisdictions and 8 of the 17 percentage of income states prorate the cost of child care between the parents and add the noncustodial parent’s share to the basic child support payment. For example, if the child care cost for the year equaled $6,000, the noncustodial parent’s income equaled $50,000, and the custodial parent’s income equaled $25,000, the noncustodial parent’s child support obligation would increase by two-thirds of $6,000, or by $4,000.

Basing the child support obligation upon actual child care expenditures is akin to the traditional method of relying upon individual budgets for establishing child support awards. It does not follow from and indeed may be counter to the income sharing philosophy that underlies both guidelines. Child care expenditures depend primarily upon how many hours the custodial parent works. Higher child care expen-
Child Support Orders: A Perspective on Reform

ditures are, therefore, associated with higher income. Thus, when the percentage of income guideline is used, prorating child care obligations leads to the anomalous result that support payment increases with custodial parent income.

On the other hand, because the income shares guideline counts custodial parent income in the determination of the noncustodial child support obligation, it is difficult to ignore the child care expenses incurred to earn that income. Indeed, under the income shares standard the prorating of child care expenditures tends to offset the effects of counting custodial parents’ income. This offsetting effect helps account for the observation of practitioners and experts that, for the vast majority of cases, the percentage of income formula (which subsumes child care costs within the formula) and the income shares formula produce very similar results. But including child care expenditures as well as custodial parent income substantially complicates the calculation of support owed and, as discussed below, makes updating of support awards more difficult.

Issues Regarding Health Care

States address the issues of medical care in their child support guidelines in a variety of ways. Most income shares states include extraordinary medical expenditures as an add-on to the basic child support award and thus prorate them between the parents. Some percentage of income states also allow the court to prorate extraordinary medical expenses between parents, others provide that such expenses are a basis for varying the amount of award, still others require the court to assign responsibility for medical expenses to one of the parents. Some states also include provision for medical insurance in their child support guidelines. A common practice is to require that the noncustodial parent provide medical insurance when available through an employer or other group at reasonable cost.

For several reasons, none of these approaches is satisfactory. It is certainly better to have extraordinary medical expenses shared between the custodial and noncustodial parent than to have the custodial parent bear the entire cost. But, often sharing the burden between the custodial and noncustodial parent handicaps both and does not satisfactorily deal with the problem. The real issue is our nation’s failure to institute a national health insurance system. The child support system will not be able to resolve this social problem.

So too the practice of ordering noncustodial parents to provide medical insurance for their children creates substantial complications for the noncustodial parent. Adding someone to a medical insurance policy in the United States normally shifts this burden to the employer and to an insurance company. It is one thing to ask an employer to provide a relatively inexpensive service for child support in the form of immediate withholding. But shifting an employee from a single policy to a family policy can cost that employer several thousand dollars per year. This can change the marginal decision as to whether to employ the noncustodial father and at what level to compensate. Research has shown that, while orders are being written that include medical insurance, it is much more difficult to have the child placed on the policy. As it was with extraordinary medical expense, child support is being asked to make up for the failure to have an adequate national health plan.

Including Costs of Higher Education in Awards

The obligation to pay child support usually ends when the child reaches the age of majority. For most states, that age is now 18, reduced from 21, where it had been for most of U.S. history. Termination of child support at 18 has meant that, for most youngsters, noncustodial parent support ended before the child had completed high school. Some states have extended the support obligation to a period beyond 18 during which the child is completing high school. Some states have extended the support obligation to a period beyond 18 during which the child is completing high school. Other states have given the courts discretion to order support in these circumstances. Many states have not addressed the problem at all. On balance, we suggest that states should be encouraged to adopt legislation extending support for the period during which the child is in high school at least to age 19, which is the age by which most students have completed the course.
Support for a college education is more problematic because parents in two-parent families are not required by law to provide support at that level and often do not, or feel they cannot do so. Although most states have not addressed the issue of support for college education, a few have authorized courts in their discretion to order support for postsecondary education. Public policy is moving to a requirement that, at least, courts have this discretion.

In this day of divorce and remarriage, child support issues often involve multiple families.

An alternative approach, supported by some public policymakers, is to treat post-high school education as a right and continue the child support order until the child has the opportunity to complete four years of postsecondary education or until the child’s 22nd birthday if the young person is in a full-time school and is meeting the requirements of that school. In this type of situation, because the child is now 18, direct payments from the noncustodial parent to the child and the child’s college could substitute for payments to the custodial parent.

Treatment of Remarriage and Multiple Support Obligations

In this day of divorce and remarriage, child support issues often involve multiple families. One frequently occurring problem is that of the noncustodial parent who remarries and has another family. Should that parent’s obligation to the children of the first family be reduced in response to the financial burden of the second family? In principle, all children should be treated equally, but there is a long-standing tradition in American law of giving preference to the first family. The rationale for that preference is that the support-paying parent and new spouse begin another family with full knowledge of the obligation owed the children of the first marriage. Neither the first family nor the public has a part in the noncustodial parent’s decision to start a new family, so why should either party bear the costs? Unfortunately, the children of the second marriage also have no part in the decision, and they may suffer from the obligation to the other children.

The problem poses difficult choices, and a few states have begun to reexamine the issue. One approach, known as the second family first doctrine, calculates child support for the children in the subsequent family and deducts that from the payer’s income before calculating a modification for the first family. Some states try to protect the expectation of children in the first family to continue to receive the support on which they had been counting by deducting the second family child support from the payer’s income only if the modification would result in an increase for the first children.

A closely related problem arises when the remarriage of the noncustodial parent ends and the issue is setting a child support payment for the children of the second family to be paid by a parent who is already paying child support. Again, most jurisdictions follow the first family preference, leaving that support award intact and reducing available income for the second support award by the amount of the first award. The effect is to give the children of the first marriage the full benefit of the noncustodial parent’s unreduced income while reducing the income base for the children of the second marriage. As before, the principle of adult responsibility takes precedence over the principle of treating all children equally.

A more unusual situation—but one that is occurring more frequently—involves the noncustodial mother who remarries, has more children, and stays home to care for those children. Should she be relieved of her child support obligation because she is no longer earning income? Courts have had varying reactions to this type of problem. Some courts refuse to impute any earning capacity to a “nurturing mother.” Others calculate a child support award based on the parent’s earnings prior to the decision to stay home. The rationale of the courts who insist on a child support payment in these cases is that the mother has a duty to all her children, not just those in her current family.

The Effect of Dual Residence on Child Support Obligations

Joint legal custody, where both the custodial and noncustodial parent share the legal responsibility for making important decisions regarding their children’s lives,
Joint physical custody means that the child lives a substantial proportion of time with both parents. This arrangement is much less common than joint legal custody, but it has important implications for the amount of the child support obligation.

Shared parenting implies not only caring for the child but sharing expenses as well. Where the child spends half time with each parent, it can be assumed that each parent incurs equal out-of-pocket expenditures for the child. Therefore, if parental incomes are equal, each parent’s child support obligation should be equal, which is to say that the net obligation of each should be zero. If parental incomes are not equal, an adjustment in child support should be made because the costs to each parent are the same. This adjustment is calculated for each parent based on the sole custody percentage. The child support payment is the difference between the two, payable to the lower-income parent.

Joint physical custody is complicated, however, because often children do not live with both parents equal amounts of time. In those cases, the time may vary from near equal time to little more than “normal visitation.” The issue in this type of case is how to reduce the child support to reflect the unequal sharing of child-raising costs. Two questions must be resolved to determine the reduction. The first is the point at which a reduction may begin. This point, that is, the amount of time that a child should be with a lesser-time parent before a reduction in child support is made, has come to be known as the threshold. Determining the threshold constitutes the first step in developing a formula for support reduction. Most states that have addressed the issue of a threshold have tied it to the amount of normal visitation on the assumption that the basic child support order takes visitation-connected expenses into consideration. However, most states do not provide for any reduction in child support until the time sharing is well above normal visitation—30% to 35% of the time.

The second question that must be addressed is how the reduction is to be made. The most commonly used approach operates on the theory that each parent owes child support to the other parent based on that parent’s income and the amount of time the child is cared for by the other parent. This approach appears, at first impression, to be fair, but the manner in which it has been implemented in many states makes it unfair. In many states, there is no reduction at 30% shared time, but at 35% shared time, there is a 35% reduction. This approach creates what has come to be called the “cliff effect.” It results in hardship to the primary custodian who does not experience that much reduction in expenses. If there is no reduction at 30%, a 35% reduction for 5% more time is a great loss to the primary custodian.

Another approach—and one that we favor—is to reduce the payments only for the amount of shared time over the threshold. Properly handled, this approach will reduce payments to zero at equally shared time if incomes are equal but does so gradually.

**Updating Child Support Orders**

One of the most common causes of inadequacy in child support awards is that their value erodes over time with inflation. In the past, a custodial parent was required to petition for modification to update the award and to retain the real value of the original order. But modification of child support is discouraged by the court system.

For example, the Uniform Marriage and Divorce Act suggests a modification “only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable.” The rationale for discouraging modifications under the old system of individualized determinations of child support awards was that the time costs of modification seriously overburdened the courts. Every update was the equivalent of rehearing the case. If the average child support case has a 10-year-obligation life, annual modification or updating under the old system would increase the burden on the courts.

---

One of the most common causes of inadequacy in child support awards is that their value erodes over time with inflation.
tenfold. Furthermore, the requirement that the custodial parent seek modification of the order necessitated expenditures for attorneys’ fees and increased tensions between the parties.

Now that numerical guidelines govern the setting of awards, it is easier to justify a procedure for periodic review based on changes in parental income and initiated by the child support system, not by the parent. As noted above, the Family Support Act (FSA) of 1988 requires child support enforcement agencies to review the awards of all AFDC cases every three years and all non-AFDC IV-D cases where either parent requests a review. Although there are no data on the national percentages of cases that are being reviewed and modified, results from five demonstration projects conducted in Colorado, Delaware, Florida, Illinois, and Oregon suggest that

The automatic updating achieved by utilizing the percentage of income standard to express orders in percentage terms is especially attractive.

little updating of awards is taking place. Of all cases reviewed, only about 20% of the orders in AFDC cases were modified, and the proportion was about half that for non-AFDC cases. Furthermore, it took approximately 200 days to complete the review and modification process.

Thus, unless the FSA updating provisions are strengthened, either legislatively or administratively, they are likely to lead to only a modest increase in updating. Even with remedial legislation, however, updating fixed dollar orders is likely to remain cumbersome and expensive.

In principle, the most efficient system for keeping child support orders current in terms of the income of the noncustodial parent is the use of the percentage of income guideline with the support order expressed as a percentage of income, for example, 17% for one child or 25% for two children. The child support agency notifies the noncustodial parent’s employer of the percentage of income to be withheld and forwarded to the agency. As the income of the noncustodial parent increases (or decreases) over time, the child support withheld and paid changes automatically as well. (If the child ages out or custody changes, of course, the percentage will need to be adjusted.) The only additional action the child support agency must take is to verify the income tax returns of the noncustodial parent each year to ascertain if he or she has received additional earned or unearned income. Unfortunately, most percentage of income jurisdictions express orders in fixed dollar terms rather than as a percentage of income. Experience in Wisconsin indicates that payments increase substantially—by 50% within two to three years—if orders are percentage based rather than fixed.

Automatic updating is not possible under the income shares guideline because orders cannot be expressed in percentage terms. Under income shares, the percentage of income owed depends not only on the number of children owed support, but also on the income of the noncustodial parent, the income of the custodial parent, and child care and extraordinary medical care expenditures. All of these factors are likely to change from year to year and even within years.

Updating the income shares standard is feasible but is likely to be substantially more costly than updating the percentage of income standard when the latter is used to express orders in percentage terms. Each year the child support agency must collect income tax returns from both parents, as well data on child care and extraordinary medical care costs from the custodial parent. A method for verifying the latter will have to be developed. The records of the two parents must be linked and a determination made on whether a different percentage of income should be applied to the new total. Then the child support agency must notify the employer, the custodial parent, and the noncustodial parent of the new obligation. The extra administrative burdens imposed by the income shares guideline will discourage updating. In view of the importance of updating to the adequacy of child support awards, the automatic updating achieved by utilizing the percentage of income standard to express orders in percentage terms is especially attractive.

Special Treatment for Poor Noncustodial Parents

On the whole, noncustodial parents are not particularly poor. In 1983 the mean income for all noncustodial fathers was
$19,346, only 14% less than the average income of all men 25 to 64 years old, $22,482. Yet, there are a lot of poor noncustodial fathers. The incomes of nonwhite noncustodial fathers are half those of white counterparts. Among whites, divorced and remarried fathers have nearly three times the income of never-married fathers; among nonwhites the ratio is greater than three to one.

How much poor noncustodial parents should pay is an important and complex issue. The argument for a lower child support sharing rate for poor noncustodial parents is the same as the argument for a progressive rather than a regressive income tax: the poor are less able to pay. While 17% of income is a substantial burden for a middle-income noncustodial parent, for a poor noncustodial parent, it can be truly oppressive.

The argument against a lower child support sharing rate for poor parents is also strong. First, when poor parents live with their children, they spend at least as great a percentage of their income on their children as nonpoor parents do. Second, equity argues that the share of income devoted to the child should be similar for poor custodial and poor noncustodial parents. Third, lowering the rate for the poor results in lower child support payments to custodial parents and their children or in higher taxes.

Directions for the Future: A Full-Fledged Child Support Assurance System?

Of all the proposals for reforming the nation’s child support system, the most far-reaching is to add a Child Support Assurance (CSA) system to our menu of Social Security programs. Under this system, child support awards would be set by a nationally legislated formula based on a percentage of the noncustodial parent’s income, and payments would be deducted from the absent parent’s earnings, just like Social Security deductions. The federal government guarantees a minimum level of child support—an assured benefit—just like minimum benefits in old age and unemployment insurance.

The Family Support Act of 1988 by requiring states to utilize numerical guidelines and routine withholding of child support obligations, has taken the nation a long way toward a CSA system on the collection side. Adoption of a full-fledged Child Support Assurance system would take us even further by completing the shift from judicial discretion to administrative regularity, by shifting responsibility for administration from the judiciary to the Social Security Administration and the Internal Revenue Service, and by creating a single national formula for determining support obligations. In addition, a CSA system would establish a national assured child support benefit.

Of course, it is possible to adopt any component without the other two. Similarly, some components could be federal and others state based. For example, a federally funded assured child support benefit could be established, while child support collections remained a state responsibility. For this reason, we examine separately the desirability of each of the three components.

Discretion Revisited

Judicial discretion has not entirely disappeared from the child support system. Although the grounds for departures from the presumptive guidelines are narrow and departures must be justified in writing, based on data from Wisconsin,
where presumptive guidelines were instituted on the state’s own initiative prior to federal requirements, departures from the guideline are common and written justifications are rare. Furthermore, one national expert asserts that there is legal ambiguity with respect to whether the guidelines must be applied to noncontested cases. It appears to him, and to us, that in practice many courts do not require noncontested cases to conform to the guidelines and that bargaining down from the guidelines is common.

Should judicial discretion be eliminated entirely from the process of determining child support awards? When a public benefit such as welfare or an assured child support benefit is involved, the case for a legislative determination of the amount of child support to be paid is quite clear. The lower the amount of child support ordered, the greater the cost to the public of the government benefit. Determining how to apportion the costs of child rearing between parents and the public is a policy issue more appropriately decided by the legislative than the judicial branch of government.

But, what is the case for public intervention when there is no public benefit involved and the parents agree to an award that differs from the guideline? Many would argue that the presumption should be that the parents are the best judges of their children’s interest and that insistence upon a uniform formula constitutes undue government interference. There are two responses. First, the proportion of families that receive a public benefit is much larger than most people imagine. During the past 20 years, the proportion of single mothers receiving welfare has varied between 40% and 60%. Enacting an assured benefit available to all custodial parents irrespective of income would increase the percentage further. Second, even in situations where there is no possibility of a public subsidy, many, including the authors, believe that the children’s interests are better protected by a legislated standard of support than by bargaining between the parents.

If child support obligations are to be determined by a simple numerical formula, the rationale for continuing to have courts administer the child support system is weak. Courts are designed to resolve disputes. The executive branch of government is more suited to the routine tasks of verifying eligibility, calculating obligations and entitlement based on numerical formulas, and collecting obligations and distributing payments. Indeed, the Social Security Administration and the Internal Revenue Service have proven track records in these areas. Massachusetts has given responsibility for collecting child support to the revenue department. At this point, however, there is no administrative blueprint for how a nationally administered system would work. Furthermore, courts may be required to continue to play some role, particularly in the establishment of legal entitlement to support.

Issues Regarding the Implementation of a National Child Support Guideline

Several congressional bills propose a national standard. Because of the lack of consensus among commission members, the U.S. Commission on Interstate Child Support recommended congressional appointment of a new national commission to study the desirability of a national child support guideline. The commission has summarized the arguments for and against a national guideline.

The most important argument against a national guideline is part of the more general argument for decentralization. The more decentralized are government functions, the greater is the dispersal of power and the opportunity for citizens to participate in shaping policy. Opponents also question the wisdom of federalizing child support guidelines while leaving other aspects of family law that affect divorce up to the states and of establishing a single federal model before we have had a chance to evaluate the experience with different state guidelines.

Proponents of a national guideline note that, without one, identical cases are treated differently in different states, creating inequities and forum shopping (seeking the best jurisdiction in which to
obtain a divorce). Moreover, differences in state guidelines inhibit interstate enforcement because of the question of which state’s guideline to apply. In view of the fact that nearly a third of child support enforcement cases are interstate, these are serious problems. A national guideline would enhance interstate equity and facilitate interstate enforcement. Finally, adoption of a national assured child support benefit would strengthen the argument for a national guideline. The cost of an assured benefit depends upon the amount of private support ordered and collected. Congress will be reluctant to assume responsibility for paying for the costs of the assured benefit with no power to affect this critical determinant of the costs.

**Issues Regarding the Implementation of an Assured Child Support Benefit**

An assured child support benefit is a government guarantee of a minimum amount of child support to those legally entitled to receive private support. For example, if the assured benefit were $200 per month and the noncustodial parent paid only $150, the government would make up the difference. Entitlement to the assured benefit would not depend upon the income of the custodial parent, but only upon legal entitlement to private child support. An assured child support benefit would increase economic security, reduce dependence on welfare, and increase paternity establishment. Although most noncustodial fathers can afford to pay substantially more private support, many have low and irregular incomes. No matter how successful we are in strengthening enforcement, private support payments for many poor children will continue to be low and irregular. The assured benefit would compensate by providing a steady, secure source of income for these children.

An assured benefit would reduce dependence on welfare because, unlike welfare, the assured benefit is not reduced as earnings increase. It complements rather than substitutes for work. Compared with increases in private support alone, an assured benefit would double the reduction in poverty and welfare dependence. Finally, because only children legally entitled to private child support would be eligible for an assured benefit, the benefit creates an incentive for mothers to establish paternity and secure child support awards.

The argument against an assured benefit is that it will extend the role of government, increase costs, and create some adverse incentives. On balance, these costs appear to us to be smaller than the benefits achieved. When immediate withholding is implemented nationwide and the government is receiving and disbursing all private child support payments, the extra administrative burden of guaranteeing a minimum monthly payment will be minimal. The collection side reforms strengthening paternity establishment and establishing numerical child support guidelines and routine income withholding involve much larger extensions of the role of government than the assured benefit.

Despite the fact that the assured benefit is not income tested, it is relatively cheap. This is so for two reasons. First, because men and women mate with people of similar socioeconomic backgrounds—what demographers call assortative mating—most of the expenditures of an assured benefit go to poor and near-poor families. Second, an assured child support benefit is a government guarantee of a minimum amount of child support to those legally entitled to receive private support. Estimates indicate that an assured benefit of $2,000 per year for one child would cost between $1 billion and $2 billion.

Finally, because the assured benefit makes the payment received by the custodial parent larger than the payment made by the noncustodial parent, it creates an incentive for the couple to live apart or to feign living apart. Yet, welfare creates a similar incentive, and research shows that the adverse effects of the incentive have been small. In 1984 and 1988 respectively, Congress authorized Wisconsin and New York to use federal funds that would otherwise have gone to AFDC to help finance state demonstrations of an assured child support benefit. Wisconsin failed to implement the demonstration because Wisconsin Gov.
Tommy G. Thompson was opposed to it. In 1989, seven New York counties began conducting a limited version wherein initial eligibility was restricted to families with incomes low enough to qualify for welfare. The National Commission on Children and the U.S. Commission on Interstate Child Support endorsed federally funded state demonstrations of a full-fledged assured benefit, Sen. Bill Bradley (D-NJ) and Sen. John D. Rockefeller, IV (D-WV) have proposed such legislation, and in conjunction with Rep. Henry J. Hyde (R-IL), former Rep. Thomas J. Downey (D-NY) proposed a full-fledged national program.

Conclusion

During the past decade, the basis of the American child support system has shifted from judicial discretion toward administrative regularity. The amount of child support owed is increasingly determined by numerical formulas—child support guidelines—established by state commissions or legislatures. Two types of guidelines have been adopted in all but four states. These are income shares and percentage of income. Both are based on the principle that noncustodial parents should share the same percentage of income with their children as they would have if they had lived with the child. Under the percentage of income guidelines, the amount owed depends only upon the income of the noncustodial parent and the number of children owed support, whereas under the income shares guidelines, the amount also depends upon the income of the custodial parent and expenditures for child care and extraordinary medical costs. While the latter method appears to many to be more equitable because it takes account of a greater number of factors, we have argued that the equity gains are debatable. Perhaps the most important advantage of the percentage of income guideline is that it allows orders to be expressed as a percentage of income and thereby permits automatic updating of awards.

Adoption of a national child support assurance system would complete the shift from judicial discretion to administrative regularity and add a publicly guaranteed minimum benefit. A CSA system could substantially reduce poverty and dependence on welfare at little extra cost.

A stronger child support system that transfers more money from both noncustodial parents and the public will increase the economic security and well-being of children of divorce. Child support alone, however, can accomplish only so much. For example, even a perfectly efficient child support enforcement system—awards in all cases, updated to existing guidelines, and paid in full—combined with a generous assured benefit of $3,000 for the first child would eliminate only half the poverty gap for children potentially eligible for child support. Further reductions in the economic insecurity facing children of divorce can be achieved only by greater public investments in children. What is needed is a comprehensive agenda like that recommended by the National Commission on Children which includes, in addition to a Child Support Assurance system, a $1,000-per-child refundable tax credit in the personal income tax, national health insurance, and expanded provision of child care.

1. Child support is the term used to describe the mixture of private and public income transfers to children who live apart from a parent. Private child support is paid by the nonresident parent, that is, the parent who does not live with the child; public child support is paid by the government.
4. Noncustodial is the traditional term used to describe the parent who does not live with the child. It may be more accurate to call that parent the nonresident parent, particularly now that all states authorize joint legal custody which enables a parent, who does not live with the child, to share legal custody with the resident parent.


13. See note no. 9, Garfinkel.


15. The formula used by four states is known as the Melson formula, after Judge Edward Melson, Jr., of Delaware, who developed it. It is based on the premise that parents should be allowed to meet their own basic needs, and then all remaining income is to be shared with their children. Under the Melson formula, a basic needs amount is set for each parent and child. The amount of each parent’s needs, called a self-support reserve, is subtracted from that parent’s income to yield what that parent has available for child support. Then the amount of the child’s basic needs is prorated between the parents based on the income of each. Each parent’s share of the child’s basic needs is then subtracted from that parent’s income to determine the amount of “discretionary income.” A percentage of any income above these basic needs is added to the support, thus enabling children to share in the living standards of their parents above the basic needs level. As with the other formulas, the principal caretaker parent’s share of the support is assumed to be provided in the course of care. The Melson formula is favorably discussed in Takas, M. Improving child support guidelines: Can simple formulas address complex families? *Family Law Quarterly* (Fall 1992) 26:171-94.


19. Bassi, L., Aron, L., Barnow, B.S., and Pande, A. Estimates of expenditures on children and child support guidelines. Report submitted to the Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, by Lewin/ICF, October 1990. None of the studies of expenditures on children provides estimates for very wealthy families—those having incomes of more than $100,000—because the samples of such families are too small in the surveys on which the studies are based.
20. See note no. 17, Williams.
21. See note no. 16, Garfinkel and Melli.
26. Most states do not define the term “extraordinary medical expenses.” However, one state defines them as “uninsured expenses in excess of $100 for a single illness or condition. Extraordinary medical expenses include, but are not limited to, such costs as are reasonably necessary for orthodonture, dental treatment, asthma treatments, physical therapy and any uninsured chronic health problem. At the discretion of the court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical expense.” Munsterman, J.T., and Grimm, C.B. Colorado child support guidelines III(F). Child support guidelines: A compendium. Williamsburg, VA: National Center for State Courts, 1991. Some states refer to uninsured medical expenses; see also Munsterman and Grimm, Arizona child support guidelines.
27. See child support guidelines for Colorado and Arizona, in note no. 26, Munsterman and Grimm.
28. See for example, Nev. Stats. §125.B.080 7, in note no. 26, Munsterman and Grimm.
29. See for example, D.C. Code 16-916.1 (M), which provides that the amount of the award may be varied where there is no medical insurance, it does not cover the item, or there is a high deductible; Georgia Stats. 19-6-15(c), in note no. 26, Munsterman and Grimm.
32. In the early and mid-1970s, public policy determined that a person old enough to be drafted was also old enough to vote. The 26th Amendment to the U.S. Constitution provided that “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States, or by any State on account of age” was drafted and ratified by the states. In response, states provided for the right to vote at 18 in state and local elections, usually by reducing the age of majority from 21 to 18. Apparently, little thought was given to what has turned out to be a troublesome side effect. Because most states tie the duration of the duty to support to the age of majority, the duty to support now ends at 18 with the result that dependent children still in high school are no longer entitled to child support from the nonresident parent.
35. To require divorced parents to provide such support strikes some as unfair and, perhaps, a denial of equal protection. However, the courts have tended to view children of divorced parents as situated differently from children in intact families in this regard. “The legislature could find . . . that most parents who remain married to each other support their children through college years. . . . On the other hand, even well-intentioned parents, when deprived of the custody of their children, sometimes react by refusing to support them as they would if the family unit had been preserved . . . .” In re Marriage of Urban, 293 N.W. 2d 198, 202 (Iowa 1980). See also, Neudecker v. Neudecker, 577 N.E. 2d 960 (Ind. 1991).
36. See note no. 34, U.S. Commission on Interstate Child Support. The commission recommends that Congress require states to have legislation granting courts discretionary power to order child support, payable to the adult child as a rebuttable presumption, at least to
age 22 for a child who is enrolled in an accredited postsecondary or vocational school or college and who is a student in good standing.


39. See note no. 38, Takas, p. 23.


42. This issue is the one most commonly addressed in state formulas when there is a subsequent family. Takas lists 40 states as authorizing the deduction of the prior child support award before calculating support for subsequent children. See note no. 38, Takas, Table A, pp. 14-15.


46. Normal visitation is probably about 20% of the calendar year consisting of every other weekend, plus a month during the summer and some holidays.

47. One reason for not reducing child support until fairly high levels of time sharing are reached is that the costs to the primary parent are not reduced much by low levels of time shared. That parent still has the burden of providing housing for a child whose primary residence is with that parent. Melli, M., and Brown, P. Child support. In Shared physical custody in Wisconsin: Present guidelines and possible alternatives. Report prepared by the Institute for Research on Poverty for the Wisconsin Department of Health and Social Service. Madison: University of Wisconsin, December 1992.

48. See note no. 15, Takas, p. 171. The most popular version of the offset formula is one that can be described as offset plus. Under this formula, the child support amount is increased by a factor of 1.35 or 1.5. The rationale behind this increase is that it recognizes the additional costs of shared parenting. However, this approach to the increased costs of shared parenting does not recognize the source of many of those costs and the distribution of expenses between parents. The increase in expenses in shared parenting comes primarily from the need to duplicate housing and other facilities for a child who now resides some of the time in the home of the nonprimary parent. The housing costs for the primary parent have been factored into the original child support payment paid by the nonprimary parent. Therefore, increasing the amount of the child support award to compensate for the need of the nonprimary parent to duplicate those housing facilities results in the nonprimary parent's paying twice for housing and related expenses. Increasing the child support order with the offset plus formula has one desirable result: it reduces the gap between support at the threshold and immediately above the threshold. This may explain why six states—Alaska, Colorado, Maryland, North Carolina, Oregon, and Vermont—and the District of Columbia use the offset formula with this modification. See also note no. 38, Takas.

49. This approach is used in Hawaii. See note no. 47, Melli and Brown.

50. Uniform Marriage and Divorce Act 1979; Sec. 316, 9A Uniform Laws Annotated.


52. Among the small proportion of awards that were modified, most were modified upward, resulting in a 60% to 144% overall increase in award levels. Despite the cumbersome and costly nature of the process, the data suggest that it is quite cost-effective and reduces welfare dependency by a small amount.

53. Williams suggests a number of changes in laws and practices to reduce the cost of periodically reviewing and updating awards.

55. See note no. 6, Garfinkel and Oellerich, Table 3. Because most nonresident parents are men, this analysis focused on fathers.

56. Some studies find that the proportion of income spent on children declines as income increases while others find that the proportion is constant. None find that the proportion increases.

57. See Garfinkel, I., and Melli, M., eds. Child support: Weaknesses of the old and features of a proposed new system. Institute for Research on Poverty, Special Report No. 32A. Madison: University of Wisconsin, 1982; see note no. 9, Garfinkel. For other proposals, see note no. 34, U.S. Commission on Interstate Child Support.


59. There has been little exploration of the reasons that departures from the guideline amount are below rather than above the guideline. However, an examination of specific factors listed in statutes or rules as a basis for departing from the guideline indicates that these policy directives are aimed more at decreasing than increasing the child support award. See note no. 58, Melli and Bartfeld.


63. See note no. 9, Garfinkel, p. 54, Table 3.1, intermediate run estimates.

64. See note no. 9, Garfinkel, p. 54, Table 3.1 and p. 142. The estimates assume that the assured benefit increases by $1,000 each for the second and third child and by $500 for each subsequent child.


68. See note no. 9, Garfinkel, The estimate includes children born out of wedlock as well as children of divorce.

69. See note no. 67, National Commission on Children.
Child Support Orders: Problems with Enforcement

Paula G. Roberts

Abstract

Child support enforcement is a topic of major concern for millions of our children and for society as a whole. Nonreceipt of child support has serious financial implications for children living without one biological parent, including children of divorce. It also has serious financial consequences for our welfare system. An examination of the child support enforcement system reveals that it is currently in need of revision despite attempts at improvements in the past. Six key issues with regard to reform are discussed; however, there is disagreement as to whether a state-based approach, a federal approach, or some combination of the two should be used to accomplish reform. Recommendations as to what should be changed are offered by the author.

First, this article examines the child support system and explains the flaws that exist within it. Next, recent reform efforts and their outcomes are described. Then, new reform proposals are presented and critiqued. Finally, the author’s own prescription for child support enforcement reform in light of the need for child support assurance is given.

Children living in a two-parent family have a much greater chance of avoiding poverty than children living in a single-parent family. In 1990, 70.5% of children in the United States lived in two-parent households, consisting of children living either with both biological parents, in stepfamilies, or with adoptive parents (see the article by Shiono and Quinn in this journal issue). In 1991 the poverty rate for married-couple families with children under age 18 was 8.3%. In contrast, approximately one quarter of the children lived in single-parent households, 9.5% with a divorced parent, 7.7% with a never-married parent, and 7.6% with a separated or widowed parent. In 1991 the poverty rate for single-parent families headed by fathers was 19.6%; for single-parent families headed by mothers, it was 47.1%. 1

Financially speaking, the families of greatest concern are those headed by females. Children living in single-parent families headed by mothers (constituting 84% of single-parent families) are more than twice as likely to be poor as children living in single-parent families headed by fathers. 2 Although it is very important that all children who are due awards receive them, children living in families headed by mothers are of special concern because of their increased likelihood of being poor.

Bane suggests that there are a variety of reasons single-parent families headed by women are likely to be poor, including
Table 1

<table>
<thead>
<tr>
<th>State</th>
<th>Maximum AFDC Grant</th>
<th>Food Stamp Benefit</th>
<th>Combined Benefits As a Percentage of the Poverty Line</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>$149</td>
<td>$292</td>
<td>49</td>
</tr>
<tr>
<td>California</td>
<td>663</td>
<td>187</td>
<td>94</td>
</tr>
<tr>
<td>Colorado</td>
<td>356</td>
<td>280</td>
<td>70</td>
</tr>
<tr>
<td>Florida</td>
<td>303</td>
<td>292</td>
<td>66</td>
</tr>
<tr>
<td>Illinois</td>
<td>367</td>
<td>282</td>
<td>72</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>539</td>
<td>225</td>
<td>84</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>421</td>
<td>260</td>
<td>75</td>
</tr>
<tr>
<td>South Carolina</td>
<td>210</td>
<td>292</td>
<td>56</td>
</tr>
<tr>
<td>Washington</td>
<td>531</td>
<td>253</td>
<td>87</td>
</tr>
<tr>
<td>Median</td>
<td>372</td>
<td>275</td>
<td>72</td>
</tr>
</tbody>
</table>


With regard to wages, there are a variety of reasons single-parent families headed by mothers are so likely to be poor. Despite some progress, women workers still tend to be employed in low-paying jobs. Thus, while most single mothers (72%) do receive wages and many work full time, their families are still poor. Nearly 23% of Hispanic mother-only families were poor in 1991, despite the fact that the mothers worked year-round, full-time. The corresponding numbers for white and African-American mother-only families were 9% and 18%. These mothers could take a second or third job to supplement their earnings, but doing so would mean even less time for parenting. Or they could seek public assistance.

A mother who has minimum wage or near-minimum wage earnings might get some help from the food stamp program. Cash assistance from the Aid to Families with Dependent Children (AFDC) program would not be available in most states. If, however, the mother lost her job, then she might seek AFDC. If she has more than minimal assets (for example, a car or a bank account), she would not be eligible for help. Once she sold or used up these resources, she would be able to receive AFDC. As shown in Table 1, the amount the family would receive varies greatly from state to state, but in no state would the family income reach the poverty level, even when combined with the value of food stamps. In most states, the family would live in deep poverty.

One avenue for improving the financial status of families headed by mothers (whether these families are the result of divorce or out-of-wedlock births) is through child support payments from the noncustodial parent. If the mother could obtain regular child support payments, the financial picture would be better for many of these families. Those already working could have an income supplement that would move them out of poverty or near-poverty. Those relying on public assistance would have an incentive...
Table 2

<table>
<thead>
<tr>
<th>Child Support Received by Mothers Eligible to Receive Support in 1989</th>
<th>All Women</th>
<th>Women Below Poverty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received no payment</td>
<td>24%</td>
<td>32%</td>
</tr>
<tr>
<td>Received at least some payment</td>
<td>76%</td>
<td>68%</td>
</tr>
<tr>
<td>Mean amount received</td>
<td>$2,995</td>
<td>$1,889</td>
</tr>
</tbody>
</table>


to seek employment because a combination of wages and child support could raise their income to at least the poverty line.7

Unfortunately, one reason for the high poverty rate in single-parent families headed by mothers is that noncustodial fathers rarely pay as much child support as they can or should. Frequently, they pay no support at all. The most recent Census Bureau data indicate that 42% of all custodial mothers do not even have a child support order. Among unmarried mothers, the number is even higher: 66% lack a support order.8

Just as important as the fact that many mothers don’t have support orders is the fact that those with orders do not receive what is owed. There is about a fifty-fifty chance that a mother with a child support order will actually receive full payment.9 Some mothers will receive partial payment, but as Table 2 shows, even then almost one-fourth of all mothers with child support orders and one-third of poor mothers with such orders will receive nothing.10 Of those who receive payment, the amount received is insufficient to support the child fully. Available data suggest that custodial fathers face a similar situation. According to a study which used Wisconsin data, only 30% of custodial fathers had a child support award. Of those with an award, 40% received no payment.11

A series of interrelated problems leads to nonpayment of child support. Among these problems is difficulty in locating the noncustodial parent, the complexity of establishing paternity if the parents were not married or the father decides to challenge the paternity of a child born within marriage, the convoluted and time-consuming process for establishing a support order, and the difficulty of enforcing an order once it has been established. These problems are difficult to solve when both parents live in the same state. When the parents live in different states or one moves to another country, the problems are almost impossible to resolve under current law.12

If these problems could be solved, the financial status of children in single-parent families headed by mothers would be substantially improved. Researchers estimate that, if paternity were established, support orders obtained, and reasonable standards for setting support were in place, each year between $17 billion and $23 billion more than is currently being paid could be available to children in mother-headed families.13

In fact, studies indicate that most noncustodial parents have enough income to provide an adequate level of support to their children.14

It should be noted, however, that better child support enforcement will not move children whose noncustodial father is poor out of poverty. This statement is especially true if the father is nonwhite, if the parents have never married, if the...
children receive AFDC, or if any combination of these variables exists. In these situations, many fathers have too little income to make a substantial contribution to their children. Also, a small group of noncustodial parents will go to great lengths to avoid their child support obligations. Even a greatly improved child support enforcement system may not be able to force these parents to pay regularly. Some have suggested that a program called Child Support Assurance (CSA) be implemented to address these problems. (See the article by Garfinkel and colleagues in this journal issue.)

Under CSA, a minimally adequate monthly support payment would be made to the custodial parent (1) when the noncustodial parent pays the full amount he or she is capable of paying, but this amount is insufficient to keep the child out of poverty; or (2) when the noncustodial parent fails to pay or does not pay the entire amount of support owed. It is probable that a Child Support Assurance system would greatly improve the lives of many children, especially those living in families headed by mothers. If the mother knew that at least some child support would be received regularly each month, she could plan the family’s economic future. If she were receiving AFDC, she would have an incentive to take a job even if it were low-paying because the guaranteed child support would supplement those wages. If she were already working, the regular support might enable the family to move to a better neighborhood, provide after-school care for a latch-key child, or allow the mother to drop her second job and devote more time to the children.

With regard to costs, a Child Support Assurance system is not prohibitively expensive if the underlying child support enforcement system can be improved.

With regard to costs, a Child Support Assurance system is not prohibitively expensive if the underlying child support enforcement system can be improved. The more parents meet their obligation to their children regularly and on time, the less expensive a guaranteed child support system would be. Many Child Support Assurance advocates are thus also deeply involved in efforts to improve child support enforcement.

The Child Support Enforcement System

Child support enforcement is part of domestic relations law. Historically, domestic relations law has been viewed as the exclusive province of the states. As the Supreme Court stated in Haddock v. Haddock, 201 U.S. 562, 575 1905: “No one denies that the states, at the time of the adoption of the Constitution, possessed full power over the subject of marriage and divorce. . . . Besides, it must be conceded that the Constitution delegated no authority to the Government of the United States on the subject of marriage and divorce.” Indeed, as late as 1975, the Supreme Court was maintaining that “. . .domestic relations is an area that has long been regarded as a virtually exclusive province of the states.”

The result is that 54 different legal systems operate within one country, including the states, territories, commonwealths, and the District of Columbia. While each state has its own variations, a custodial parent seeking child support must usually pursue the steps described below.

Steps to Receiving Child Support

Identify the Noncustodial Parent

The first step is to identify the noncustodial parent. If the parents were married, doing so is usually not a problem. If the parents were not married, a paternity proceeding has traditionally been required if the noncustodial parent is the alleged father. Paternity proceedings can be very complicated. All parties must submit to genetic tests, the tests must be analyzed, and the results reported. Even if the test results indicate a high probability of paternity, the alleged father may dispute the results and call expert witnesses. In many jurisdictions, he can ask for a jury trial. The mother will have to produce evidence in addition to the test results. The father’s attorney may ask explicit and detailed questions about her sexual relations with other men prior to, and around the time of, conception. In addition, some states have antifornication laws and statutory rape laws. Thus, the civil paternity proceedings can give rise to a later
criminal action against the father. The threat of possible criminal charges makes men reluctant to admit paternity, especially when the mother is a minor.

Locate the Noncustodial Parent

Whether the custodial parent seeks paternity and a support order or just a support order because paternity is not at issue, the proceeding can be brought only in a court that has jurisdiction over the noncustodial parent. Thus, the residence or business address of the responsible parent must be known because the courts of a state generally have jurisdiction only over a person who lives, owns property, or derives income in that state. The one exception is when a noncustodial parent who does not live, work, or own property in the state nonetheless has enough connection to the state to make it fair for the courts of that state to act. This is called long-arm jurisdiction. For example, if a man and a woman conceived a child in the District of Columbia, the man then left and returned to his home in Massachusetts, and the woman stayed in the District and gave birth there, a District of Columbia court might exercise long-arm jurisdiction over the Massachusetts father in a paternity case.

Serve the Noncustodial Parent with Legal Papers

The noncustodial parent’s address or workplace must be known so that a sheriff or process server can deliver the legal papers. Some states (for example, Massachusetts) allow service by registered mail, but this practice is uncommon for service of the initial papers.

Schedule a Hearing

Scheduling a hearing can be a major cause of delay because of crowded court dockets. For example, a recent survey of custodial mothers in four different states (Georgia, New York, Ohio, and Oregon) found that, of those who eventually obtained an order, 40% waited more than six months after initiating their case before obtaining the order.

Undertake Discovery

Child support obligations are based on the financial circumstances of the parents. Information about the parents’ income, assets, earnings potential, and the like must be obtained. In addition, information about health insurance availability and cost must be uncovered. Although federal regulations now require that each state’s child support guideline consider the availability of health insurance and apportion health care costs, in 1989 the U.S. Bureau of the Census reported that 60% of all support orders lacked provisions regarding health insurance. In addition, it is estimated that the total number of uninsured children in single-parent households approaches 8 million. In many states, data about child care costs and any special needs of the child are also factored into the support amount. (For a more detailed description, see the article by Garfinkel in this journal issue.) A noncustodial parent may not willingly supply this information or provide accurate information to the other parent. If the noncustodial parent is uncooperative, the custodial parent may need to take depositions and issue subpoenas for records.

Appear at the Hearing

Both parties must appear at the hearing. If one party does not appear, the judge will frequently reschedule the hearing. Sometimes there are multiple reschedulings before the noncustodial parent finally appears or the court is willing to enter a default order based on failure to appear.

Enter the Order

At some point, a decision is made, payment is ordered, and that order is entered in the record. Depending on the state, the money goes to a court, a government registry, a state agency, or the custodial parent. In some states (for example, Ohio) all payments must first go through a governmental agency. In other states (for example, California) the custodial parent can choose to receive payment directly if he or she is not using the services of the state child support enforcement agency. If the payment is made to a court, central registry, or state agency, the collecting entity will record payment and disburse the money. If the custodial parent receives the money directly, there will be no formal record of payment.

Possible Additional Steps

As long as payment is voluntarily made, no further steps are required. When payment is not made, the noncustodial parent must be relocated and notified of the alleged default. Depending on the remedy to be used, the defaulter may have to be personally served and brought back into court. A hearing will have to be scheduled. If payment records exist, proving the amount of arrears should be straightforward. If there are no records, obtaining relief can be difficult.
In short, to receive child support, the custodial parent must usually hire a lawyer, finance the process for locating the absent parent, and pay filing fees, as well as fees for service of process and court costs. If paternity needs to be established, costs of genetic testing will also have to be borne. Even if she proceeds without a lawyer (that is, pro se) the fees and costs will have to be paid out of pocket. In many states custodial parents are discouraged or forbidden from acting pro se. Moreover, if payment is not voluntarily made, the custodial parent must bear a second round of attorney’s fees and/or costs.

**Problems with the Existing System**

The existing child support enforcement system works best for the affluent and well educated. For mothers of modest means or limited ability to cope with a sophisticated legal process, the system simply does not work. Even for the affluent and well educated, the system is slow, complicated, and costly.

The problems engendered by this complex and costly system received less public attention when the out-of-wedlock birth rate was low, divorce was infrequent, and divorce usually occurred when the children neared or reached the age of majority. Today, the birth rate outside marriage is nearly 30%, the divorce rate is nearly 40%, and about 60% of divorces involve young children. Slowly, America is responding to this reality.

---

**For mothers of modest means or limited ability to cope with a sophisticated legal process, the system simply does not work.**

---

In part, this response was triggered when many children in single-parent families headed by mothers began to enter the AFDC system. In the early 1970s, a study conducted by the RAND Corporation indicated that some of the growth in AFDC was related to mothers’ inability to access child support. This led at least one powerful member of Congress to ask: “Should our welfare system be made to support the children whose father cavalierly abandons them—or chooses not to marry the mother in the first place? Is it fair to ask the American taxpayer—who works hard to support his own family and to carry his own burden—to carry the burden of the deserting father as well? Perhaps we cannot stop the father from abandoning his children, but we can certainly improve the system by obtaining child support from him and thereby place the burden of caring for his children on his own shoulders where it belongs. We can—and we must—take the financial reward out of desertions.”

**Efforts to Improve the System**

In 1975, Congress enacted Title IV-D of the Social Security Act. This law requires every state with an AFDC program to also have a state agency to help parents obtain child support. These public agencies are required to assist in locating absent parents, establishing paternity, obtaining and modifying support orders, and enforcing those orders.

The services of state IV-D agencies are free to recipients of AFDC and Medicaid. In fact, the law requires that these families use IV-D services unless they have “good cause” for not pursuing child support. The services of the state IV-D agencies are also available to mothers who are not receiving AFDC or Medicaid. These mothers apply for services and may pay a small application fee. They may also pay nominal fees for other services. In this article, the cases involving AFDC and Medicaid families as well as cases where the custodial parent has applied for services will be referred to as “IV-D cases.”

The new public system solved one of the major problems faced by lower-income custodial parents: it gave them access to services at little or no cost. In the early years, the federal government paid 75% of the state IV-D agency’s expenses for providing these services. More recently, the federal government has paid 66% of the costs of the basic services and 90% of the costs related to genetic testing for paternity establishment and 90% for computerization. Unlimited funding is available to states willing and able to put up the 34% (or 10%) state match required to obtain these federal funds. Unfortunately, few states are willing to take advantage of the generous funding. From the beginning, public programs have been understaffed and underfunded. For example, in 1990, nationwide there were on average 345 cases in the system...
per full-time worker. In many states, case loads exceed 1,000 per worker.

In addition, the 1975 law failed to address the need to streamline the processes for establishing paternity and obtaining support orders. In many states (for example, Tennessee) unless a paternity action was brought within one or two years of the baby’s birth, paternity could not be established. Many states (for example, Delaware) still did not admit genetic test results to prove paternity. No state had a legally enforceable time frame within which a paternity or support action had to be resolved. The 1975 law also failed to acknowledge that few states actually had laws to enforce support orders once they were obtained. Some states (for example, Texas) actually prohibited wage garnishment to collect support from a parent who was in arrears on his obligation.

By 1980, two separate and equally flawed child support enforcement systems had emerged. The private system continued to operate for most nonwelfare families. It depended on the custodial parent’s ability to afford legal counsel and wait for court action. Support, when paid, went directly from the noncustodial parent to the custodial parent leaving no public record of payment. If support was not voluntarily paid, no action was taken unless the custodial parent was financially able to hire a lawyer and pursue the arrears.

The public system focused primarily on welfare families. While providing free or low-cost services and maintaining records of payment, this system was woefully underfunded and understaffed. Moreover, this system saw its primary function as recoupment of AFDC benefits. In most states, any support collected was kept by the state to offset the AFDC grant; the family received nothing. The few non-AFDC families who entered the system received inferior services.

In the next decade, however, Congress—and many of the states—made bold attempts to improve the system. The major innovations are described below.

### Establishing Paternity

Until the advent of genetic testing, establishing paternity was an archaic process. The mother had to prove her case with whatever evidence she could muster. Because doing so meant she had to testify that she had sexual relations with the father, she was subject to cross-examination about her own sexual history and who else she might have had sexual relations with around the time of conception. Also, the action had to be brought within one or two years of the baby’s birth. Fathers were entitled to a jury trial and proof beyond a reasonable doubt of their paternity.

---

**In 1988, Congress compelled states to enact laws requiring parties to submit to genetic tests when paternity is contested.**

---

In 1984, spurred in part by Supreme Court cases finding it to be unconstitutional to force the mother to bring a paternity action close to the time of the baby’s birth, Congress required every state to allow paternity to be established at least until the child’s 18th birthday. In 1988, Congress compelled states to enact laws requiring parties to submit to genetic tests when paternity is contested. It also urged states to set up simple civil processes for establishing paternity voluntarily and to make contested cases civil, rather than criminal, proceedings. These federal requirements apply to all paternity cases, not solely to IV-D cases.

Many states responded to these congressional mandates by revolutionizing the paternity process. Several states (for example, Missouri and Oregon) have moved voluntary paternity establishment out of the courts and into the administrative process system. Others (for example, Arizona and Massachusetts) have gone beyond voluntary out-of-court establishment of paternity to allowing paternity to be established by affidavit or by signing the birth certificate. Still others (for example, Ohio and Washington) have gone into hospitals and birthing facilities to establish paternity at the time of the baby’s birth.

In contested cases, states have moved to a less rigorous standard of proof, made genetic test results which yield a high probability of paternity a rebuttable presumption that the alleged father is the father, and even made it possible to try paternity cases in an administrative proceeding rather than in court.
Expediting the Process for Establishing Orders

In 1984, Congress required every state to expedite the process for establishing and enforcing support awards in IV-D cases. States must now be able to obtain or enforce an order in 90% of their IV-D cases within three months of filing them; 98% must be processed within six months and 100% within a year. States can continue to use their courts to issue and enforce orders so long as the courts can accomplish these tasks within the federal time frames. If the courts cannot do so, then states must set up an alternative process. One possibility open to the state is to establish a quasi-judicial system which is housed in the court but staffed by non-judges who are specially trained in child support matters. These staff members are usually called “masters” and can issue orders (subject to judicial review) which are then approved and docketed by a judge. The other possibility is for the state to set up an administrative process system. The administrative process system is usually housed in the IV-D agency and staffed by administrative law judges who issue orders which are then sent to the court for docketing.

Some states have set up universal quasi-judicial procedures, the most comprehensive of which is Michigan’s Friend of the Court System. Michigan’s system is used by non-IV-D as well as IV-D clients. Especially during the past two to three years, the trend has been for states (for example, Colorado) to set up administrative processes. Administrative processes, however, are usually available only in IV-D cases. This can be problematic for families who come into and out of the IV-D system. If a court establishes an order in a non-IV-D case, for example, and the IV-D agency may use only administrative processes in modification cases. This leaves the family in limbo.

Improving the Chances that Support Will Be Paid on Time

Payment of support has traditionally been voluntary. The obligated parent had to make the affirmative decision each month (or week) to send a check, buy and mail a money order, or deliver the cash. If he or she was short of funds or angry at the custodial parent, the temptation to pay late or to skip the payment entirely was great.

In many states, the most common way to enforce a support order when the obligated parent did not pay was through a criminal action. In those states it was a misdemeanor (or sometimes a felony) to default on a support obligation. The other common remedy was to bring a contempt action. In civil contempt, the obligated parent is jailed until payment is made. As soon as he pays, he is released from jail. In criminal contempt, the defaulting parent is given a specific sentence whether or not he makes payment. Custodial parents were frequently reluctant to send their children’s father to jail. Even those who were not reluctant recognized the futility of invoking these remedies. If the father was in jail, he was even less likely to pay support. If the question is how to get regular support, jailing the father does not seem to be the answer.

The failure of this approach led some states to try a different one. Garnishing the obligated parent’s wages to obtain overdue support was one remedy. Several states (for example, Kentucky and Massachusetts) went beyond this and authorized withholding of current support as well as overdue support from the obligated parent’s paycheck. This method of ordering that support be withheld as soon as the child support order is entered is referred to as “immediate income (or wage) withholding.”

In 1988, Congress decided to require all states to use this method of enforcement. Beginning in November 1990, in every IV-D case, all new or modified support orders must include immediate wage withholding unless the court or administrative agency finds good cause for not ordering withholding or both parents agree to an alternate payment arrangement. All child support orders not established by the state IV-D agency must

The need to collect, record, and disburse child support payment in immediate wage withholding cases has led some states to set up child support registries.

family then applies for IV-D services, who can modify the order? An administrative agency cannot modify a court order, but
contain immediate wage withholding as of January 1, 1994.\textsuperscript{50}

In immediate wage withholding cases, once the child support order is entered, a notice is sent to the obligated parent’s employer to withhold the money from the parent’s paycheck and forward it to a named public entity, which could be the IV-D agency, a state central registry, or the clerk of the court.\textsuperscript{51} That entity records payment and forwards the proceeds to the custodial parent or the welfare department if the family receives AFDC.\textsuperscript{51} If the noncustodial parent is unemployed, the immediate withholding order is sent to the state unemployment insurance agency, which withholds the support payment from the obligated parent’s unemployment benefits.\textsuperscript{52}

The need to collect, record, and disburse child support payment in immediate wage withholding cases has led some states (for example, Ohio and Virginia) to set up child support registries.\textsuperscript{53} These registries contain an abstract of the support order, payment records, and data about the parents. Several states (for example, Colorado) now require the obligated parent to keep the registry or court informed of his or her current address.\textsuperscript{54}

The wage withholding system has also enhanced the importance of obtaining parents’ Social Security numbers. These can be very helpful in identifying and properly crediting payments as they come in. States are, therefore, now also required to obtain each parent’s Social Security number as part of the birth records process when a child is born or paternity is established.\textsuperscript{55} These requirements affect both IV-D and non-IV-D cases.

Another reform engendered by wage withholding is employer reporting of all new hires or rehires.\textsuperscript{56} Studies indicated that some noncustodial parents frequently change jobs to avoid wage withholding. By the time they are located and the new employer served with the income withholding order, these obligated parents have changed jobs again.\textsuperscript{57} If the employer immediately reports a new hire, this practice is discouraged. The report is made (to the state employment service or the child support agency) and immediately cross-referenced to the state registry or record of IV-D cases. If there is a child support obligation, the employer is notified and withholding begins with the next paycheck. Some states (for example, Washington) allow the report to be part of the existing W-4 reporting system that employers already use in reporting information about newly hired employees. Hence, the practice is often referred to as “W-4 reporting.”

Improving the Mechanisms Available to Collect and Enforce Arrears

Once the use of immediate income withholding becomes more widespread, the number of children who do not receive support regularly should greatly diminish. Over time, there will be fewer cases in which large arrears are owed. However, according to recent government studies, this development is still several years off. Wage withholding in IV-D cases is not yet widespread\textsuperscript{57} and in non-IV-D cases is just beginning to be implemented.\textsuperscript{58} Moreover, even when withholding is a general practice, there will still be millions of children to whom support arrears are owed from the time before wage withholding began.

There is also the problem of collecting current support from those who are not wage earners. It is especially difficult to collect support from the self-employed, who do not have wages subject to withholding. To date, no one has devised a system for keeping these parents current in their support payments unless they voluntarily comply. Usually, the custodial
Table 3

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of mothers with an order</td>
<td>59</td>
<td>59</td>
<td>58</td>
<td>61</td>
<td>59</td>
<td>58</td>
</tr>
<tr>
<td>Percentage of mothers obtaining full amount ordered</td>
<td>49</td>
<td>47</td>
<td>51</td>
<td>48</td>
<td>51</td>
<td>48</td>
</tr>
<tr>
<td>Percentage of mothers obtaining partial payment</td>
<td>23</td>
<td>25</td>
<td>25</td>
<td>26</td>
<td>25</td>
<td>26</td>
</tr>
<tr>
<td>Percentage of mothers obtaining no payment</td>
<td>28</td>
<td>28</td>
<td>24</td>
<td>26</td>
<td>24</td>
<td>26</td>
</tr>
</tbody>
</table>


A number of mechanisms have been developed to collect arrears. Congress has authorized state IV-D agencies to send a notice to the Internal Revenue Service (IRS) when child support arrears in excess of a certain amount are owed in an IV-D case.59 The IRS will seize any tax refund due the obligated taxpayer and send the payment to the state agency. The state agency can then use the money to pay off the arrears. Federal law requires states that levy income taxes to have a similar program to seize state tax refunds to pay child support arrears.60 Federal law also authorizes states to certify difficult IV-D cases to the IRS, which can then use all of the methods at its disposal to collect unpaid taxes to collect child support.61

Congress also requires states to have methods for collecting IV-D arrears by imposing liens on real and personal property,62 by ordering withholding when an amount equal to one month’s support is overdue,63 and by reporting the arrears to credit agencies.64 Some states (for example, Vermont) have gone beyond these federal requirements and are also seizing lottery winning65 and withholding state professional licenses when a parent is in arrears.66 Some states (for example, Virginia) are even refusing to issue driver’s licenses, car registrations, hunting and fishing licenses, and the like to those who are behind in their child support payments and have made no arrangements to meet their obligations.

Obtaining Health Insurance Orders

Many children can obtain health insurance through their noncustodial parent. Until recently, however, the state did little to obtain such coverage. Since 1989, greater emphasis has been placed on this service, and the picture is gradually changing.67

Health insurance coverage orders are meaningless unless they are enforced. Several states (for example, Virginia) have enacted laws requiring employers to put the children on the health insurance plan once the court or administrative agency has so ordered.68 These laws also require the employers to provide custodial parents with claim forms and other plan-related information, and to honor the custodial parent’s signature on the claim form.69 Many of these laws apply in both IV-D and non-IV-D cases.

Problems with the System from the Custodial Parent’s Point of View

Despite these changes, the child support enforcement picture remains bleak. Most of the studies of the IV-D system give it low marks for performance.70 Since 1984, there have been more than 12 studies by the General Accounting Office (GAO) detailing deficiencies in the IV-D system.71 The GAO has been particularly critical of the poor performance in interstate cases.72 In these cases, the problem of

It is especially difficult to collect support from the self-employed, who do not have wages subject to withholding.
locating the noncustodial parent is more difficult, there are complex legal issues regarding jurisdiction to enter or enforce an order, and enforcement of cash and medical support is even more problematic because the employer is also usually located in a different state.

If the noncustodial parent lives in a foreign country, the situation is even more complex. To date, the United States has not ratified any of the treaties that would permit the international establishment and enforcement of support obligations.\(^{73}\) Custodial parents must usually hire foreign counsel to establish an order if they want results.

Data from the Census Bureau (Table 3) confirm that very little overall progress has been made in the past decade in changing the number of mothers who have support orders and actually receive collections.

Data compiled annually by the Department of Health and Human Services indicate serious deficiencies in the IV-D program which probably contribute to the bleak picture painted by the Census Bureau. A collection of any kind at some time during the year was made in only one-third of IV-D cases with a support order of support.\(^{74}\) While income withholding is having some impact in IV-D cases, many of the other remedies are either not being used or are not very effective (Table 4).

Wage withholding seems the most effective method of obtaining payments but is clearly not in place in more than half of the cases with orders. Other methods—such as liens, bonds, and lottery intercepts—do not even account for one percent of the collections. The failure of these methods may reflect underutilization by understaffed state agencies. Or it may reflect the difficulty of implementing federal mandates in a system traditionally governed solely by state law.

As a result, some custodial parents now turn to private collection agencies. These agencies may charge an application fee. They will only take cases in which an order has been established and there are arrears owed. Many will not take a case if the family now receives AFDC or received AFDC in the past. These private collection agencies make their money by taking a percentage of the support collected (usually 25\% to 33\%), thereby reducing the resources available to raise the child. For these reasons, they do not seem to offer a viable alternative source of help for most low- and moderate-income mothers.

Noncustodial parents are also unhappy with the system. Of particular concern is the question of access or visitation. Many fathers believe that the problem of nonpayment of support is tied to denial of access to the children. If fathers were given regular access and decision-making authority in their children’s lives, they argue, fathers would pay more support.\(^{75}\) Evidence to back up this position is mixed.\(^{76}\) Moreover, withholding of financial support clearly hurts children.

---

### Table 4

<table>
<thead>
<tr>
<th>Method of Collection</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage withholding</td>
<td>47%</td>
</tr>
<tr>
<td>Other (voluntary payment)</td>
<td>43%</td>
</tr>
<tr>
<td>Federal tax intercept</td>
<td>7%</td>
</tr>
<tr>
<td>Unemployment intercept</td>
<td>2%</td>
</tr>
<tr>
<td>State tax offset</td>
<td>1%</td>
</tr>
</tbody>
</table>

Obligated parents should not be able to hurt their child in this way simply because they cannot agree with the custodial parent about proper access. For this reason, most policymakers agree that alleged interference with access should not be grounds for withholding support.77

Nonetheless, as Kelly points out in her article in this journal, there are good reasons for encouraging contact between children and their parents after divorce. Attention needs to be paid to developing mechanisms to resolve access problems.

To summarize, until recently, every state had its own unique child support enforcement system. Each system required a custodial parent to possess significant personal and financial resources to obtain or enforce a child support award. Starting in 1975, Congress began changing the system by requiring states to enact virtually identical laws in a number of areas. This “federalization of family law” has had a great impact on how paternity is established and how support awards are enforced. The federal law has also caused the creation of state agencies which provide low-or no-cost services to custodial parents.

Nonetheless, each state’s system is distinctive, and no state has a truly effective system in place even for IV-D cases. This multiplicity of systems also makes interstate establishment and enforcement of support obligations problematic. As a result, despite nearly two decades of federal and state activity, there has been very little improvement in the likelihood that children will actually receive child support.

**Despite nearly two decades of federal and state activity, there has been very little improvement in the likelihood that children will actually receive child support.**

The Current Debate

There is little disagreement that the child support enforcement system is in need of further revision. Indeed, IV-D clients, advocates, lawyers, state administrators, state officials, federal legislators, and two federal commissions have recommended change. There is consensus on several key issues among all of these groups.78 The areas of agreement are as follows:

1. Paternity should be established as a routine matter at the time of every child’s birth. To the maximum extent possible, this should be accomplished through simple nonjudicial processes. If paternity were routinely established, costly adversarial proceedings could be avoided, and more children would have the fundamental prerequisite to obtaining a support award.

2. There should be a national child support guideline to set and periodically modify support awards. A national guideline would bring greater equity to children and reduce the parent’s ability to forum shop for the state with the guideline most favorable to him or her.

3. Support should be collected primarily through immediate withholding from the obligated parent’s wages. An employer reporting system (W-4) should be implemented so that withholding can begin immediately whenever the obligated parent begins work or changes jobs. A procedure of this kind would vastly improve the rate of collection in cases where the obligated parent was a wage earner.

4. The process for establishing and enforcing orders in interstate cases needs to be overhauled and strengthened. As many cases as possible should be brought in the child’s state of residence by greater use of long-arm statutes.

5. Enforcement of medical support orders must be required, and employers must be authorized to put children on available health insurance plans and facilitate children’s use of these services.

There is, however, deep disagreement about how to accomplish these five changes. Some believe that, despite its shortcomings, the existing state-based system can be improved. Others believe that a more radical approach is required. They favor moving some or all aspects of the state system into a national system within the IRS or the Social Security Administration (SSA). This approach is usually referred to as “federalization.”

The State-Based Approach

As part of the Family Support Act of 1988, Congress authorized the establishment of the U.S. Commission on Interstate Child Support (“the Commission”).79 The 15 members of this Commission are the
most vocal proponents of the state-based approach. As articulated in the Commission’s Report, their rationale is: “...the majority of Commission members was not convinced that the federal government could do a better job than states in establishing and enforcing support. Commission members were concerned about: (1) the loss of creativity at the state and local level, (2) the federalization of one aspect of family law that often arises in the context of other family issues, (3) the existing backlog in federal courts, (4) the lack of an effective federal administrative model, (5) improper identification and distribution of payments, (6) the cost of creating a system that already exists at the state level, and (7) the taking of such a major step prior to evaluating the effects of state automated systems on states’ abilities to effectively process cases.”

Therefore, the Commission recommended more than 100 changes in current state law and practice. The vast majority of the changes recommended by the Commission would be accomplished by mandates from the federal government to the states. Yet, even within the Commission, there was disagreement about the desirability of federal mandates.

Other advocates of the state-based approach are even more adamantly opposed to federal mandates. They would prefer more federal funding and encouragement to states to adopt model legislation (for example, W-4 reporting). This strategy would bring more funding for the states without requiring that they actually improve the system. Many state administrators would also prefer less stringent audit standards so that states would have to pay less attention to compliance with every single federal mandate.

Moreover, the Commission’s recommendations rely heavily on a belief that many of the problems inherent in the state-based model can be addressed by the development of “an integrated, automated network linking all the states to provide quick access to location and income information ... and a registry of support orders.” Because federal legislation requires all states to have automated statewide systems by October 1995, the Commission envisions that it will be possible to build these systems into an integrated national system. Unfortunately, a recent General Accounting Office report suggests that many of the state systems are seriously flawed and will not be functioning on time. Moreover, there is some question as to how quickly (if ever) these 54 independently developed automated systems will be able to communicate with one another.

Another cornerstone of the state-based approach is that every state be required to replace its current interstate child support law with the new Uniform Interstate Family Support Act (UIFSA) recently approved by the National Conference of Commissioners on Uniform State Laws. UIFSA contains broad long-arm jurisdiction, authorizes simpler procedures for exchanging information and holding hearings when the parties live in different states, and streamlines implementation of income withholding orders when the noncustodial parent’s employer does business in a state other than the custodial parent’s.

The strength of the state-based approach is that it builds on existing good practices and engenders little political controversy among powerful interests such as judges, lawyers, and state legislators and officials. Its weakness is that it rests on the assumption that two totally untested ideas—automation and UIFSA—will radically increase the chances that support enforcement will improve. Beneath the surface, it also holds a serious tension. Is it any the less “federalization” if Congress requires state legislatures to adopt laws than if Congress federalizes the function altogether? Is the Commission’s approach really federalization by a different name? If so, those on the Commission who opposed federal mandates raise a real point. But then one is left simply encouraging states to adopt best practices rather than mandating them. Given the lack of progress under the mandates of the past two decades, isn’t this approach tantamount to condemning a large number of the next gen-

---

**Some believe that, despite its shortcomings, the existing state-based system can be improved. Others believe that a more radical approach is required.**
eration of children living in single-parent families to poverty?

**The Federal Approach**

In May 1992, Rep. Thomas J. Downey (D-NY) and Rep. Henry J. Hyde (R-IL) drafted a proposal to restructure the existing child support system radically. They would have moved the establishment of paternity, the modification of support orders, and the support enforcement function from the states to the federal government. A new agency located in the IRS or SSA would have taken on these responsibilities in a national, universal system. Their proposal was part of a larger scheme which would also encompass a national Child Support Assurance (CSA) system and provide assistance to low-income noncustodial parents to improve their ability to pay support. Some of this opposition was a genuine response that such radical change was neither feasible nor advisable. Some of it was fear that private lawyers and state workers would lose their jobs in a federalized system. Because Rep. Downey was not reelected, it is unclear whether such an innovative proposal will be introduced again. Rep. Hyde is now focused on the part of the proposal to federalize the collection of support.

Others supported a somewhat less radical approach to federalization. Under the name the Ad Hoc Committee to Improve Child Support, a gathering of custodial and noncustodial parent groups, child support advocates, as well as some individual IV-D directors, and one member of the U.S. Commission on Interstate Child Support favored a partial federalization of the system and adoption of Child Support Assurance. They favored establishing a national registry of all child support orders within the IRS. The IRS would enforce those orders (primarily through income withholding) and disburse payments.

Geraldine Jensen, member of the U.S. Commission on Interstate Child Support who dissented from the Commission’s report, stated that “... America’s child support enforcement system fails in almost every possible way to serve the children. The message delivered at every public hearing the Commission held was the same: the system needs radical fundamental restructuring. It needs to put children first!"

To provide a proposal for restructuring of the child support enforcement system with a new vision, Jensen worked with the Ad Hoc Committee to Improve Child Support. They developed a comprehensive and far-reaching proposal for reform which Jensen suggested is the kind of proposal that the Commission should have adopted. The fundamental recommendations of the Ad Hoc Committee to Improve Child Support were: (1) a child support assurance program must be adopted which guarantees that child support will be a regular, reliable source of income for children growing up with an absent parent; (2) responsibility for collecting and distributing child support should be federalized and housed in an agency like the Internal Revenue Service; (3) each state must have in place effective laws and practices to establish paternity and child support orders; and (4) national guidelines must be established to guarantee children a fair level of support.

The major strength of the federalization approach is its ability to create a uniform national system where the amount of child support and the likelihood that support will be paid will no longer depend on the custodial parent’s ability to hire a lawyer and pay the attendant costs and where it will not matter if parents reside in different states. Its weaknesses are that it rests on the unproven assertion that the IRS can do a better job than the states and that it engenders violent negative political reaction from powerful constituencies such as the American Bar Association.

**Recommendations**

Table 3 graphically illustrates that, despite enormous efforts, the state-based approach to reforming child support enforcement has failed. Further emphasis on this approach alone—as recommended by the U.S. Commission—will simply...
doo a large part of another generation of children living in single-parent families to poverty or near poverty. This state-based approach also runs the risk that the federal government will pour even more money into a state-based system which has yet to show that it is capable of significant improvement.

Yet, reaction to the Downey-Hyde proposal demonstrates that a move to federalize the whole child support enforcement system has the potential to engender so much opposition that all efforts at reform could be stalemated. This result—like insistence on a pure state-based model—has terrible consequences for another generation of children. A CSA system could alleviate some of the problem but, in the current fiscal climate, it is hard to envision Congress authorizing a CSA unless payments collected from noncustodial parents offset most of the cost. Greatly improved child support enforcement is a fiscal prerequisite to CSA. So we come full circle. Insisting on full federalization dooms CSA.

Before giving in to despair, a middle ground must be developed. A plan needs to be put forth which strengthens that part of the state system which can be strengthened and moves to the federal level those functions which truly do need to be federalized. Some will disagree with different pieces, but the following is suggested as a rough outline of how to structure a reform proposal.

1. Leave establishment of paternity at the state level. Require every state to offer voluntary establishment of paternity by affidavit at the hospital (for newborns) and the birth records agency (for other children). Require states to streamline contested case processing and provide federal funding for genetic testing research so that the cost of genetic tests is low and their reliability is high.

2. Develop a much greater capacity to locate parents at the state level. Require every state’s child support computer system to have the ability to access data in every other computerized data base maintained by the state. Make this expanded state data base available to the computerized child support system of every other state so parents can be located across state lines. In addition, allow states access to federal records—including federal tax returns—when information about parents’ income and assets is needed so that proper support awards can be established and then enforced.

3. Enact a national child support guideline based on the percentage of income model so that the children of similarly situated noncustodial parents will be similarly supported. As Garfinkel’s article in this journal issue indicates, there is much debate about which guideline is best. However, if one’s goal is ease of administration, the percentage of income guideline seems best. It also addresses the problem inherent in the income shares model that awards go down when custodial parent income goes up, creating a work disincentive like the one which plagues the AFDC system.

4. Leave the establishment and modification of support orders at the state level so that the issues can be addressed in the context of property distribution, custody, and visitation. Require that states use the national guideline as a rebuttable presumption of support to be paid. Also require all states to adopt UIFSA so that interstate cases can be handled expeditiously.

5. Establish a national registry for child support orders within the IRS. Every time a new order is entered, an abstract (containing the basic information needed for enforcement) would also be entered in the national registry. Modifications would also be entered in the registry as made.

6. Transition the enforcement of all child support orders from the states to the IRS. The process could begin with new orders, adding old orders as they are modified. Or interstate orders could be done first, followed by new orders and modified orders. Over a decade, this should bring most orders to federal enforcement and phase out state activity in this area, leaving states to focus their re-
sources on establishing paternity and obtaining orders.

7. Authorize the IRS to administer wage withholding for child support. Supplement this with a quarterly payment system (either in advance or retrospectively) for the self-employed. Require automatic use of all other IRS collection mechanisms against those who do not pay.

8. Have the IRS keep records and disburse the payments (including CSA payments) to custodial parents. This system would provide universal, federal service at the collection and distribution end. Parents would be free to use the private system or the public system before that time to locate the noncustodial parent and his or her assets, establish paternity, and set or modify the support obligation. More affluent parents, especially those with significant property to distribute, would be free to pursue their rights under current state laws. Once the issue came down to collecting what is owed to children, however, the public system would be mandatory and swift.

We owe this much to our children.


2. See note no. 1, U.S. Bureau of the Census. This figure is obtained by dividing the total number of mother-only families (7,991 million) by the total number of single-parent families (9,504 million).


6. It is beyond the scope of this article to make distinctions between the financial circumstances of children in various types of single-parent families. The focus here is on child support awards because the majority of these children are entitled to them by law. However, careful analysis of the economic conditions of the various types of single-parent families may indicate needs that are unique to the family type, for example, single-parent family due to divorce, single-parent family due to multiple divorces, or single-parent family due to out-of-wedlock birth(s).

7. See note no. 3, U.S. General Accounting Office, p. 11.


9. See note no. 8, U.S. Bureau of the Census, p. 4, Table B. According to 1989 data, 51% of the mothers received all that was owed, 25% received partial payment, and 24% received no payment.


12. The General Accounting Office estimates that at least one quarter of all child support cases involve parents who live in different states. Another 11% are cases where the noncustodial father’s residence is unknown: both fathers living in different states from the ones in which their children live and fathers living abroad fall into this category. The custodial mothers in these cases were even less likely than those involved with in-state cases to receive child support. U.S. General Accounting Office. Interstate child support: Mothers report receiving less support from out-of-state fathers. HRD-92-39FS. Washington, DC: U.S. General Accounting Office, 1992, p. 3.


14. There are a variety of studies on the issue each with some methodological limitations. Several of the studies suggest that the typical noncustodial father has income in the $25,000-
to $30,000-per-year range, however. The most complete of the studies, which provides a breakdown by fathers’ race and marital status, is Garfinkel, I., and Oellerich, D. Noncustodial fathers’ ability to pay child support. *Demography* (May 1989) 26:219-33.


17. Occasionally, the paternity of a marital child can also be challenged. See, for example, *People in the Interest of L.J.*, 835 P.2d 1265 (Col. App. 1992).

18. For a historical perspective on these issues, see Krause, H. *Illegitimacy: Law and social policy*. Indianapolis, IN: Bobbs-Merrill, 1971.

19. Roberts, P. *Childhood’s end*. Uniondale, NY: National Child Support Assurance Consortium, February 1993. Available from the Child Support Assurance Consortium, 773 Fulton Avenue, Uniondale, NY 11553. This study examines the child support experience of 300 low- and moderate-income mothers. It documents what happened to the families when the fathers left and failed to pay support. It also examines the experience of the mothers in trying to obtain support. There was no significant difference in the findings across the four sites.


21. According to the Census Bureau, the women most likely to actually obtain child support are white, have attended four or more years of college, and/or have remarried. Those least likely to receive support are African-American, high school dropouts, and/or they never married. See note no. 8, U.S. Bureau of the Census.

22. Glick, P.C. American families: As they are and were. *Sociology and Social Research* (April 1990) 74:139-45.


27. See 42 U.S.C. §§602(a) (26) and 1396k. “Good cause” can be found when the case involves issues of domestic violence, when the pregnancy was a result of rape or incest, or when adoption is being considered, 45 C.F.R. §232.42.


30. U.S. Department of Health and Human Services, Administration of Children and Families, Office of Child Support Enforcement. *Sixteenth Annual Report to Congress*. Washington, DC: DHHS, 1993. The total number of full-time workers (Table 63) was divided by the full-time case load (Table 34) to obtain this figure.

31. In 1984, this provision was changed slightly to allow custodial parents to have the first $50 collected on time each month without reducing their AFDC grant or eligibility. 42 U.S.C. §602(a) (8) (A) (vi). A few states allow clients to keep even more than $50, U.S.C. §602(a) (28).

32. For a more detailed description and an overview of the legal challenges brought against these systems for their poor performance, see Roberts, P., and Mason, M. *Improving the quality of IV-D programs through litigation*. Chicago: National Clearinghouse for Legal Services, 1989. Available from the National Clearinghouse for Legal Services, 205 W. Monroe Street, 2nd Floor, Chicago, IL 60606-5013.


35. See 42 U.S.C. §666(a) (5) (B).


40. See, for example, Ohio Rev. Code Ann. §2301.35(B); Wash. Rev. Stat. 70.58.080.
42. See, for example, Ark. Code Ann. 9-10-108(a); Me. Rev. Stat. tit. 19, §§526.1 and 280.1(d); Wy. Stat. §14-2-109(c).
43. See, for example, Mt. Code Ann. §40-5-231 et seq.
44. See 42 U.S.C. §666(a)(2) and 45 C.F.R. §303.101(b)(2).
47. See, for example, Col. Stat. Ann. 26-13.5-101 et seq.
49. See 42 U.S.C. §666(b) (3) (A)
50. See 42 U.S.C. §666(a) (8).
51. See 42 U.S.C. §666(b) (5).
53. See, for example, Ohio Rev. Code §2301.35; Va. Code Ann. §20-60.5.
54. See, for example, Col. Rev. Stat. §26-13-114(7) (f).
61. See 42 U.S.C. §652(b) and 26 U.S.C. §6305.
63. See 42 U.S.C. §666(a) (1) and (a) (8).
64. See 42 U.S.C. §666(a) (7).
66. See, for example, Calif. Welf. & Inst. Code §11350.6.
67. For a more complete discussion, see Roberts, P. Securing medical insurance coverage for children through the child support enforcement system. Clearinghouse Review (1992) 25:1436.


74. See note no. 30, U.S. Department of Health and Human Services. This figure was obtained by dividing the average number of cases in which a collection was made (Table 39) by the total number of cases with an order (Table 35). If one looks at the entire IV-D case load, a collection is made in fewer than 20% of all cases (Table 39 divided by Table 35).


77. See, for example, H.R. 1961, 103rd Cong., 1st Sess., §101 (a) (1993).

78. Endorsers of most or all of these basic ideas include the National Commission on Children, the U.S. Commission on Interstate Child Support, the American Public Welfare Association, the National Conference of State Legislatures, and the Ad Hoc Committee to Improve Child Support.


80. See note no. 20, U.S. Commission on Interstate Child Support, p. xiii.


82. See, for example, National Conference of State Legislatures, Committees on Human Services and Law and Justice, Official Policy on Child Support Enforcement, 1992.


84. See note no. 20, U.S. Commission on Interstate Child Support, chapter 5.


86. See note no. 20, U.S. Commission on Interstate Child Support. The full Act is printed as Appendix E.


89. Hearings Before the Subcommittee on Human Resources of the Committee on Ways and Means, 102nd Cong., 2d Sess., June 30 and July 1, 1992.


91. Child support for children: Making it work. July 1992. Endorsers of this document included IV-D directors from Georgia, Guam, Indiana, New Mexico, Texas, and Virginia, as well as the Organization for the Enforcement of Child Support, Second Husbands’ Alli-
ance for Fair Treatment, Children’s Defense Fund, Association for Children for Enforcement of Support, Inc., and the Center for Law and Social Policy. This document was assembled by the Ad Hoc Committee on Child Support, and copies are available from the Center for Law and Social Policy, 1616 P Street, NW, Suite 50, Washington, DC 20036.

Abstract
This article reviews briefly the history of child custody decision making and describes current custodial arrangements in the United States. It examines both the manner in which parents and courts make decisions regarding custody and access, and the changes in visiting patterns in recent decades. The author discusses the impact of reforms in the law and the implementation of newer dispute resolution and educational interventions, and then makes recommendations for policy and practice.

The process for determining custodial arrangements for children of divorce is important to parents, their children, and society. Because children’s well-being is dependent, in large measure, upon the extent and quality of parenting received throughout their childhood, it is in society’s interest to ensure that children will have the best possible upbringing after divorce. The roles that parents are expected to assume in raising their children during marriage and after divorce have changed considerably over time from both a societal and a legal perspective, and continue to evolve today.

An understanding of how custody is determined is complicated by the fact that custody laws differ from state to state, and judicial and social practices vary considerably across the country. In addition, clear legal rules presuming that custody should be awarded to the father or to the mother have been replaced by less well-defined standards for making custody decisions. And as societal norms more recently have de-emphasized gender-linked differences in the workplace and within the family, uncertainty about the appropriate role of each parent in the child’s life after divorce has increased. The purpose of this article is to present the historical and current perspective of the process of custody determination, and to acquaint the reader with the continuing struggle in our society and legal systems to make custody decisions which will be beneficial to children and fair to their parents.

Custody Decision Making in Historical Context

In Roman law, children were viewed as the property of their father, who had the absolute power to sell his children and enter them into enforced labor. Mothers had no legal rights with respect to their children, even as guardians in the event of the father’s death.1 In later English common law, fathers continued to have near absolute powers, and the legal obligation to protect, support, and educate their children. Thus, in divorce, until the mid-nineteenth century, fathers had a right to custody as well, regardless of circumstances, and mothers had very restricted access to their children after divorce.1 A landmark change was initiated with the British Act of 1839,2 which directed the courts to award cus-
tody of children under the age of seven to mothers, and to award visiting rights to mothers for children seven years and older. This “tender years” doctrine advanced by the English lawyer and author Justice Thomas Noon Talfourd, though intended to determine custody only until the children were old enough to be returned to the father’s custody, provided the first major challenge to the paternal presumption.

In the seventeenth and eighteenth centuries, America had a patriarchal legal system, and upon divorce the paternal preference was applied to divorce custody cases. However, by the nineteenth century, the paternal preference was not as strictly applied as in English law. While many states adopted statutes modeled on the Talfourd Act, several states radically departed from English common law by enacting laws giving both parents equal rights to custody of the children.

Several major historical trends also converged to weaken the paternal presumption in the late 1800s, including society’s increasing concern for children’s welfare and the effects of the industrial revolution. As fathers sought work beyond the farm or village, mothers remained at home as primary caretakers of children. The resultant division of family responsibilities into wage earner and child nurturer influenced subsequent custody decisions. In addition, according to Mason, the movement toward a maternal preference was accompanied by an increase in the legal status of women in the United States during the nineteenth and twentieth centuries. The paternal preference was gradually replaced by a maternal preference, and by the 1920s, the maternal preference in custody determinations became as firmly fixed as the earlier paternal preference, both in statutes and in judicial decision making.

The assumption that mothers were better suited to raise children received an intellectual underpinning in the 1940s from Freudian psychoanalytic theory, which emphasized the mother’s role as “unique . . . the first and strongest love object . . . the prototype of all later love relations.” The subsequent body of theory and research on the development of infant attachments to the mother was equally influential in supporting the maternal preference. Later research indicating infants formed meaningful attachments to both of their parents by the middle of the child’s first year provided support to paternal claims for sole or joint custody.

The maternal presumption for custody remained firm for many decades, challenged only after the divorce rate began its dramatic rise in the 1960s. Spurred on by fathers’ claims of sex discrimination in custody decisions, constitutional concerns for equal protection, the feminist movement, and the entry of large numbers of women into the work force, which weakened the concept of a primary maternal caretaker, most states abandoned the maternal presumption by the mid-1970s in favor of gender-neutral laws. The Uniform Marriage and Divorce Act, approved in 1970, provided for a straight best interests standard, and was adopted in varying forms by the majority of states. For the first time in history, custody decisions were to be based on a consideration of the needs and interests of the child rather than on the gender or rights of the parent.

In attempting to define this newer but more vague standard of the child’s best interests, the ground-breaking concept of the psychological (rather than biological) parent, the need for continuity in parenting, and the need for expedited decision making were proposed as important criteria. And, consistent with the best interests focus, children’s own wishes with respect to custody were newly considered if they were deemed to be of sufficient age to form an intelligent opinion.

The historic shift to gender-neutral and best interests standards prepared the path for a new custody arrangement to emerge, that of joint custody. The concept of joint custody originated in the early 1970s from a small number of fathers, including mental health professionals, who desired continuity in their relationship with their children after divorce and strongly objected to being disenfranchised of their parental rights simply because divorce had occurred. Newly formed fa-
thers’ rights advocacy groups provided the impetus for a joint custody movement,” supported in the early 1980s by lay and scholarly publications which described various advantages of joint custody for society, parents, and children.16-21

The growing interest in shared custody as a means of preserving parental status and responsibilities was enhanced by several parallel developments. First, after focusing almost exclusively on mothers and children for decades, the child development field began, in the early 1970s, to study the father’s contributions to the children’s development. 22 The expanding literature suggested that fathers’ contributions to their children’s development had been undervalued, as had the importance of children’s attachment to their fathers. 23,24 Second, gender roles within families began to shift, particularly in dual-career families. More mothers began to work outside the home in addition to carrying out domestic responsibilities. To distribute the work load more evenly, larger numbers of fathers in dual-career families participated more fully in household and child-rearing responsibilities. While women still spend significantly more time than men caring for children and performing household tasks, 25-27 the increase in paternal involvement may reflect a social trend. 26 As a result, many mothers and fathers wanted fathers to play a greater role in their children’s lives after divorce. And third, as divorce engaged the attention of the nation, numerous studies documented the sense of loss and alienation experienced by noncustodial parents and children in traditional custody arrangements after divorce. 9,26-30

These converging trends, amplified by the fact that more than one million children were involved in divorce each year, resulted in pressure to pass new laws permitting joint custody as a viable option for postdivorce custodial status. In 1979, the first joint custody statute was enacted in California, followed by Kansas, and Oregon. 18 By 1991, more than 40 states had statutes in which joint custody was either an option or a preference, and most other states had recognized the concept of joint custody in case law. 31,32 The effect of such legislation has been to promote increasingly positive attitudes toward greater paternal involvement after divorce among parents, lawyers, mental health professionals, and judges. 33-35

Strong resistance to joint custody statutes remains among some feminists, 11,36,37 who advocate for primary caretaker standards which, in their view, reflect the distribution of labor regarding children during the marriage. As a result, several states have adopted language that favors the primary caretaker of the child in custody disputes. The prevailing basis at this time for determining custody is that of the best interests of the child.

Nearly all states have distinguished in their legislation, either explicitly or implicitly, between legal custody and physical custody.

Parents now have a variety of custodial arrangements available to them for providing care to their children after divorce. The struggle between various advocacy groups to influence custody legislation and practice, particularly feminists and fathers’ rights groups, is likely to continue for some time.

Type and Incidence of Custody Arrangements

Nearly all states have distinguished in their legislation, either explicitly or implicitly, between legal custody, which refers to decision making regarding the child’s health and welfare, and physical custody, which refers to the living arrangements of the child on a day-to-day basis. Table 1 describes different types of possible custody arrangements. Considerable variation exists among states in the definition of joint custody and the circumstances under which it is permitted or denied. 32 Because joint physical custody statutes do not require fifty-fifty time sharing or define how much time the child resides with each parent, actual resident time may range along a continuum from somewhat expanded visiting to equal time in each household. Most noncustodial parents seeking joint physical custody object to being a visitor in the child’s life and want their child to live with them at least part of the time rather than visit infrequently. One study found that, when joint-custody parents do not have equal time sharing, mothers always have the larger share of time. 34
## Table 1

<table>
<thead>
<tr>
<th>Types of Custody Arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sole Custody</strong></td>
</tr>
<tr>
<td>Sole legal custody</td>
</tr>
<tr>
<td>Sole physical custody</td>
</tr>
<tr>
<td><strong>Joint Custody</strong></td>
</tr>
<tr>
<td>Joint legal custody</td>
</tr>
<tr>
<td>Joint physical custody</td>
</tr>
<tr>
<td><strong>Divided Custody</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Split Custody</strong></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

The legal trend over the past decade has been to favor shared parental legal authority over shared residential custody. It is not possible to determine, on a national basis, what percentage of parents have joint legal or physical custody, as these data must be obtained from individual divorce decrees. Studies in California and Massachusetts indicate that the incidence of joint legal custody rises dramatically when statutes permit it, with three California studies finding joint legal custody in 80% to 90% of decrees in the mid-1980s. The number of joint physical custody orders also increases after enabling legislation is passed, but at a much lower rate. In the absence of national data, regional studies suggest that joint legal and sole maternal physical custody is today the most common legal custody arrangement in the United States, followed by sole legal and physical custody to the mother. Divided and split custody orders are rare, accounting for less than 5% of orders. While judges appear to share society’s belief that siblings should not be separated, such arrangements evolve informally between parents in the years after divorce, particularly with older children. Despite changes in law and social custom over two decades, physical custody arrangements have remained rather stable. In the 1970s, women had sole custody of the children 85% of the time, and men retained sole custody 10% of the time, with the remaining 5% a variety of other custody arrangements. Recent studies, based on census and survey data that reflect which parent has the child in residence more than half the time, indicate that father-custody figures may be closer to 15%. However, the incidence and type of joint physical parenting arrangements are difficult to determine. In divorce research,
living arrangements are categorized as joint physical custody when the child lives with one of the parents from 30% to 50% of the time.\textsuperscript{35,41,45,47} Using this criterion, between 17% to 34% of families shared physical custody in the mid-1980s in a jurisdiction (California) permitting joint custody.\textsuperscript{35,41,45} Because these are not random sampling studies, actual rates outside the San Francisco Bay Area and California may be lower. Studies in other states indicate that from 12% to 24% of children are visiting their fathers often enough to be considered living in shared residence arrangements.\textsuperscript{48,49} All studies find that shared custody is more common among more educated parents.\textsuperscript{35,41,46,47,50}

**How Are Custody Arrangements Decided?**

Decisions regarding custody arrangements range along a continuum from the very informal, those agreements reached privately between parents, to those decided through the most formal procedural process, by judicial determination following trial. Parents theoretically have the most control over the outcome of their private agreements if they each participate fully in the decision making. In contrast, parents have the most uncertainty and least control regarding the custody arrangement when the decision is made by a judge.

**Private Agreements**

The notion of parents making private decisions regarding custody and visitation is an appealing one, from both a psychological and an economic viewpoint. Parents can discuss their children’s particular needs and reach agreements reflecting those needs, parental desires, and family values, and they can do so without depleting their economic resources. Two California studies indicate that at least 50%\textsuperscript{35} and as many as 68%\textsuperscript{41} of parents make private decisions between themselves about custody and visiting. In the first study, an additional 30% settled these issues after further negotiation.

Although private decision making regarding custody and visitation can be advantageous for parents, one of the major disadvantages of this approach is that parents often make these important decisions without full knowledge of the options available to them and without detailing plans for the long run.\textsuperscript{41} For example, some parents base their custody agreement on the cultural assumption that the mother will have physical custody of the children, when, in fact, other options are available. In addition, many parents avoid discussion of the details of visitation because of fear of conflict. Educating parents regarding the options available to them and how to plan for the long term would be very useful to those parents who make private decisions.

**Mediation**

When parents are unable to settle custody and visiting arrangements on their own, other nonadversarial forums are available. Some parents turn to trusted advisors or decision makers outside the legal system—including extended family members, the clergy, or psychotherapists—for assistance. In the past decade, another dispute settlement option, custody or comprehensive divorce mediation, has become more widely available. In mediation, decision making remains with the parties. The role of the mediator is to assist parents in reaching mutually acceptable agreements. In contrast to adversarial proceedings, mediation emphasizes cooperative problem solving and addresses the needs of all family members.\textsuperscript{51-53}

Five states\textsuperscript{54} now mandate mediation as a first step process in attempting to resolve custody or visiting disputes. As of 1991, court-connected custody mediation was available in seven additional states on a discretionary basis or for specified circumstances.\textsuperscript{54} Strong objections to mandatory mediation have been voiced in feminist jurisprudence and by some feminist groups.\textsuperscript{37,55,56} Mediation is perceived by them as dangerous and disadvantageous to women, based on the belief that women in our society do not have sufficient power and resources to represent their views adequately in mediation. However, a growing body of mediation research does not support these claims. Studies of court-
related custody mediation indicate very high levels of satisfaction among both men and women, even when the agreements reached do not reflect their most highly desired outcome. Women are significantly more likely than men to report that mediation gave them an opportunity to express their views and increased their confidence in their ability to stand up for themselves with their ex-spouses. The vast majority of women indicate a willingness to use mediation services again to resolve disputes. Further, research thus far does not support the claim that women are either forced by mediation to give away custody or primary care “entitlements” or disadvantaged financially by the strategic use of custody conflicts. (See the article by Katz in this journal issue for a further discussion of mediation.)

Adversarial Processes
At a more formal level of decision making in custody disputes, parents must use the adversarial process to present their respective positions about what is in their child’s best interest. Attorneys advise clients about their rights and likely outcomes, and either assist their clients to reach negotiated settlements or encourage further litigation as a means of settling custody or visiting disputes.

When parents are unable to reach negotiated settlements, a range of the most formal legal processes requiring judicial determination is used for settling custody disputes, including judicial hearings, pretrial settlement conferences, and custody trials. In states without mediation programs, trials are a more common process for resolving disputes, representing an estimated 15% to 20% of all contested custody or visiting cases. In California, mandatory mediation has reduced the number of custody trials to between 1% and 5% of all contested custody cases. Adjudicated custody disputes are expensive (ranging from $30,000 to $300,000) and require up to three years for settlement. They can create massive upheaval in the lives of all family members, generating higher levels of mistrust and acrimony.

Do Your Own Divorce (In Pro Per)
In states with legislation enabling parents to reach agreements and file their own divorce papers (in pro per), the use of attorneys has decreased dramatically. In large part, disenchantment with the prohibitive costs, inefficiency, erratic outcomes, the acrimony of the adversarial divorce process, and the availability of excellent self-help resources account for this social trend. It is estimated that, in California, more than 50% of
divorce cases have one or both parties handling their own divorce 42 (including large numbers of parents disputing custody or access), 40 and in one jurisdiction with a predominantly lower socioeconomic population, close to 80% are not using attorneys. 71 Mandatory custody mediation services have enabled parents to reduce their costs and reliance upon attorneys or to bypass adversarial proceedings altogether. 62

Influences on Decision Making

Regardless of the level at which custody decisions are made, powerful influences on these decisions arise from statutory, judicial, cultural, educational, and research sources. Certainly most powerful in influencing custody outcomes are the statutes governing each state and the related case law which has evolved to test, modify, or expand the intent of the statutes. Although only a small percentage of litigating parents require judicial decision making, statutory law pervades all lower level decisions, as attorneys and parents negotiate “in the shadow of the law.” 72 The reliance upon legal and judicial precedent for making decisions is at the heart of the adversarial process and limits diverse or innovative outcomes. At the parental level, if a parent seeks an agreement which is at odds with state or case law, the parent’s attorney will either discourage that option 73 or advocate trial and appeal in an attempt to create new case law.

Cultural traditions and socioeconomic factors also heavily influence parental decision making about custody and visiting. The predominance of mother-custody families reflects the mainstream American cultural view that women should be the primary caretakers for children after divorce. In some ethnic minority groups, the role of extended family support systems and the strength of kinship bonds will be powerful determinants of the custody and visiting patterns. Among ethnic groups, for example, that encourage divorced mothers to move back into their parents’ home, the father’s role may become even more peripheral than in families where the mother lives alone with the children. 74 Socioeconomic factors, such as employment, education, and level of income, also influence decision making, particularly the amount of contact that nonresident parents will have with their children, in part because they determine such parents’ ability to maintain a separate residence large enough for the children or to travel for visits when separated by long distance.

The use of mediation to settle custody disputes may also influence parental decision making, although the direction and degree of this influence will depend upon the range of custody options available within a jurisdiction. Mediators describe various options for parents to consider when parents are at an impasse. This feature of mediation is accorded high levels of approval from both men and women. 57,59,76

Educational materials and parent education programs are also influencing the decision making of parents, attorneys, and judges. In many courtrooms across the country, divorce-related educational video presentations are required viewing for parents disputing custody or visiting matters. 77

Educational materials and parent education programs are also influencing the decision making of parents, attorneys, and judges.

Most materials seek to educate parents about the impact of divorce and conflict on their children, and children’s need for continuity in their relationships with both parents after divorce. The effectiveness of such materials or divorce-related parent education classes is relatively unknown, although one study found that noncustodial parents in an educational intervention group had more contact with their children one year later when compared with parents in the control groups. 78 And some books written for parents have influenced both parents and attorneys in making custody arrangements. 16,17,19,35

Research on the effects of divorce on children, including postdivorce parent-child relationships and the adjustment of children in sole and joint custody, has had widespread influence on decision making at parental, judicial, and legislative levels. 19,25,35,79 For example, the dissatisfaction of children in mother-custody homes with twice monthly weekend visitation and their sadness and/or depression resulting
from the diminished presence or the loss of the father from their lives provided a strong impetus in many jurisdictions to encourage increased access of the father to the child after divorce.

Debate continues regarding the extent to which social science should be used to influence legislation, judicial practices, or parental decision making. Because of flaws in methods and samples, divorce studies have been of varying usefulness, and most have used measures that assessed pathological child behaviors or symptoms to the exclusion of more healthy or coping behaviors. The studies have, for the most part, also neglected to obtain data from fathers and children, and have not measured parental adjustment and the quality of both parent-child relationships. While clearly there is growing convergence on a number of divorce-related findings, they currently remain inconclusive or contradictory with respect to a number of important issues, and continued well-designed research is needed. The current practice of feminist writers and fathers’ rights groups to use a particular research finding to bolster a political or gender-linked point of view while ignoring other data makes it difficult for legislators, judges, attorneys, or parents to obtain a balanced, informed view.

Factors Considered in Custody Determinations

When parents are able to settle custody or visiting disputes privately between themselves, they are free to rely upon any criteria of their own choosing for determining the outcome. Although it has not always been so, if parents stipulate to mutual agreements regarding their children, judges in many jurisdictions will automatically approve their custody or parenting plan. The trend in judicial practice in the past decade has been to de-emphasize the role of the state as “big brother,” passing judgment on privately ordered parenting arrangements simply because a divorce has occurred. In states requiring mediation, written parenting plans, or other educational interventions, judges more often limit their scrutiny to contested parenting matters.

Parents who cannot agree on custody and access become subject to the legal criteria for determining custody outcomes that have been adopted by their state’s legislature and related case law. The most common standard is the best interests of the child, a gender-neutral referent which allows mothers and fathers to compete for custody on an equal footing. In a few states the courts are directed to consider the primary caretaker standard as the major factor in determining custody. A third standard is the child’s preference for custody, if the child is of sufficient age and intelligence to make a judgment.

The Best Interests Standard

The Uniform Marriage and Divorce Act, presented by the commissioners on uniform state laws, defines the child’s best interests as a composite of the following factors: (1) the wishes of the child’s parent or parents as to his custody; (2) the wishes of the child as to his custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child’s best interest; (4) the child’s adjustment to his home, school, and community; (5) the mental and physical health of all individuals involved. The court shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child. This standard is simple to state and difficult to apply. There is not full consensus among legal, judicial, or mental health communities regarding what the child’s best interests are as they apply to a custody dispute. There are advantages and disadvantages to utilizing this criterion as the benchmark for custody decision making. The most important advantage of relying upon a determination of the child’s best interests is that decision making is centered on children’s developmental and psychological needs, rather than on parental demands, societal stereotypes, or legal tradition. The best interests standard indicated a willingness on the part of the legal system to consider custody outcomes on a case-by-case basis, rather than adjudicating children as a class or homogeneous grouping. To those
concerned with each individual child’s psychological and developmental well-being, this more discerning, individuated approach was highly appropriate.

A second advantage of the best interests standard is that it is potentially responsive to changing social or legal trends outside custody law. The best interests standard enabled fathers who had engaged in significant caretaking roles in the marriage to have an expanded role in the child’s life after divorce, and some fathers were appropriately awarded custody who would not have been considered under the maternal presumption rule. Further, the advances made by the physically handicapped or homosexuals in federal legislation have been reflected in a growing number of custody decisions awarding physical custody to disabled or gay parents, based on a consideration of the child’s emotional ties and needs.

The core problem of the best interests standard arises from lack of uniformity regarding which interests to consider, how to define and weigh the different factors, and how to account for children’s changing developmental needs over time. The effect of such unclarity is that attorneys, court workers, and custody evaluators may consider and emphasize different factors or interpret the same concepts, such as continuity or stability, in diametrically opposed ways designed to benefit the parent they represent or favor. Without clear guidelines, judges often make these difficult decisions by relying upon their own subjective value judgments and life experiences, resulting in unevenness in outcomes across or within jurisdictions.

To make the decision-making process more uniform, a number of states have adopted provisions listing multiple criteria to be considered in determining the child’s best interests. Michigan, for example, adopted 11 such criteria, including the parents’ mental and physical health, and the love and emotional ties existing between parents and child. With the wider adoption of such criteria, there is likely to be more uniformity in outcomes and less uncertainty in bargaining. Proponents of the case-by-case approach argue that, with good criteria, appropriate information about the family gathered by an impartial evaluator, and reliable accessible social science and developmental research, judges can make appropriate judgments which respect children’s needs.

Some feminist critics argue that the best interests standard disadvantages women by discounting the importance of primary caretaking usually undertaken by women, reduces women’s bargaining power, complicates divorce negotiations, and encourages unnecessary litigation because of the uncertainty of outcome. The best interests standard does not inherently discount the importance of primary caretaking. Indeed, in many states, the primary caretaking role is one of the criteria to be considered in determining custody. It does, however, expand beyond primary caretaking functions to include a consideration of the child’s age, gender, emotional ties to each parent, parental adjustment, and the quality and meaning to the child of each parent-child relationship. In this sense, the best interests standard dilutes the presumption that the primary caretaker shall continue exclusively in that role after divorce, and thus it receives the support of fathers’ rights groups and many professionals who believe there should be continuity in the relationship between both parents and child after divorce, unless found to be inappropriate. Recent research indicates that women do not appear to be disadvantaged in the bargaining process by the best interests standard, that is, the uncertainty of custody outcomes does not cause women to trade off child support to avoid risk. The existence of mandatory child support guidelines reduces further such potential bargaining inequities. Earlier in this century, the maternal presumption rule undoubtedly deterred legal action, even when maternal custody was perceived to be deleterious to children. The larger philosophical question is whether one favors an approach that focuses on children’s interests or an approach that favors greater simplicity and efficiency in the legal system and gender-linked outcomes. In states relying on the best interests standard, child-focused, court-connected interventions such as media-
The future of children

The Primary Caretaker Standard

At the urging of some feminist groups, several states (for example, Minnesota, Washington, and West Virginia) have adopted language which favors the primary caretaker of the child during the marriage in determining contested custody outcomes. While the concept of the primary caretaker is technically gender neutral, there are many who perceive this approach as a return to a disguised maternal preference standard. Feminist critics acknowledge that the primary caretaker standard is a mechanism for protecting mothers’ greater interest in retaining custody. Some feminists also claim that the primary caretaker standard is better for young children and protects the child’s primary attachment to the mother. If divorce occurs during the child’s first three years, the child has been cared for almost exclusively by the mother, and a healthy attachment is in evidence, this argument may be compelling.

Opponents of the primary caretaker standard cite developmental research which demonstrates the child’s strong attachments to both parents in the first year of life and note that research suggests at best a weak preference for a primary caretaker standard for children under the age of five. No empirical evidence supports the distinction between primary and secondary caretaker after age five, as children’s greatly increased social, cognitive, and emotional maturity creates changes in the meaning of attachments and parent-child relationships to the child. The primary caretaker is defined by the parental activities undertaken during marriage, including which parent spent the most time preparing meals, bathing and dressing, purchasing clothes, obtaining medical care, putting the child to bed, disciplining, educating, and teaching elementary skills such as reading. While fathers’ participation in family care has increased, it is well documented that, in most families, women still spend more time than men performing physical caretaking tasks, even when both parents are employed.

In the primary caretaker proposals advanced by some feminists, there is little, if any, credit given for the activities and interactions more typically undertaken by men, including playing, encouraging interest in sports, coaching teams, providing intellectual stimulation and homework assistance—activities that also have real and symbolic meaning to children. Further, no credit is given for earning income to support the family and its activities, despite the fact that mothers and fathers see this during marriage as fathers’ most important function on behalf of the family. The issue is further clouded by evidence that many women say they want their husbands to be more involved in child-rearing activities, yet exclude them from these activities in the marriage or criticize fathers’ parenting efforts as a means of retaining power and control in their perceived domain.

The most serious problem with use of the primary caretaker standard is that it ignores the quality of the relationship between the child and the primary caretaker in favor of counting hours and rewarding many repetitive, concrete behaviors. Indeed, the most important emotional and interactive behaviors promoting children’s development and psychological, social, and academic adjustment, such as love, acceptance, respect, encouragement of autonomy, learning, and self-esteem, moral guidance, and absence of abusive interactions, are not considered. A second problem is that the primary caretaker standard disadvantages men, who are essentially punished after divorce for being the primary wage earner, even if their caretaking activities have been considerable.

A third problem is that the psychological adjustment of the primary caretaker is not taken into consideration, despite evidence that it is a central factor in the postdivorce adjustment of children. Whether male or female, primary caretakers range from being abusive, neglectful, and emotionally disturbed to being the most stable and nurturing of parents. In relying upon the primary caretaker standard, the child’s core interests may be dismissed in custody decisions. It is cer-
tainly appropriate, however, in determining the child’s best interests, to consider the range and quality of each parent’s care, activities, and interactions with the child during the marriage.

**The Child’s Preference**

In many states, the child’s preference is either given great weight or is determinative in a custody dispute, if the child is deemed to be of sufficient age and capacity to form an intelligent opinion. While popular belief is that the court will accord great weight to the preference of children over the age of 14, statutes are not specific in this regard, and judges may include the reasoned arguments of younger children in their deliberations as well. No body of legal literature exists regarding children’s wishes, primarily because the courts have focused historically on parental rights rather than on children’s rights or interests. As a result, there is no uniformity regarding how children’s preferences are to be considered and weighted. Some judges rely upon custody evaluators and children’s counsel to present children’s preferences directly to the court and do not interview children themselves. Other judges believe that judicial interviews with older children and adolescents humanize the process and provide the judge with a better “feel” for the case. When judges do interview children in chambers, they must consider whether the session is confidential or if a court reporter is to be present and whether they have adequate interview skills to elicit reliable and sufficient information from children who may be anxious and reticent to be forthcoming in a formal, adversarial setting.

**Access as a Primary Factor in Custody Determinations**

During the decades of maternal presumption, the limited visitation given to noncustodial fathers reflected the perceived insignificance of the father in children’s development. Many fathers visited infrequently or ceased contact because of lack of interest, personality problems, maternal opposition to visits, long distances, limited income, or the belief that they were not important to their children. Other fathers became infrequent visitors because of the pain of loss experienced each time they visited and the increasing superficiality of the father-child relationship over time. The increased number of divorces in the 1970s and new research on children of divorce forced a reexamination of the concept of limited access. Early studies of children in maternal custody described children’s intense dissatisfaction with infrequent contact with the father, the diminution over time of the father’s importance to the child, and reported a positive relationship between visit frequency and children’s adjustment, particularly for boys, unless the parent was poorly adjusted or extremely immature. In response to these findings, legislation encouraging “frequent and continuing contact” between noncustodial parent and child was passed in many states, and visitation patterns slowly expanded in the 1980s. Increased access was often achieved by adding a weekly mid-week overnight to the every-other-weekend pattern, thereby shortening the number of days children waited between visits and doubling the amount of time that children were spending on a monthly basis with their noncustodial parents, usually fathers, from less than 15% to nearly 30%.

It is not possible to determine, on a national basis, how much time children are actually spending with their fathers at present, although a significant trend toward more contacts has emerged in the past decade. Early reports of families separated in the 1970s indicated that approximately half of the nation’s children were not seeing their fathers at all several years after divorce, and very few were visiting their fathers once a week or more. These data were collected before influential divorce research was available and prior to the adoption of joint custody or “frequent and continuing contact” statutes in most states. Compared with noncustodial fathers, noncustodial mothers have generally maintained higher levels of contact with their children, although along many dimensions, mothers without
custody cannot be considered comparable to fathers without custody.  

It is now apparent that fewer children than previously reported have no contact with their fathers after divorce, and more children are experiencing weekly contacts. A 1988 national data set indicates that 18% of the children had no contact in the prior year; 25% saw their fathers one or more times a week. Recent regional studies also suggest the level of contact between divorced fathers and children is further increasing in that only about 10% of nonresident parents had not seen their children in the previous year. Separated parents who never married have much higher rates of no contact than do divorced noncustodial parents. Contacts with fathers diminish with time and distance after separation, although recent studies suggest considerable stability in patterns of contact between fathers and children in the first several years after separation, particularly when fathers share physical custody. If parents do not establish the visitation pattern immediately after separation and do not include overnights in the schedule, the likelihood of visits continuing in the future is considerably diminished. 

The importance of noncustodial parents’ continued contacts after divorce has been questioned by research finding no relationship between visit frequency and adjustment. Newer research indicates that the psychological adjustment of the custodial parent and the extent of conflict during the marriage and after divorce are more profound influences on children’s adjustment than visit frequency. However, a number of studies suggest that continued father involvement after divorce is advantageous to children under certain circumstances. When the relationship with the noncustodial parent is a positive one, children with expanded and flexible visitation are more content and satisfied, and view the divorce less negatively. And when the custodial mother approves of the father’s continued contacts with the child, the link between visiting and child adjustment is strong, particularly for boys. Economic advantages accrue as well, in that greater contact between child and father is associated with higher child support compliance, payment of more supplemental child expenses, and less father dropout in the longer term. Research is needed to assess the longer-term effects of noncustodial parent involvement for children of different ages and gender, using a broader range of variables including father-child closeness, legal and parent conflict, parent social and psychological adjustment, the child’s self-esteem, sense of being loved and supported, and academic and social functioning.

**Specificity and Modifiability of Custody and Access Orders**

Most custody orders simply state that the father will have “reasonable visitation.” They do not specify what the actual monthly visiting pattern, holidays, and vacations will be. The failure to develop and specify detailed parenting plans creates uncertainty and conflict between parents, and anxiety and confusion for children about when they will next see the noncustodial parent. In the absence of specific orders, the nonresident parent must make a request to the custodial parent each time access to the child is sought. When the custodial parent remains angry after divorce, such requests are often denied. Lack of specificity in visitation also leads to considerable postdivorce litigation (or mediation), particularly before summer vacations and holidays. While some attorneys and judges continue to believe that specific parenting plans create rather than lessen conflict, this view is not supported by the experience of mediators and mental health professionals working with di-
Given the opportunity, the vast majority of disputing and nondisputing parents want to develop a structured parenting plan or schedule because they recognize the benefits to their children of a stable, known schedule and lessened conflict, and they appreciate being able to plan their lives with and without their children. Nonadversarial forums can help divorcing or divorced parents reach agreements of this kind.

In the past, visiting orders were not generally expected to be modified over time. Every-other-weekend visitation was expected to meet the developmental needs of the child no matter what the age, and of the family no matter how it changed after divorce. Custody or visiting orders could not be changed within the legal system unless they met the test of certain material changes of circumstances specified within each state. Although parents have always been entitled to modify their custody order by private agreement, most states have had limited criteria defining a change of circumstance. It is striking that the changing developmental needs of the child do not qualify as a change of circumstance in most states.

In California, approximately half of the contested custody and visiting cases before the court now involve children below the age of seven. Thus, it is important to reconsider the circumstances under which parents can petition to change visiting or custody orders. A parenting plan that meets the developmental needs of a fifteen-month-old child will not be optimal for a six-year-old. As statutes have permitted joint custody arrangements and as visiting patterns have expanded, many parents and the professionals that assist them have recognized the need for flexibility in custody and visiting agreements to accommodate the child’s changing developmental needs. In mediation, parents will develop a parenting plan tailored to their two-year-old’s immature sense of time and anxieties arising from long separations from either parent. Such parents generally agree to shift to a more appropriate plan as the child matures or to return to mediation if necessary. Flexibility is not just a need of young children; adolescents sometimes express a strong desire to change custody, particularly when they have lived in sole custody with one parent. Yet most states do not recognize the child’s wish to change custody as a change of circumstance, whether the reason is to develop a closer relationship with the other parent, to remove oneself from the household of an angry, punitive custodial parent, or to escape an alcoholic step-parent. Unless the parents can agree privately or settle in mediation, there may be no remedy for such youngsters.

Policy Recommendations in Custody Determinations

Recommendations for policy emerge from the accumulating body of divorce and mediation research focusing on children, families, and programs; observations of the shortcomings of the adversarial system in dealing constructively with divorce; and years of thoughtful input from the judges, attorneys, mediators, and mental health professionals who assist families. It is clear that parents and the judicial, legal, and mental health professionals who assist them need reliable, practical information and guidelines about divorce and children to help them make decisions that will promote their children’s postdivorce adjustment and well-being. In addition, parents should have available a hierarchy of programs or services that will address their particular needs and conditions, reduce their reliance when possible upon adversarial processes, contain or reduce their conflict, and enable them to settle divorce disputes as early and as efficiently as possible.

Parent Education Programs

Educational programs designed to provide divorcing parents with information regarding the potential effects of conflict and divorce on their children, various custodial and parenting arrangements available, and communication techniques that keep their children out of the middle of conflicts are important. Such programs can be offered through nonprofit agencies, churches, or by the courts. Good resource programs could include:

Many parents and the professionals who assist them have recognized the need for flexibility in custody and visiting agreements to accommodate the child’s changing developmental needs.
and training materials integrating written, video, and discussion elements have been developed to ensure balanced, comprehensive programs. It would be optimal if all divorcing parents participated in these brief programs, but participation should be required of all parents disputing custody or access prior to entering mediation or initiating litigation.

The increasing number of parents doing their own divorce indicates the need for video orientation programs which provide basic information about court processes, legal rules and entitlements, and community resources available for further assistance. Such programs should be multilingual and provided free of charge by the courts and the bar.

In states offering or mandating custody mediation, orientation sessions should also be mandatory to educate parents about what mediation is and how it works.

Mandatory Mediation

Mediation should be not only widely available but also mandatory as a “first step” for all parents disputing custody and access before continuing adversarial custody proceedings. The vast majority of disputes seen in mandatory mediation involve not custody, but how much time the noncustodial parent, usually the father, will spend with the children and what the pattern of contacts will be. Such disputes are generally more easily settled than custody disputes. However, settlement of issues during the mediation process should never be mandatory. Other contested issues, such as substance abuse allegations or whether a parent’s mental state requires supervised visitation, require more time and evaluation. Even with these more difficult issues, mediation is often an effective intervention.

From a public policy standpoint, the advantages of mandatory custody mediation include acceptably high settlement rates, ranging from 50% to 75%, often following one to two hours, and a much greater likelihood of reaching agreement prior to a court hearing, compared with parents who do not attempt mediation. Some mediation settings report handling a greater case load while saving judicial resources and court overhead. Further, because parents who participate in mediation more often both report feeling they have “won” in reaching settlement, compared with parents who rely on litigation and view the outcome as producing a winner and a loser, the mediation alternative may reduce acrimony and relitigation.

Mandatory mediation in the public sector requires protective policies for those unable or afraid to negotiate on their own behalf, even with preparation of counsel. Feminists have expressed legitimate concern about the effect of domestic violence on women’s bargaining abilities, and some advocate that mediation should never be attempted if any history of interspousal violence is alleged. Many proponents of mediation take these concerns seriously but also remind us that women, particularly those of color and low socioeconomic status, have not been adequately protected or represented in the adversarial system and should not be excluded from mediation if they wish to participate. Some argue that mediation may help defuse the rage of an abusive spouse and that effective screening measures, specialized protocols and procedures (including separate sessions and the use of restraining orders), and the readiness to terminate mediation in favor of formal investigations when indicated are critical.

In response to feminist criticisms, California adopted legislation addressing feminist concerns, including separate mediation sessions where there is a history of domestic violence, bringing a “support” person into mediation if the party desires, and procedures within court mediation settings designed to ensure the safety of domestic violence victims. Several regional planning coalitions of court mediation personnel, feminists, researchers, and domestic violence specialists have developed
protocols for identification, safety, screening, and interviewing. There is widespread agreement that effective screening procedures should be instituted in all mandatory mediation programs.

From a policy standpoint, several additional considerations are important in recommending mandatory mediation. It is essential that mediators have specialized, intensive training and experience in divorce and custody matters, in domestic violence assessment, and in divorce mediation. Training and experience as a therapist, evaluator, lawyer, probation officer, or judge does not adequately prepare one to be an effective mediator. Further, settlement rates should never be considered as the sole indicator of the success of a program. Many experienced mediators believe that settlement rates in excess of 85% in custody disputes may reflect administrative or mediator coercion to settle and diminish the likelihood of client self-determination. Serious issues, such as substance abuse, impaired mental capacity, and child neglect and abuse, are often more appropriately resolved in more adversarial proceedings, including custody investigations, judicial settlement conferences, hearings, and trials.

Mediation should also be available for those who seek assistance in developing or changing parenting plans for their children. For parents who are without formal disputes but need information and assistance, a premediation consultation could be beneficial and might prevent conflict escalation. Such consultation services could be provided by courts or agencies in conjunction with educational programs, with backup mediation available for parents requiring dispute resolution services. A hierarchy of services targeted at different levels of parental conflict is likely to be the most effective combination, from both an economic and a parent-child perspective.

Mediation of Financial Disputes

Comprehensive divorce mediation, when provided by skilled, knowledgeable mediators, is more cost-effective than adversarial processes, results in equitable agreements more satisfactory to its participants, produces more compliance, contains conflict, and facilitates more cooperative communication. Clients in court-connected custody mediation often express the desire for mediators to resolve their support issues as well. Given the increasing number of clients handling their own divorces, mediation services should be available and affordable for settling simple property and support matters. Most states require that custody and financial disputes be settled in separate proceedings. With the adoption, in many states, of child support guidelines that tie the amount of child support to the nonresident parent’s time with the child, these two issues have become inextricably linked. The advantage of comprehensive mediation is the ability to explore financial and child-related issues separately on their own merits in one setting, acknowledging their interdependency, but reaching equitable agreements within each sphere.

It should be noted that neither custody mediation nor comprehensive divorce mediation produces significant changes in adult or child adjustment.

Special Master and Arbitration Programs

A small group of divorcing parents, estimated to be 10% to 15% in number, remain in high conflict after divorce. Members of this chronically litigating group use a disproportionate amount of the court’s time and resources, and deplete their own economic resources and energies. Several California jurisdictions have initiated a special master program in an attempt to settle the continuing stream of postdivorce child-rearing disputes presented by this population outside the court. While some of these parents have a history of serious problems and chaotic functioning, others of these parents
have widely divergent child-rearing goals and values, and disagree about almost everything.

A special master is a hybrid court officer who has the authority to make certain decisions related to parenting and visiting that the parents cannot make themselves. Special masters’ decisions and subsequent court orders are subject to judicial review upon appeal of a parent. The majority of special masters are mental health professionals with considerable training and experience in divorce, custody evaluations, child development, parenting issues, and mediation. Different models of decision making are used by special masters, the most common of which is a mediation/arbitration model. In this model, the special master first attempts to mediate parents’ disputes; but, if parents cannot reach agreement in a brief mediation, the special master then prepares a written decision, which can become a court order.

Special masters are generally appointed upon recommendation of the parties’ attorneys or judges when parents have a history of repeated litigation and high acrimony, in recognition of their very limited ability to communicate and cooperate about their children. It is recommended that pilot projects which assess different models of decision making for chronically litigating parents and which incorporate education, mediation, and arbitration roles be established and evaluated. Special educational materials for this difficult group of parents, and guidelines for parental behaviors at transition, on the phone, at children’s school, and at social events should be developed and evaluated.

Judicial Education

With the latitude given to judges under the “best interests of the child” statutes for custody decision making, judicial education in basic child development concepts becomes extremely important. While judges in some jurisdictions receive specific case law and procedural training when they move onto the family law bench, few receive education that would enable them to make appropriate decisions regarding developmentally sensitive visiting or custody plans for children of different ages. Curricula including information about attachment, separation anxiety, continuity in relationships, and children’s needs during and after divorce with particular emphasis on the implications of such concepts and data for judicial decision making are necessary to achieve more uniformity and quality in judicial orders. Panels of neutral developmental/clinical consultants should be available to judges to explore with them the particular developmental and research issues raised by difficult custody cases so that the judiciary has a defensible, reasoned basis for making decisions.

The Most Appropriate Standard

The most appropriate statutory standard for making decisions in custody disputes is the best interests of the child. Given the increasingly larger diversity of family styles, values, and traditions in our culture, decisions about children and parent-child relationships after divorce should be case-by-case decisions. The best interests standard can be more thoughtfully applied when states adopt criteria that delineate important factors to be considered, and decisions will achieve more uniformity with appropriate judicial education. Finally, if educational and mediation programs are available in all jurisdictions, parents will be encouraged to focus on their children’s needs, and the majority will settle the issues of access and custody without reliance upon adversarial processes.

Conclusions

Over the past century, the basis in law for custody decision making has shifted from a paternal presumption to a maternal presumption to current gender-neutral laws which rely upon a consideration of the best interests of the child in determining custody outcomes. While joint legal and physical custody statutes now allow parents to share child-rearing time and responsibilities after divorce as an alternative to awarding sole custody to one parent, the most common physical custody arrangement remains that of maternal physical custody. Despite profound societal changes in the past two decades which have affected family functioning and parental care traditions, it would appear that the majority of custody decisions continue to reflect, to a large degree, deeply embedded cultural traditions that view mothers as primarily responsible for their children, both during marriage and after divorce. As a consequence, mothers usually take the extremely
The Determination of Child Custody

challenging responsibility of raising their children on their own with little assistance.

The number of families with shared residential custody arrangements is increasing, particularly in states with laws supportive of continuity in children’s relationships with both parents after divorce. Visit frequency has increased between fathers and children over the past decade, in part because of research documenting the psychological and economic impact for many children of infrequent contact with fathers and because of a societal trend toward somewhat more father involvement in child rearing during the marriage. Fewer fathers are dropping out of children’s lives in the years after divorce, perhaps because expanded visitation patterns enable interested fathers to maintain more meaningful relationships with their children after divorce, even if they do not have joint physical custody.

The best interests of the child standard remains firm in most states. It is argued that the best interests standard is more beneficial for children than the primary caretaker standard because it allows for a consideration of the quality of the relationships between the child and each parent, and parental psychological adjustment, critical factors in promoting children’s healthy adjustment. Current gender-neutral laws, combined with the best interests standard, allow parents, evaluators, and judges to reach decisions about children on a case-by-case basis which address their individual developmental and psychological needs. It is expected that, if courts have developmentally sound and uniform criteria to be considered in determining the child’s best interests, there will be more clarity in the negotiation process and increasing uniformity in decision making.

While divorce research continues to enrich our understanding of the impact of divorce on children and on parent-child relationships, there is much to learn. Although child development research has been valuable in informing decision making, we lack a full understanding of how custody arrangements should be shaped over the years to reflect the changing developmental needs of the child, and our body of knowledge does not illuminate what kinds of custody arrangements would be suitable to the individual child within the individual family.

It is evident that, in settling custody and visiting disputes, the adversarial legal system, pitting parent against parent, is unwieldy, expensive, unsatisfactory, and unnecessary for large numbers of divorcing parents wanting to reach good agreements about their children. To diminish rather than escalate conflict, to enable parents to focus not on parental rights but on what is best for children, and to increase the likelihood of mutually acceptable custody and visiting agreements, parents need a range of educational and mediation services. While more research assessing the efficacy of these newer interventions is needed, initial studies indicate that they facilitate dispute settlement, contain or reduce conflict, promote more cooperative communication, and result in high levels of satisfaction in mothers and fathers. Continued efforts are needed to develop and evaluate programs for divorcing parents with special needs, particularly victims of domestic violence, and parents with high levels of continuing conflict after divorce.

As society’s cultural and family traditions continue to change, it is likely that child custody and visiting arrangements will reflect, at least in part, these evolving attitudes and customs. The effort to ensure that children have postdivorce parenting arrangements which promote good social and psychological adjustment is an ongoing one, involving dialogue and debate at all levels. Our children deserve no less than this.


2. See 2 and 3 Victoria, 1839. The British Act of 1839 amended the law relating to the custody of infants.


9. See note no. 1, Roth, for more extensive discussion, and Watts v. Watts, 350 N.Y. State 2d 285, 290-91 (Family Court 1973), Devine v. Devine 398 So. 2d 686 (Alabama 1981), which held that paternal preference laws were a form of sex discrimination and violated fathers’ equal protection rights under the Fourteenth Amendment.


21. See note no. 10, Bartlett and Stack.


54. California, Maine, New Mexico, Oregon, and Wisconsin mandate custody mediation for disputing parents. In Alaska, Colorado, Connecticut, Illinois, Iowa, Kansas, and Louisiana, mediation is available on a discretionary basis. See note no. 32, Appendix A, for specific statutes and practices.


63. Estimated range obtained in past several years from judges and attorneys in many jurisdictions, and from unpublished data of the author.


82. The 1970 Uniform Marriage and Divorce Act (UMDA) Sec. 402.

83. Michigan Compiled Laws Annual, at 722.23 a-k.


91. Duryee, M., director, Alameda County Family Court Services, Superior Court of Alameda County, Oakland, CA. Personal communications, 1992-1993.


115. For example, Guidelines for Family Court Service Interventions when there are allegations of domestic violence (Family Court Services, 1221 Oak St., Room 260, Oakland, CA 94612); Los Angeles County Domestic Violence Guidelines (Family Court Services, Los Angeles County Superior Court, 111 N. Hill St., Los Angeles, CA 90012).


119. *Manual for appointment of special masters*. Superior Court of California, County of Santa Clara, San Jose, CA.

120. *Qualifications for special masters*. Marin Task Force on Special Masters, Marin County Superior Court, San Rafael, CA.
Life-Span Adjustment of Children to Their Parents’ Divorce

Paul R. Amato

Abstract

Children who experience parental divorce, compared with children in continuously intact two-parent families, exhibit more conduct problems, more symptoms of psychological maladjustment, lower academic achievement, more social difficulties, and poorer self-concepts. Similarly, adults who experienced parental divorce as children, compared with adults raised in continuously intact two-parent families, score lower on a variety of indicators of psychological, interpersonal, and socioeconomic well-being.

However, the overall group differences between offspring from divorced and intact families are small, with considerable diversity existing in children’s reactions to divorce. Children’s adjustment to divorce depends on several factors, including the amount and quality of contact with noncustodial parents, the custodial parents’ psychological adjustment and parenting skills, the level of interparental conflict that precedes and follows divorce, the degree of economic hardship to which children are exposed, and the number of stressful life events that accompany and follow divorce. These factors can be used as guides to assess the probable impact of various legal and therapeutic interventions to improve the well-being of children of divorce.

Children have always faced the threat of family disruption. In the past, death was more likely to disrupt families than was divorce. Around the turn of the century in the United States, about 25% of children experienced the death of a parent before age 15, compared with 7% or 8% who experienced parental divorce.¹ As a result of the increase in longevity, the proportion of dependent children who lost a parent through death decreased during this century; currently, only about 5% of children are so affected. But the divorce rate increased over this same period, and at current rates, between two-fifths and two-thirds of all recent first marriages will end in divorce or separation.² The high rate of marital dissolution means that about 40% of children will experience a parental divorce prior to the age of 16.³ Although a substantial risk of family disruption has always been present, today it is much more likely to be caused by divorce than by death.

Americans traditionally have believed that a two-parent family is necessary for the successful socialization and development of children. Consequently, it was assumed that parental death leads to many problems for children, such as
delinquency, depression, and even suicide in later life—assumptions that appeared to be confirmed by early research.4

More recent studies indicate that, although parental death disadvantages children, the long-term consequences are not as severe as people once believed.5 Nevertheless, many social scientists assumed that children who “lost” a parent through divorce experienced serious problems similar to those experienced by children who lost a parent through death. Furthermore, whereas the death of a parent is usually unintended and unavoidable, marital dissolution is freely chosen by at least one parent. Consequently, the question of the impact of divorce on children took on moral overtones. These concerns, combined with the dramatic increase in the rate of divorce during the last few decades, resulted in a proliferation of studies on the effects of divorce on children.

This research literature does not always lead to firm conclusions. Many gaps exist in our knowledge, and weaknesses in study methodology mean that many findings are tentative at best. Nevertheless, a consensus is beginning to emerge among social scientists about the consequences of divorce for children. And, in spite of its limitations, this knowledge can help to inform policies designed to improve the well-being of children involved in parental marital dissolution.

A consensus is beginning to emerge among social scientists about the consequences of divorce for children.

How Do Researchers Study Children and Divorce?

To understand how divorce affects children, social scientists predominately rely on two research designs: cross-sectional and longitudinal.6 In a cross-sectional study,7 researchers compare children from divorced and continuously intact two-parent families at a single point in time.5 In a longitudinal study, researchers follow children over an extended period of time following marital dissolution.8 Longitudinal studies usually include a comparison group of children from two-parent families as well. Although both types of research designs have methodological advantages and disadvantages, they provide useful information about adjustment.5,8,9 Cross-sectional studies provide a “snapshot” that shows how children of divorce differ from other children, whereas longitudinal studies allow us to understand how children adjust to divorce over time.

In addition to studies of children, social scientists have studied the long-term consequences of divorce by comparing adults who experienced divorce as children with those who grew up in continuously intact families. Researchers also have carried out a small number of longitudinal studies in which children of divorce are followed into early adulthood.10

Three types of samples appear in the literature.11 Clinical samples consist of children or adults who are in therapy or counseling. Clinical samples are useful in documenting the kinds of problems presented by offspring who adjust poorly to divorce, but these results cannot be generalized to the broad majority of people who never receive professional attention. Researchers obtain convenience samples of children or adults through community organizations (such as single-parent support groups) or other local sources. Convenience samples are relatively easy and inexpensive to obtain, but people in these groups may be atypical in unknown ways. Researchers select random samples of children or adults in a scientific manner such that the sample represents a clearly defined population within known limits.12 These samples may be obtained from schools, court records, or households. Random samples allow us to make valid generalizations about the majority of children who experience divorce.13 Unfortunately, these types of samples are also the most difficult and expensive to obtain.

Researchers match (or statistically equate) children or adults in the two samples (divorced and intact) on key variables known to be associated with both divorce and adjustment.14 For example, parents of low socioeconomic status are more likely than other parents to divorce and to have children who exhibit behavioral and academic problems. Consequently, it is necessary to make sure that
Researchers then select outcome measures that reflect children’s and adults’ functioning, or well-being. Common outcome measures for children include academic achievement, conduct, psychological adjustment, self-concept, social adjustment, and the quality of relations with parents. Common outcome measures for adults include psychological adjustment, conduct, use of mental health services, self-concept, social well-being, marital quality, separation or divorce, single parenthood, socioeconomic attainment, and physical health.

Social scientists gather information about children by interviewing one or both parents, questioning the child’s teachers, administering tests to the child, or directly observing the child’s behavior. Information is usually obtained from adults by interviewing them. Researchers then compare outcomes for those in the divorced and the continuously intact family groups. Statistical criteria are used to judge if differences in outcome measures are large enough to rule out the possibility of their being attributable to chance alone. Observed differences that are too large to be attributable to chance are assumed to be caused by divorce, or at least, by some factor(s) associated with divorce.

Unfortunately, because these studies are correlational, it is difficult to know for certain if divorce is responsible for observed differences between groups. It is always possible that groups might differ in ways that researchers cannot anticipate, measure, and control. For example, an unspecified parental personality characteristic might increase the risk of both divorce and child maladjustment. Firm conclusions about causation require experimentation; because we cannot randomly assign children to divorced and nondivorced families, our beliefs about the causal impact of divorce remain tentative.

How Do Children of Divorce Differ from Other Children?

Those who delve into the published literature on this topic may experience some frustration, as the results vary a good deal from study to study. Many studies show that children of divorce have more problems than do children in continuously intact two-parent families. But other studies show no difference, and a few show that children in divorced families are better off in certain respects than children in two-parent families. This inconsistency results from the fact that studies vary in their sampling strategies, choice of what outcomes to measure, methods of obtaining information, and techniques for analyzing data.

A technique known as meta-analysis was recently developed to deal with this very situation. In a meta-analysis, the results of individual studies are expressed in terms of an “effect size” which summarizes the differences between children in divorced and intact groups on each outcome. Because these effect sizes are expressed in a common unit of measure, it is possible to combine them across all studies to determine whether significant effects exist for each topic being reviewed. It is also possible to examine how design features of studies, such as the nature of the sample, might affect the conclusions.

Children in divorced families, on average, experience more problems and have a lower level of well-being than do children in continuously intact two-parent families.

In 1991, Amato and Keith pooled the results for 92 studies that involved more than 13,000 children ranging from preschool to college age. This meta-analysis confirmed that children in divorced families, on average, experience more problems and have a lower level of well-being than do children in continuously intact two-parent families. These problems include lower academic achievement, more behavioral problems, poorer psychological adjustment, more negative self-concepts, more social difficulties, and more problematic relationships with both mothers and fathers.

To determine if there are also differences in adjustment when children of divorce grow into adulthood, Amato and Keith carried out a second meta-analysis of 37 studies in which they examined adult children of divorce. These results, based
on pooled data from 80,000 adults, suggest that parental divorce has a detrimental impact on the life course.\textsuperscript{24} Compared with those raised in intact two-parent families, adults who experienced a parental divorce had lower psychological well-being, more behavioral problems, less education, lower job status, a lower standard of living, lower marital satisfaction, a heightened risk of divorce, a heightened risk of being a single parent, and poorer physical health.\textsuperscript{25} The view that children adapt readily to divorce and show no lingering negative consequences is clearly inconsistent with the cumulative research in this area. However, several qualifications temper the seriousness of this conclusion. First, the average differences between children from divorced and continuously intact families are small rather than large. This fact suggests that divorce is not as severe a stressor for children as are other things that can go wrong during childhood. For example, a recent meta-analysis of studies dealing with childhood sexual abuse revealed average effect sizes three to four times larger than those based on studies of children of divorce.\textsuperscript{26} Second, although children of divorce differ, on average, from children in continuously intact two-parent families, there is a great deal of overlap between the two groups.

To illustrate these points, the results of a hypothetical but typical study are shown in Figure 1. This figure shows the distribution of well-being scores (on a representative measure of well-being) for children in divorced and nondivorced families. The height of the curve represents the frequency with which children score at various levels of well-being. Lower scores on the left side of the figure indicate poorer outcomes, whereas higher scores on the right side of the figure indicate better outcomes.

The average for each group of children is represented by the highest point in each
curve. Note that the average score of children in the divorced group is lower than the average score of children in the non-divorced group, indicating a lower level of well-being. At the same time, a large proportion of children in the divorced group score higher than the average score of children in the non-divorced group. Similarly, a large proportion of children in the non-divorced group score lower than the average score of children in the divorced group. This overlap reflects the diversity of outcomes for children in both groups. Although the figure is described in terms of children, the same conclusions apply to studies dealing with adults from divorced and intact families of origin.

This diversity helps us to understand why the average effects of divorce are relatively weak. Divorce may represent a severe stressor for some children, resulting in substantial impairment and decline in well-being. But for other children, divorce may be relatively inconsequential. And some children may show improvements following divorce. In other words, to inquire about the effects of divorce, as if all children were affected similarly, is to ask the wrong question. A better question would be, "Under what conditions is divorce harmful or beneficial to children?" This point is returned to below.

Variations by Gender of Child

Some researchers are interested in measuring differences in adjustment between children of divorce and children in intact families based on such variables as gender, ethnicity, age, and cohort membership in attempts to identify groups that may respond differently to divorce. In other words, to inquire about the effects of divorce, as if all children were affected similarly, is to ask the wrong question. A better question would be, "Under what conditions is divorce harmful or beneficial to children?" This point is returned to below.

Amato and Keith tried to clarify this issue in their meta-analytic studies by pooling the results from all studies that reported data for males and females separately. For children, the literature reveals one major gender difference: the estimated negative effects of divorce on social adjustment are stronger for boys than for girls. Social adjustment includes measures of popularity, loneliness, and cooperativeness. In other areas, however, such as academic achievement, conduct, or psychological adjustment, no differences between boys and girls are apparent. Why a difference in social adjustment, in particular, should occur is unclear. Girls may be more socially skilled than boys, and this may make them less susceptible to any disruptive effects of divorce. Alternatively, the increased aggressiveness of boys from divorced families may make their social relationships especially problematic, at least in the short term. Nevertheless, the meta-analysis suggests that boys do not always suffer more detrimental consequences of divorce than do girls.

The meta-analysis for adults also revealed minimal sex differences, with one exception: although both men and women from divorced families obtain less education than do those from continuously intact two-parent families, this difference is larger for women than for men. The reason for the greater vulnerability of women is somewhat unclear. One possibility is that noncustodial fathers are less likely to finance the higher education of daughters than sons.
Variations by Ethnicity of Child

There is a scant amount of research on how divorce affects nonwhite children of divorce. For example, because relatively little research has focused on this population, Amato and Keith were unable to reach any conclusions about ethnic differences in children’s reactions to divorce.\textsuperscript{20} The lack of information on how divorce affects nonwhite children is a serious omission in this research literature.

With regard to African-American children, some research has suggested that academic deficits associated with living with a single mother are not as pronounced for black children as for white children.\textsuperscript{32} In relation to adults, Amato and Keith show that African Americans are affected less by parental divorce than are whites. For example, the gap in socioeconomic attainment between adults from divorced and nondivorced families of origin is greater among whites than among African Americans. This difference may have to do with the fact that divorce is more common, and perhaps more accepted, among African Americans than among whites.

Variations by Age of Child

Some of the best descriptions of how divorce affects children of different ages come from the work of Wallerstein and Kelly, who conducted detailed interviews with children and parents.\textsuperscript{34} Although their sample appears to have overrepresented parents who had a difficult time adjusting to divorce, many of their conclusions about age differences have been supported by later studies. Observation of children during the first year after parental separation showed that preschool age children lack the cognitive sophistication to understand the meaning of divorce. Consequently, they react to the departure of one parent with a great deal of confusion. Because they do not understand what is happening, many become fearful. For example, a child may wonder, “Now that one parent is gone, what is to stop the other parent from leaving also?” Young children also tend to be egocentric, that is, they see themselves at the center of the world. This leads some children to blame themselves for their parents’ divorce. For example, they may think, “Daddy left because I was bad.” Regression to earlier stages of behavior is also common among very young children.

Children of primary school age have greater cognitive maturity and can more accurately grasp the meaning of divorce. However, their understanding of what divorce entails may lead them to grieve for the loss of the family as it was, and feelings of sadness and depression are common. Some children see the divorce as a personal rejection. However, because egocentrism decreases with age, many are able to place the blame elsewhere—usually on a parent. Consequently, older children in this age group may feel a great deal of anger toward one, or sometimes both, parents.

Adolescents are more peer-oriented and less dependent on the family than are younger children. For this reason, they may be impacted less directly by the divorce. However, adolescents may still feel a considerable degree of anger toward one or both parents. In addition, adolescents are concerned about their own intimate relationships. The divorce of their parents may lead adolescents to question their own ability to maintain a long-term relationship with a partner.
The work of Wallerstein and Kelly suggests that children at every age are affected by divorce, although the nature of their reactions differs. But are these reactions more disturbing for one group than for another? Wallerstein and Kelly found that preschool children were the most distressed in the period following parental separation. However, 10 years later, the children of preschool age appeared to have adjusted better than children who were older at the time of family disruption.35

Many other studies have examined age at the time of divorce to see if it is associated with children’s problems. However, these studies have yielded mixed and often inconsistent results, and the meta-analyses of children20 and adults23 were unable to cast much light on these issues.36 A common problem in many data sets is that age at divorce and time since divorce are confounded. In other words, for a group of children of the same age, the younger they were at the time of divorce, the more time that has elapsed. But if we examine children whose parents all divorced at about the same time, then the more time that has passed, the older children are at the time of the study. Similarly, if we hold constant the age of the child at the time of divorce, then length of time and current age are perfectly correlated. In other words, it is impossible to separate the effects of age at divorce, length of time since divorce, and current age. Given this problem, it is not surprising that research findings are unclear. Nevertheless, it is safe to say that divorce has the potential to impact negatively on children of all ages.

**Year of Study**

One additional noteworthy finding that emerged from the meta-analyses by Amato and Keith20,23 concerns the year in which the study was conducted. These researchers found that older studies tended to yield larger differences between children from divorced and intact families than studies carried out more recently. This tendency was observed in studies of children (in relation to measures of academic achievement and conduct) and in studies of adults (in relation to measures of psychological adjustment, separation and divorce, material quality of life, and occupational quality).23,37 The difference persisted when the fact that more recent studies are more methodologically sophisticated than earlier studies was taken into account.

This finding suggests that more recent cohorts of children are showing less severe effects of divorce than earlier cohorts. Two explanations are worth considering. First, as divorce has become more common, attitudes toward divorce have become more accepting, so children probably feel less stigmatized. Similarly, the increasing number of divorces makes it easier for children to obtain support from others in similar circumstances. Second, because the legal and social barriers to marital dissolution were stronger in the past, couples who obtained a divorce several decades ago probably had more serious problems and experienced more conflict prior to separation than do some divorcing couples today. Furthermore, divorces were probably more acrimonious before the introduction of no-fault divorce. Thus, children of divorce in the past may have been exposed to more dysfunctional family environments and higher levels of conflict than were more recent cohorts of children.

**Why Does Divorce Lower Children’s Well-Being?**

Available research clearly shows an association between parental divorce and children’s well-being. However, the causal
mechanisms responsible for this association are just beginning to be understood. Most explanations refer to the absence of the noncustodial parent, the adjustment of the custodial parent, interparental conflict, economic hardship, and life stress. Variations in these factors may explain why divorce affects some children more adversely than others.

**Parental Absence**

According to this view, divorce affects children negatively to the extent that it results in a loss of time, assistance, and affection provided by the noncustodial parent. Mothers and fathers are both considered potentially important resources for children. Both can serve as sources of practical assistance, emotional support, protection, guidance, and supervision. Divorce usually brings about the departure of one parent—typically the father—from the child’s household. Over time, the quantity and quality of contact between children and noncustodial parents often decreases, and this is believed to result in lower levels of adjustment for these children as compared with children from intact families.

The parental absence explanation is supported by several lines of research. For example, some studies show that children who experience the death of a parent exhibit problems similar to those of children who “lose” a parent through divorce. These findings are consistent with the notion that the absence of a parent for any reason is problematic for children. Also consistent with a parental absence perspective are studies showing that children who have another adult (such as a grandparent or other relative) to fill some of the functions of the absent parent have fewer problems than do children who have no substitute for the absent parent. In addition, although the results of studies in the area of access to the noncustodial parent and adjustment are mixed, in general, studies show that a close relationship with both parents is associated with positive adjustment after divorce. One circumstance in which high levels of access may not produce positive adjustment in children is in high-conflict divorces. When conflict between parents is marked, frequent contact with the noncustodial parent may do more harm than good.

**Custodial Parental Adjustment and Parenting Skills**

According to this view, divorce affects children negatively to the extent that it interferes with the custodial parents’ psychological health and ability to parent effectively. Following divorce, custodial parents often exhibit symptoms of depression and anxiety. Lowered emotional well-being, in turn, is likely to impair single parents’ child-rearing behaviors. Hetherington and colleagues found that, during the first year following separation, custodial parents were less affectionate toward their children, made fewer maturity demands, supervised them less, were more punitive, and were less consistent in dispensing discipline.

Research provides clear support for this perspective. Almost all studies show that children are better adjusted when the custodial parent is in good mental health and displays good child-rearing skills. In particular, children are better off when custodial parents are affectionate, provide adequate supervision, exercise a moderate degree of control, provide explanations for rules, avoid harsh discipline, and are consistent in dispensing punishment. Also consistent with a parental adjustment perspective are studies showing that, when custodial parents have a good deal of social support, their children have fewer difficulties.

**Interparental Conflict**

A third explanation for the effects of divorce on children focuses on the role of conflict between parents. A home marked by high levels of discord represents a problematic environment for children’s socialization and development. Witnessing overt conflict is a direct stressor for children. Furthermore, parents who argue heatedly or resort to physical violence indirectly teach children that fighting is an appropriate method for resolving differences. As such, children in high-conflict families may not have opportunities to learn alternative ways to manage disagreements, such as negotiating and reaching...
compromises. Failure to acquire these social skills may interfere with children’s ability to form and maintain friendships. Not surprisingly, numerous studies show that children living in high-conflict two-parent families are at increased risk for a variety of problems. It seems likely, therefore, that many of the problems observed among children of divorce are actually caused by the conflict between parents that precedes and accompanies marital dissolution.

Studies show that children in high-conflict intact families are no better off—and often are worse off—than children in divorced single-parent families. Indeed, children in single-parent families may show improvements in well-being following divorce if it represents an escape from an aversive and dysfunctional family environment. Furthermore, a study by Cherlin and colleagues shows that many, but not all, of the difficulties exhibited by children of divorce, such as behavioral problems and low academic test scores, are present prior to parental separation, especially for boys. This finding is consistent with the notion that the lowered well-being of children is partly attributable to the conflict that precedes divorce. In addition, conflict may increase around the time of the separation, and parents often continue to fight long after the divorce is final. Indeed, many studies show that children’s adjustment is related to the level of conflict between parents following divorce. It should be noted here that postdivorce adjustment may also be influenced by residual effects of conflict that occurred during the marriage. (For further discussion of this topic, see the article by Johnston in this journal issue.)

**Economic Hardship**

Divorce typically results in a severe decline in standard of living for most custodial mothers and their children. Economic hardship increases the risk of psychological and behavioral problems among children and may negatively affect their nutrition and health. Economic hardship also makes it difficult for custodial mothers to provide books, educational toys, home computers, and other resources that can facilitate children’s academic attainment. Furthermore, economically pressed parents often move to neighborhoods where schools are poorly financed, crime rates are high, and services are inadequate. Living under these circumstances may facilitate the entry of adolescents into delinquent subcultures. According to this view, divorce affects children negatively to the extent that it results in economic hardship.

Studies show that children’s outcomes—especially measures of academic achievement—are related to the level of household income following divorce. For example, Guidubaldi and colleagues found that children in divorced families scored significantly lower than children in intact two-parent families on 27 out of 34 outcomes; taking income differences into account statistically reduced the number of significant differences to only 13.

---

**Studies show that children in high-conflict intact families are no better off—and often are worse off—than children in divorced single-parent families.**

Similarly, McLanahan found that income accounted for about half of the association between living in a single-parent family and high school completion for white students. However, most studies show that, even when families are equated in terms of income, children of divorce continue to experience an increased risk of problems. This suggests that economic disadvantage, although important, is not the sole explanation for divorce effects.

**Life Stress**

Each of the factors noted above—loss of contact with the noncustodial parent, impaired child rearing by the custodial parent, conflict between parents, and a decline in standard of living—represents a stressor for children. In addition, divorce often sets into motion other events that may be stressful, such as moving, changing schools, and parental remarriage. And of course, parental remarriage brings about the possibility of additional divorces. Multiple instances of divorce expose children to repeated episodes of conflict, diminished parenting, and financial hardship. For some children of divorce, stress accumulates throughout childhood.

Research generally supports a stress interpretation of children’s adjustment following divorce. Divorces that are ac-
compounded by a large number of other changes appear to have an especially negative impact on children. Furthermore, parental remarriage sometimes exacerbates problems for children of divorce, as does a second divorce.

A General Perspective on How Divorce Affects Children

All five explanations for the effects of divorce on children appear to have merit, and a complete accounting for the effect of divorce on children must make reference to each. Because of variability in these five factors, the consequences of divorce differ considerably from one child to the next.

Consider a divorce in which a child loses contact with the father, the custodial mother is preoccupied and inattentive, the parents fight over child support and other issues, the household descends abruptly into poverty, and the separation is accompanied by a series of other uncontrollable changes. Under these circumstances, one would expect the divorce to have a substantial negative impact on the child. In contrast, consider a divorce in which the child continues to see the noncustodial father regularly, the custodial mother continues to be supportive and exercises appropriate discipline, the parents are able to cooperate without conflict, the child’s standard of living changes little, and the transition is accompanied by no other major disruptions in the child’s life. Under these circumstances, one would predict few negative consequences of divorce. Finally, consider a high-conflict marriage that ends in divorce. As the level of conflict subsides, the previously distant father grows closer to his child, and the previously distracted and stressed mother becomes warmer and more attentive. Assuming no major economic problems or additional disruptive changes, this divorce would probably have a positive impact on the child.

Overall, to understand how divorce affects children, it is necessary to assess how divorce changes the total configuration of resources and stressors in children’s lives.

What Interventions Might Benefit Children of Divorce?

Concern for the well-being of children of divorce leads to a consideration of how various policies and interventions might reduce the risk of problems for them. The most commonly discussed interventions include lowering the incidence of divorce, joint custody, child support reform, enhancing the self-sufficiency of single mothers, and therapeutic programs for children and parents. Interventions suggested in this article are considered in the light of available research evidence.

Lowering the Incidence of Divorce

In the United States during the twentieth century, divorce became increasingly available as the result of a series of judicial decisions that widened the grounds for divorce. In 1970, no-fault divorce was introduced in California; presently it is available in all 50 states. Under most forms of no-fault divorce, a divorce can be obtained without a restrictive waiting period if one partner wants it even if the other partner has done nothing to violate the marriage contract and wishes to keep the marriage together. This fact raises an interesting question: If the law were changed to make marital dissolution more difficult to obtain, and if doing so lowered the divorce rate, would we see a corresponding improvement in the well-being of children?

Several considerations suggest that this outcome is unlikely. First, although legal divorces occurred less often in the past, informal separations and desertions were not uncommon, especially among minorities and those of low socioeconomic status. From a child’s perspective, separation is no better than divorce. If the legal system were changed to make marital dissolution more difficult to obtain, and if doing so lowered the divorce rate, would we see a corresponding improvement in the well-being of children?

Several considerations suggest that this outcome is unlikely. First, although legal divorces occurred less often in the past, informal separations and desertions were not uncommon, especially among minorities and those of low socioeconomic status. From a child’s perspective, separation is no better than divorce. If the legal system were changed to make marital dissolution more difficult to obtain, and if doing so lowered the divorce rate, would we see a corresponding improvement in the well-being of children?

Overall, to understand how divorce affects children, it is necessary to assess how divorce changes the total configuration of resources and stressors in children’s lives.
Life-Span Adjustment of Children to Their Parents’ Divorce

present just as many problems for children as do divorced single-parent families, perhaps more so. Given that the legal system cannot stop married couples from living apart or fighting, changing the legal system to decrease the frequency of divorce is unlikely to improve the well-being of children.

Is it possible to lower the frequency of divorce by increasing marital happiness and stability? The government could enact certain changes toward this end, for example, by changing the tax code to benefit married parents. It is possible that such a policy would enhance the quality and stability of some marriages; however, providing these benefits to married-couple families would increase the relative disadvantage of single parents and their children, an undesirable outcome. Alternatively, the government could take steps to promote marriage preparation, enrichment, and counseling. Increasing the availability of such services would probably help to keep some marriages from ending in divorce. However, as Furstenberg and Cherlin suggest, the rise in divorce is the result of fundamental changes in American society, including shifts in personal values and the growing economic independence of women, factors that cannot be affected easily by government policies. Joint physical custody provides legal rights and responsibilities to both parents and is intended to grant children substantial portions of time with each parent. Joint legal custody, which is more common, provides legal rights and responsibilities to both parents, but the child lives with one parent. (See Table 1 in the article by Kelly in this journal issue.)

Joint physical custody is associated with greater father contact, involvement, and payment of child support.

Joint legal custody may be beneficial to the extent that it keeps both parents involved in their children’s lives. However, studies show few differences between joint legal and mother-custody families in the extent to which fathers pay child support, visit their children, and are involved in making decisions about their children, once parental income, education, and other predivorce parental characteristics are taken into account. Although joint legal custody may have symbolic value in emphasizing the importance of both parents, it appears to make little difference in practice.

In contrast, joint physical custody is associated with greater father contact, involvement, and payment of child support. Fathers also appear to be more satisfied with joint physical custody than with mother custody. For example, Shrier and colleagues found in 1991 that joint-custody fathers were significantly more satisfied than sole-maternal-custody fathers in two areas, including their legal rights and responsibilities as a parent and their current alimony and child support financial arrangements. Joint physical custody may be beneficial if it gives...
children frequent access to both parents. On the other hand, residential instability may be stressful for some children. Although few studies are available, some show that children in joint physical custody are better adjusted than are children with other custody arrangements, and other studies show no difference.

However, these results may present a picture that is too optimistic. Courts are most likely to grant joint physical custody to couples who request it. A large-scale study by Maccoby and Mnookin in California showed that couples with joint physical custody, compared with those who receive sole custody, are better educated and have higher incomes; further-

more, couples who request joint custody may be relatively less hostile, and fathers may be particularly committed to their children prior to divorce. These findings suggest that some of the apparent positive “effect” of joint custody is a natural result of the type of people who request it in the first place.

It is unlikely that joint physical custody would work well if it were imposed on parents against their will. Under these conditions, joint custody may lead to more contact between fathers and their children but may also maintain and exacerbate conflict between parents. Maccoby and Mnookin found that, although conflict over custody is relatively rare, joint custody is sometimes used to resolve custody disputes. In their study, joint custody was awarded in about one-third of cases in which mothers and fathers had each initially sought sole custody; furthermore, the more legal conflict between parents, the more likely joint custody was to be awarded. Three and one-half years after separation, these couples were experiencing considerably more conflict and less cooperative parenting than couples in which both had wanted joint custody initially. This finding demonstrates that an award of joint custody does not improve the relationship between hostile parents.

As noted above, studies show that children’s contact with noncustodial parents is harmful if postdivorce conflict between parents is high. To the extent that joint physical custody maintains contact between children and parents in an atmosphere of conflict, it may do as much (or more) harm than good. Joint custody, therefore, would appear to be the best arrangement for children when parents are cooperative and request such an arrangement. But in cases where parents are unable to cooperate, or when one parent is violent or abusive, a more traditional custody arrangement would be preferable.

Does research suggest that children are better adjusted in mother- or father-custody households? From an economic perspective, one might expect children to be better off with fathers, given that men typically earn more money than do women. On the other hand, children may be cared for more competently by mothers than fathers, given that mothers usually have more child care experience. Studies that have compared the adjustment of children in mother- and father-custody households have yielded mixed results, with some favoring mother custody, some favoring father custody, and others favoring the placement of the child with the same-sex parent.

A recent and thorough study by Downey and Powell, based on a large national sample of children, found little evidence to support the notion that children are better off with the same-sex parent. On a few outcomes, children were better off in father-custody households. However, with household income controlled, children tended to be slightly better off with mothers. This finding suggests that the higher income of single-father households confers certain advantages on children, but if mothers earned as much as fathers, children would be better off with mothers. The overall finding of the study, however, is that the sex of the custodial parent has little to do with children’s adjustment. In general then, it does not appear that either mother or father custody is inherently better for children, regardless of the sex of the child.

Child Support Reform

It is widely recognized that noncustodial fathers often fail to pay child support. In a 1987 study by the U.S. Bureau of the Census, about one-third of formerly married women with custody had no child
Life-Span Adjustment of Children to Their Parents’ Divorce

support award. And among those with an award, one-fourth reported receiving no payments in the previous year. In the past, it has been difficult for custodial mothers to seek compliance with awards because of the complications and expense involved. New provisions in the 1988 Family Support Act allow for states to recover child support payments through the taxation system. Starting in 1994, all new payments will be subject to automatic withholding from parents’ paychecks.

Child support payments represent only a fraction of most single mothers’ income, usually no more than one-fifth. As such, stricter enforcement of child support payments cannot be expected to have a dramatic impact on children’s standard of living. Nevertheless, it is usually highly needed income. As noted above, economic hardship has negative consequences for children’s health, academic achievement, and psychological adjustment. Consequently, any policy that reduces the economic hardship experienced by children of divorce would be helpful. Furthermore, the extra income derived from child support may decrease custodial mothers’ stress and improve parental functioning, with beneficial consequences for children. Consistent with this view, two studies show that regular payment of child support by noncustodial fathers decreases children’s behavior problems and increases academic test scores. Furthermore, in these studies, the apparently beneficial effect of child support occurred in spite of the fact that contact between fathers and children was not related to children’s well-being.

Research indicates that the majority of fathers are capable of paying the full amount of child support awarded; in fact, most are capable of paying more. Based on these considerations, it would appear to be desirable to increase the economic support provided by noncustodial fathers to their children. This would include increasing the proportion of children with awards, increasing the level of awards, and enforcing child support awards more strictly. A guaranteed minimum child support benefit, in which the government sets a minimum benefit level and assures full payment when fathers are unable to comply, would also improve the standard of living of many children.

Requiring fathers to increase their economic commitment to children may also lead them to increase visitation, if for no other reason than to make sure that their money is being spent wisely. A number of studies have shown that fathers who pay child support tend to visit their children more often and make more decisions about them than do fathers who fail to pay. If increasing the level of compliance increases father visitation, it may increase conflict between some parents. On the other hand, some children may benefit from greater father involvement. Overall, the benefits of increasing fathers’ economic contribution to children would seem to outweigh any risks. (See the articles by Garfinkel and by Roberts in this journal issue.)

Economic Self-Sufficiency for Single Mothers

As noted above, stricter enforcement of child support awards will help to raise the standard of living of single mothers and their children. However, even if fathers comply fully with child support awards, the economic situation of many single mothers will remain precarious. To a large extent, the economic vulnerability of single mothers reflects the larger inequality between men and women in American society. Not only do women earn less than men, but many married women sacrifice future earning potential to care for children by dropping out of the paid labor force, cut-

Economic hardship has negative consequences for children’s health, academic achievement, and psychological adjustment.
programs operate at government expense, they are cost-effective to the extent that women and children become independent of further public assistance. Furthermore, many single mothers are "penalized" for working because they lose government benefits, such as health care and child care. Welfare reform that removes work disincentives by allowing women to earn a reasonable level of income without losing health care and child care benefits would be desirable. In fact, changes in these directions are being implemented as part of the Family Support Act of 1988. Given that the employment of single mothers does not appear to be harmful to children and can provide a higher standard of living for children than does welfare, and given that economic self-sufficiency would probably improve the psychological well-being of single mothers, it seems likely that these changes will benefit children.

**Therapeutic Interventions for Children**

According to Cherlin, there are still no firm estimates on the proportion of children who experience harmful psychological effects from parental divorce. Research suggests that, in many cases, children adjust well to divorce without the need for therapeutic intervention. However, our current understanding is that a minority of children do experience adjustment problems and are in need of therapeutic intervention.

---

**Our current understanding is that a minority of children do experience adjustment problems and are in need of therapeutic intervention.**

---

The type of therapeutic intervention suited for children varies according to the type and severity of the adjustment problems and the length of time they are expressed by the child. The major types of therapeutic interventions include child-oriented interventions and family-oriented interventions.

*Child-oriented interventions* attempt to help children by alleviating the problems commonly experienced by them after divorce. Some intervention programs include private individual therapy. However, many single parents are unable to afford private therapy for their children and may enroll them in programs in which counselors work with groups of children.

Typically, in these sessions, children meet on a regular basis to share their experiences, learn about problem-solving strategies, and offer mutual support. Children may also view films, draw, or participate in role-playing exercises. Small groups are desirable for children of divorce for several reasons. Not only can they reach large numbers of children, but the group itself is therapeutic: children may find it easier to talk with other children than with adults about their experiences and feelings. Most group programs are located in schools; such programs have been introduced in thousands of school districts across the United States.

Evaluations of these programs have been attempted, and in spite of some methodological limitations, most are favorable: children from divorced families who participate, compared with those who do not, exhibit fewer maladaptive attitudes and beliefs about divorce, better classroom behavior, less anxiety and depression, and improved self-concept. Although much of the evidence is positive, it is not entirely clear which components of these programs are most effective. For example, improvement may be brought about by a better understanding of divorce, newly acquired communication skills, or the support of other students. Although more evaluation research is needed, the evidence is positive enough to warrant further development and introduction of therapeutic programs for children.

In addition to child-focused interventions, there are *family-focused interventions* including both educational and therapeutic programs. These programs are aimed at divorcing parents, with the intention of either improving parenting skills or reducing the level of conflict over children. In principle, therapeutic interventions that improve parental child-rearing skills or decrease the level of conflict between parents should benefit children, although this effect has not yet been demonstrated.

**What Directions Should Future Research Take?**

All things being equal, existing research suggests that a well-functioning nuclear
family with two caring parents may be a better environment for children’s growth and development than a divorced single-parent family. Children of divorce, as a group, are at greater risk than children from intact families, as a group, for many psychological, academic, and social problems. And adults raised in divorced single-parent families, as a group, do not achieve the same level of psychological and material well-being as those raised in continuously intact two-parent families. However, we need to keep in mind that many children are better off living in single-parent households than in two-parent families marked by conflict. Furthermore, we need to recognize that most single parents work hard to provide their children with a loving and structured family life. Many single-parent families function well, and most children raised in these settings develop into well-adjusted adults. Blaming single parents as a group for the problems experienced by children of divorce is a pointless exercise.

At this time, our knowledge about children and divorce needs to be expanded in certain directions. The long-term effect of divorce on children is the basic question that needs to be addressed. The answers to this question will inform social policy and the court system, shape models of intervention, and influence parental decision making. This type of information should be obtained from longitudinal and longitudinal-sequential designs. Needed are studies that begin prior to divorce, as well as studies that follow children of divorce through adolescence and into adulthood.87

Also needed are data on how a variety of factors—relations with parents, parental adjustment, economic well-being, conflict, and exposure to stressors—combine to affect children’s response to divorce. This research should make it possible to determine which children lose the most through divorce, which children are relatively unaffected, and which children benefit.

Information on how divorce affects children in different racial and ethnic groups is another area of research that would be informative from the standpoint of both clinical and economic intervention.33 And more evaluation of various interventions, both legal (joint custody, mediation, child support reform) and therapeutic, are also needed.

It is important to focus on establishing policies that will help narrow the gap in well-being between children of divorce and children from intact families. High divorce rates and single-parent families are facts of life in American society. If it is impossible to prevent children from experiencing parental divorce, steps must be taken to ease the transition.

6. The cross-sectional and longitudinal designs are used widely in adjustment research and other developmental research because they are suited for studies in which there are one or more nonmanipulable independent variables. In this instance, the researcher must select subjects who already possess different levels of a particular characteristic. Examples of nonmanipulable independent variables include age, sex, marital status of parents, and socioeconomic status. The use of nonmanipulable independent variables in a study usually
precludes the use of true experimental designs which involve the random assignment of subjects to groups. Subjects are randomly assigned to eliminate the influence of extraneous variables. If the influence of extraneous variables has been accomplished in a study and there are significant differences found between groups on a dependent variable, then the researcher may state with confidence that the independent variable caused the results to differ between groups. In studies without random assignment of subjects, including those using cross-sectional and longitudinal designs, statements about cause and effect relationships cannot be made. Researchers are unable to determine which variable caused which or if some other extraneous variable(s) could be responsible for an observed relationship between the variables. It should be noted that this difficulty is inherent in the literature on adjustment to divorce. Although cause and effect relationships may not be known, what is known is that there is a correlation between parental marital status and children’s adjustment, and the knowledge that this correlation exists helps to assist the process of policymaking in this area. For a further discussion of the differences between experimental and nonexperimental designs, see Miller, S.A. Developmental research methods. Englewood Cliffs, NJ: Prentice-Hall, 1987; Cozby, P.C., Worden, P.E., and Kee, D.W. Research methods in human development. Mountain View, CA: Mayfield, 1989.

7. The optimal comparison group would be families that would potentially divorce, but stay together for the sake of the children. However, this population of families would be very difficult to sample. Another available comparison group would be continuously intact two-parent families. However, this comparison group is not consistently used by researchers. Many classifications in cross-sectional research are based on the current marital status of parents. The intact group is heterogeneous as to marital history, and the divorced group is not similar as to the time of divorce or the age of the children when it took place. Some of the most prominent longitudinal studies have no comparison group of intact families. See, for example, Wallerstein, J.S., and Corbin, S.B. Father-child relationships after divorce: Child support and educational opportunity. Family Law Quarterly (1986) 20:109-28; Maccoby, E.E., and Mnookin, R.H. Dividing the child: Social and legal dilemmas of custody. Cambridge, MA: Harvard University Press, 1992.

8. For example, a researcher using a cross-sectional design might study four different groups of children, grouped by age (for example, 3, 6, 9, and 12) and parental marital status (married or divorced) to see if children from divorced families exhibit significantly more aggression than children from intact families. If the researcher finds that aggressive behavior is, indeed, significantly more likely in children from divorced families, the researcher cannot determine the direction of the relationship, that is, whether the divorce increased aggression in these children or high levels of aggression in the children caused the divorce. In addition, the researcher is unable to determine if some extraneous variable caused both high aggression and divorce, for example, low socioeconomic status.

For the developmental researcher, there are advantages and disadvantages to using this type of research design. The cross-sectional design is relatively inexpensive and timely, which makes it a popular choice for many researchers. However, a number of difficulties may threaten the validity and reliability of the results. These difficulties include the following: there is no direct measure of age changes; the issue of individual stability over time cannot be addressed; there is a possibility of selection bias; there may be difficulty establishing measurement equivalence; and there is an inevitable confounding of age and time of birth. Some of these problems are avoidable with adequate planning and control; however, the problem of the confounding of age and time of birth (cohort) is intrinsic in the cross-sectional design, and it is impossible to avoid.

Another design that is available to researchers but is seldom used is called the cross-sectional-sequential design. A cross-sectional-sequential study tests separate cross-sectional samples at two or more times of measurement. In comparison to a standard cross-sectional design, this sequential design has the advantage of at least partly unconfounding age and year of birth (because there are at least two different cohorts for each age tested), and it also provides a comparison of the same age group at different times of testing (called a time-lag comparison). It would be advantageous to use this research design in the future for some types of adjustment research.

9. There are major advantages and disadvantages to this type of design. The advantages include the following: a researcher can observe actual changes occurring in subjects over time; irrelevant sources of variability are not of concern; there are no cohort effects because the same cohort is being studied over time and there is no selection bias. Disadvantages that may influence reliability and validity include the following: an expensive and time-consuming design; subject attrition; selective dropout; possible obsolescence of tests and instruments; a potentially biased sample; measurement of only a single cohort; effects of repeated testing; reactivity; difficulty of establishing equivalent measures; and the inevitable confounding of the age of subjects and the historical time of testing. As with the
cross-sectional design, some of these problems are avoidable. However, it is impossible to avoid the confounding of age with time of measurement in the longitudinal approach. This confounding follows from the fact that the age comparisons are all within subject. Therefore, if we want to test subjects of different ages, we must test at different times. For an in-depth discussion of longitudinal designs, see Menard, S. *Longitudinal research*. Series: Quantitative Applications in the Social Sciences, No. 07-076. Newbury Park, CA: Sage, 1991.

A design that is available to developmental researchers and is more complicated but should assist in disentangling the contributions of age, generation, and time of measurement is called the longitudinal-sequential design. In this design, the samples are selected from different cohorts (that is, years of birth), and they are tested repeatedly across the same time span. This design offers at least three advantages over a standard longitudinal design. The longitudinal comparisons are not limited to a single generation or cohort because samples are drawn from different birth years. In addition, there is a cross-sectional component to the design because different age groups are tested at each time of measurement. Finally, the same age group is represented at different times of measurement. More information is provided than in a standard longitudinal design, and there is greater opportunity to disentangle causative factors. See Baltes, P.B., Reese, H.W., and Nesselroade, J.R. *Life-span developmental psychology: Introduction to research methods*. Monterey, CA: Brooks/Cole, 1977.


12. It should be noted that there are no perfect random samples on this subject. The national studies select ever-divorced families, who are limited by geography, the choice of schools included (rarely private schools, which is a problem in places where a large segment of children, often those with the best advantages, are not enrolled in public schools), or use the court sampling frame, which offers insufficient address data to draw a comprehensive sample.

13. This type of random selection of samples should not be confused with random assignment of subjects to groups.

14. For a discussion of matching, see note no. 6, Miller.


19. The term meta-analysis refers to the quantitative combinations of data from independent studies. The procedure is valuable when the result is a descriptive summary of the weight of the available evidence. Summaries are necessary primarily because there are conflicting results in the literature and, at some point, it is valuable to know where the weight of
the evidence falls. The primary goals of meta-analysis include determining whether significant effects exist for the topic being reviewed, estimating the magnitude of effects, and relating the existence and magnitude of effects of variations in design and procedure across studies. Proponents of meta-analysis argue that meta-analysis can achieve a greater precision and generalizability of findings than single studies. They then have the potential to provide more definitive evidence for policymaking than can be realized by other means. However, there are logical and methodological difficulties with the technique that need to be understood when interpreting the results of any meta-analysis. First, there is the problem of the selection of studies, that is, how to determine which studies should be included in the meta-analysis. Oakes contends that any rule establishment in this area presents impossible difficulties. A second problem is that, if a researcher includes only published studies in the meta-analysis, there is the danger of overestimating differences between groups. This danger arises because journal articles are not a representative sample of work addressed in any particular research area. Significant research findings are more likely to be published than nonsignificant research findings. To control for this problem, the researcher must trace unpublished research and incorporate it into the analysis. A third problem is that the use of meta-analysis may overinflate differences between groups because a high proportion of reported statistically significant results are spurious. Finally, because of the diversity of the types of samples that are included in the meta-analysis, it is difficult—if not impossible—to know what population the results are applicable to. For more in-depth discussions of the technique, its advantages, and its disadvantages, see note no. 18, Glass, McGaw, and Smith; Oakes, M. The logic and role of meta-analysis in clinical research. *Statistical Methods in Medical Research* (1993) 2:146-60; note no. 6, Miller; Thompson, S.G., and Pocock, S.J. Can meta-analyses be trusted? *The Lancet* (November 2, 1991) 338:1127-30; Wolf, F.M. *Meta-analysis: Quantitative methods for research synthesis*. Series: Quantitative Applications in Social Sciences, No. 07-059. Beverly Hills, CA: Sage, 1986.

20. Amato, P.R., and Keith, B. Parental divorce and the well-being of children: A meta analysis. *Psychological Bulletin* (1991) 100:26-46. Studies were included if they met the following criteria: (1) were published in an academic journal or book, (2) included a sample of children of divorce as well as a sample of children from continuously intact two-parent families, (3) involved quantitative measures of any of the outcomes listed below in note no. 21, and (4) provided sufficient information to calculate an effect size.

21. In the meta-analysis for children, measures of well-being were coded into the following eight categories: academic achievement (standardized achievement tests, grades, teachers’ ratings, or intelligence); conduct (misbehavior, aggression, or delinquency); psychological adjustment (depression, anxiety, or happiness); self-concept (self-esteem, perceived competence, or internal locus of control); social adjustment (popularity, loneliness, or cooperativeness); mother-child and father-child relations (affection, help, or quality of interaction), and other.

22. Mean effect sizes ranged from .06 for the “other” category (not significant) to -.23 for conduct (p .001), with an overall effect size of -.17 across all outcomes. Effect sizes reflect the difference between groups in standard deviation units. A negative effect size indicates that children of divorce exhibit lower well-being than do children in intact two-parent families. With the exception of the “other” category, all mean effect sizes were statistically significant (p .001).


24. In the meta-analysis for adults, outcomes were coded into the following 15 categories: psychological well-being (emotional adjustment, depression, anxiety, life-satisfaction); behavior/conduct (criminal behavior, drug use, alcoholism, suicide, teenage pregnancy, teenage marriage); use of mental health services; self-concept (self-esteem, self-efficacy, sense of power, internal locus of control); social well-being (number of friends, social participation, social support, contact with parents and extended family); marital quality (marital satisfaction, marital disagreements, marital instability); separation or divorce; one-parent family status; quality of relations with one’s children; quality of general family relations (overall rating of family life); educational attainment (high school graduation; years of education); occupational quality (occupational prestige, job autonomy, job satisfaction); material quality of life (income, assets held, housing quality, welfare dependency, perceived economic strain); physical health (chronic problems, disability), and other.

25. Mean effect sizes ranged from -.02 for relations with children (not significant) to -.36 for becoming a single parent (p .001), with an effect size of -.20 across all outcomes. All mean
effect sizes were significant (at least p .01) except for relations with children and self-concept.


31. See note no. 7, Wallerstein and Corbin.


34. See note no. 10, Wallerstein and Kelly.

35. See note no. 10, Wallerstein and Blakeslee.

36. For a summary of these studies, see Amato, P.R. Children’s adjustment to divorce: Theories, hypotheses, and empirical support. *Journal of Marriage and the Family* (1993) 55:23-38.

37. See note no. 20, Amato and Keith.


39. This trend was confirmed in the meta-analysis by Amato and Keith; see note no. 23. For examples of studies, see Amato P.R. Parental absence during childhood and depression in later life. *Sociological Quarterly* (1991) 32:543-56; Gregory, I. Introspective data following childhood loss of a parent: Delinquency and high school dropout. *Archives of General Psychiatry* (1965) 13:99-109; Saucier, J., and Ambert, A. Parental marital status and adolescents’ optimism about their future. *Journal of Youth and Adolescence* (1982) 11:345-53. Our meta-analysis also showed that, although children who experience parental death are worse off than those in intact two-parent families, they have higher levels of well-being than do children of divorce.


46. Of course, it is also likely that well-behaved children allow parents to behave in a positive and competent manner, whereas ill-behaved children stimulate problematic parental behaviors. Undoubtedly, children influence parents just as parents influence children. However, this does not invalidate the notion that divorce-induced stress can interfere with a person’s ability to function effectively as a parent and that a parent’s failure to function effectively might have negative consequences for children.


51. It is also probable that children’s problems, to a certain extent, exacerbate conflict between parents.


56. See note no. 15, Guidubaldi, Cleminshaw, Perry, and McLoughlin.


60. See note no. 16, Baydar. Hetherington and her colleagues found that the remarriage of the custodial mother was associated with increased problems for girls but decreased problems for boys. Hetherington, E.M., Cox, M., and Cox, R. Long-term effects of divorce and remarriage on the adjustment of children. *Journal of the American Academy of Child Psychiatry* (1985) 24:518-30.


65. See note no. 1, Furstenberg and Cherlin.

66. See note no. 7, Maccoby and Mnookin.


78. See note no. 52, Duncan and Hoffman.


High-Conflict Divorce

Janet R. Johnston

Abstract

This article reviews available research studies of high-conflict divorce and its effects on children. Interparental conflict after divorce (defined as verbal and physical aggression, overt hostility, and distrust) and the primary parent’s emotional distress are jointly predictive of more problematic parent-child relationships and greater child emotional and behavioral maladjustment. As a group, children of high-conflict divorce as defined above, especially boys, are two to four times more likely to be clinically disturbed in emotions and behavior compared with national norms. Court-ordered joint physical custody and frequent visitation arrangements in high-conflict divorce tend to be associated with poorer child outcomes, especially for girls. Types of intervention programs and social policy appropriate for these kinds of families are presented.

The intent of this paper is first to discuss the problem of identifying important elements of conflict in divorce and, on the bases of various definitions, to review the available research about their incidence. The second aim is to examine the various factors that are believed to contribute to high-conflict divorce and to propose a theoretical model explaining how these factors interrelate. Third, the focus will turn to what is known about the effects on children of interparental conflict, in general, and what is known about the characteristics of children living in high-conflict divorce situations, in particular. Fourth, dispute resolution procedures and preventive and interventive programs, together with available data on outcome effectiveness, will be outlined. Finally, implications of the current research base for social policy with respect to custody and access in cases of high-conflict divorce will be discussed.

Definitional Problems

In much early research, no conceptual distinctions were made among types of conflict. Spousal and interparental conflict were simply equated with divorce, or with various measures of marital dissatisfaction, hostile attitudes, and physical aggression. This failure to distinguish among types of conflict has confounded the debate about the extent to which different kinds of divorce conflict are normal and functional, and the extent to which they signal pathology and are dysfunctional, especially for children.

Divorce conflict has at least three important dimensions which should be considered when assessing incidence and its effects on children. First, conflict has a domain dimension, which can refer to disagreements over a series of divorce issues such as financial support, property division, custody, and access to the children, or to values and methods of child rearing. Second, conflict has a tactics dimension, which can refer to the manner in which divorcing couples informally try to resolve disagreements either by avoiding each other and the issues, or by verbal reasoning, verbal aggression, physical coercion,
and physical aggression; or it can refer to ways in which divorce disputes are formally resolved by the use of attorney negotiation, mediation, litigation, or arbitration by a judge. Third, conflict has an attitudinal dimension, referring to the degree of negative emotional feeling or hostility directed by divorcing parties toward each other, which may be covertly or overtly expressed. The problem of measuring incidence of conflict in divorce is complicated further by the facts that a specific domain of conflict may be perceived to exist by one party and not by the other, the parties may employ different conflict tactics (for example, one may avoid and the other may litigate), and one party may harbor greater hostility than is reciprocated by the other.

The duration and developing pattern of each form of conflict are relevant to its characterization as either normal or pathological. For instance, higher levels of most types of divorce conflict are expectable and relatively common beginning at the time of marital separation and filing for divorce and continuing until the issuance of the final decree—that is, encompassing the time when the family is in the process of fundamental reorganization from an intact to a two-household family structure.

Postdecree divorce conflicts are sometimes considered to be intractable and indicative of preexisting individual and family dysfunction. Unfortunately, divorce research is still in its infancy with respect to making many of these conceptual distinctions and addressing these questions. In particular, there are virtually no data available about cultural and gender differences in the parents of high-conflict divorce and about effects on children of different ages. The review of research which follows focuses only on the domain of conflict over custody, access, and child rearing after marital separation.

In each study referenced, careful delineation is made of the type and measurement of conflict, and the nature of the sample is specified. The reader is cautioned against generalizing the findings beyond the specific dimension of conflict to nonrepresentative populations of divorcing families.

## Incidence of High-Conflict Divorce and Associated Factors

### Estimates of Incidence of High-Conflict Divorce

Estimates of the incidence of highly conflicted divorce ideally would be drawn from large studies designed to be representative of the full divorcing population. Unfortunately, the studies in this category
provide scant information about the rates of conflict of any kind. Tangentially, in a national study, Furstenberg and Nord noted that the most prevalent pattern of child rearing two years after divorce is “parallel parenting,” in which the only attempt parents make to communicate or coordinate their child-rearing practices is around visitation arrangements.\(^6\)

A recent California study by Maccoby and Mnookin of 1,124 families with 1,875 children, recruited from divorce filings in two counties and reinterviewed one year and two and one-half years later, has provided some estimates, albeit ones that were not intended as incidence statistics.\(^7\) With respect to the amount of legal conflict over custody and visitation matters, these researchers identified a “conflict pyramid,” showing that, in half the divorces, these issues were uncontested; in nearly one-third more cases, the issues, although contested, were settled without the help of the court or its related services.

The remaining one-fifth of the families reached a settlement with respect to custody and access using the more formal conflict-resolution procedures offered by the court (11% in state-mandated mediation sessions; 5% after a formal custody evaluation; 2% during trial; and 1.5% decided by a judge). These “conflict pyramid” proportions are clearly linked as much to the objectives, principles, and procedures of California’s (or the local county’s) family law system as they are to a couple’s propensity to dispute custody. The figures could be very different in states with different custody presumptions and different formal stages of dispute resolution. Using a combined measure of court data and parent interview data, these researchers estimated that 10% of families experienced “substantial” legal conflict, and 15% experienced a greater degree of “intense” legal conflict. Interestingly, the most hostile couples were not necessarily the couples locked in the most contentious legal battles.

### Factors Associated with High-Conflict Divorce Coparenting Patterns

Three principal types of coparenting patterns were identified in the Maccoby and Mnookin study, generated by the presence or absence of discord (frequent arguments, undermining and sabotage of each other’s role as parents), and the presence or absence of frequent attempts to communicate and coordinate with respect to the children.\(^7\) Three to four years after separation, there were three major patterns: high communication and low discord, called cooperative coparenting, characterized 29% of the sample; low communication and low discord, denoted as disengaged coparenting, involved 41% of the sample; and low communication and high discord, labeled conflicted coparenting, was a feature in 24% of the cases. Over the three-year period, it was unlikely for conflicted parents to become cooperative; most remained conflicted, and a small group became disengaged. Moreover, those who had conflicted coparenting styles were also more likely to be divorcing parents who had experienced substantial or intense legal conflict and who were more hostile to one another, especially mothers. It is important to emphasize, however, that these groups (those with high legal conflict, conflicted coparenting, and hostile attitudes) did not completely overlap, confirming that these dimensions of conflict are not identical; in fact, they may be only weakly related to one another.

In sum, using different measures (legal conflict, hostility, and conflicted coparenting), Maccoby and Mnookin’s data indicated that one quarter of divorces were highly conflicted at an average of three and one-half years after the separation, by which time almost all couples had obtained their final decree.\(^7\) It is interesting that these estimates are not greatly disparate from smaller nonrepresentative samples. Two earlier studies—one by Wallerstein and Kelly of 60 families referred for counseling and one by Ahrons of 54 couples obtained from divorce filings—concurred that almost one-third of families remained very hostile and in conflict over child-rearing matters three to five years after separation.\(^8,9\)
Families with Young and/or Many Children

What other factors are associated with high-conflict divorce? Again, the 1992 Maccoby and Mnookin study provides the best comparative data. No socioeconomic, income, or ethnic differences were found to distinguish divorces involving high legal conflict and conflicted coparenting styles from those with low indicators of conflict. Moreover, conflicted coparenting was just as likely to be experienced by children living in dual residences as by those who resided solely with either mother or father. Families with very young children were more likely to be highly conflicted both legally and in terms of day-to-day parenting. Larger families were somewhat more likely to have coparenting conflict than those with an only child. These findings suggest that the need to cooperate closely, especially in the care of very young children and in coordinating the separate needs of multiple children, increases the strain on the coparenting relationship.

Concern About Ex-Partner’s Parenting Practices

Most notable, however, are the findings by these same researchers that pervasive distrust about the other parent’s ability to care for their child adequately and discrepant perceptions about parenting practices generally typify the couples who are likely to be highly disputatious both inside and outside the court. Pervasive distrust about the other parent’s ability to care for their child adequately, and discrepant perceptions about parenting practices, generally typify the couples who are likely to be highly disputatious both inside and outside the court. These observations are supported by a recent California statewide study by Depner and her colleagues of 1,669 mediation sessions conducted in family courts, a sample which included 93% of all disputes regarding custody and access mediated during a two-week period. (California law requires mediation in any case where parents are disputing custody and visitation matters.) Within these sessions, serious multiple overlapping concerns about the ex-partner’s parenting practices were raised by separating and divorced individuals: these included allegations of child neglect (38%), child physical abuse (18%), child sexual abuse (8%), and child stealing (6%). In addition, grave concerns were raised about exposing the child to the other parent because of his or her substance abuse (36%) or criminal activity (7%). It is not known if these allegations could have been substantiated, or if they mostly signified each party’s negative perceptions, hostility, and distrust of the other.

It is commonly believed by family court counselors, however, that these allegations of neglect and abuse often do not meet the criteria for mandatory reporting. In fact, court counselors generally contend that, when such investigations are undertaken by child protective services, the allegations are frequently dismissed by overworked staff as being either indicators of interpertal spite, impossible to prove, or insufficiently serious to require state intervention.

Depner and colleagues found that, in a startling 65% of families, domestic violence was alleged by one or both parents within the mediation session. Two small studies of high-conflict divorcing families, by Johnston and Campbell (n = 80) and by Johnston (n = 60), confirm this high level of domestic violence. Both samples were drawn from family court referrals for counseling that were made either because mandatory mediation in court had failed or because parents continued disputing over the care of their children, at times violently, despite a legal settlement. Physical aggression had occurred between 75% and 70% of the parents, in the first and second studies, respectively, during the past year, even though the couples had been separated, on the average, 30 months and 42 months. In 25% of the first sample and 20% of the second, the aggression was termed moderate and involved slapping, hitting, kicking, or biting. In 35% of the first sample and 48% of the second, it was denoted as severe and involved battering and threatening to use or using a weapon.

In a comparison sample of 60 cases drawn from a more general sample of divorce filings, where the couple had been separated more than two years, physical aggression was 36 times lower than in the
High-Conflict Divorce

In divorces marked by ongoing disputes over the custody and care of children, both inside and outside the court, there is often a history of domestic violence in the family and a likelihood that the violence will continue after the separation.

A Theoretical Model Predicting High-Conflict Divorce

Currently, there are no adequate studies that attempt to critically evaluate the various factors which are hypothesized to create and maintain highly conflictual postdivorce relationships between parents over the custody and care of their children. The theoretical explanatory model that is proposed here, however, is a complex, interactive, and reciprocal one, as diagrammed in Figure 1 and illustrated in the accompanying inset (see Box 1).11

At the individual level, separation-engendered conflicts (the humiliation inherent in rejection, the grief associated with loss, and the overall helplessness in response to assaultive life changes) interact with vulnerabilities in the character structure of some divorcing individuals, making them especially prone to unresolved hostility and ongoing disputes. At the interactional level, a combination of the destructive spousal dynamics that are a function of these intrapsychic conflicts, the history of the prior marital relationship, and the legacy of an ambivalent or traumatic separation experience causes the parties to construct negative, polarized views of each other. Consequently, these parents continue to be highly distrustful of each other and are convinced that they are fighting to protect the children from the perceived negative effects of each other’s parenting.

In addition, there are realistic concerns about parenting capacity in individuals whose functioning and judgment are compromised by their own emotional distress and the continual criticism and undermining of their parenting by the ex-spouse. The dysfunctional family relationships that are a product of these intrapsychic and interparental conflicts,
A Model of Individual, Interactional and External Factors Predicting High-Conflict Divorce and Custody Disputes

Preseparation Factors

**Individual Level**
- Nature of Child (gender, age, temperament)

**Interactional Level**
- History of Courtship and Marital Conflict
- Prior Parent-Child Relationships

**External Level**
- Demographic Factors (income discrepancy and cultural differences between parents; family composition)

Separation Factors

- Intrapsychic Vulnerability of Parent (to loss, rejection, helplessness)

Postseparation Factors

- Child Distress and Symptomatology
- Interparental Conflict (hostility, distrust, and physical violence)
- Legal Conflict and Involvement of Others in Disputes (e.g., kin, new partners, counselors)
- Disturbed Parent-Child Relationship

especially disturbances in parent-child relationships, can result in emotional and behavioral symptomatology in children (particularly in vulnerable younger children and boys). This, in turn, fuels the interparental dispute. At the external social level, these disputes can be both provoked and maintained by socioeconomic and cultural stressors and by coalitions formed with significant others: extended kin, new partners, and mental health and legal professionals. The traditional adversarial process in the courts is particularly fertile ground for the polarization of perceptions and for the hostility and combative stance which are hallmarks of this group.

Children’s Adjustment to Divorce-Related Conflict

Effects of Parental Conflict on Children

The studies reviewed in this section are concerned with the general relationship between parental conflict and child functioning in the broader population of divorcing families. Here, we are interested in understanding under what conditions children are affected by interparental conflict, and to what extent and in what ways they are disadvantaged. These are crucial questions with social policy implications. An extensive literature has been generated during the past two decades about the effects of interparental conflict on children, mostly within intact but also within divorcing families (see reviews by Emery; Grych and Fincham; Depner, Leino, and Chun). A common shortcoming of these numerous studies is that, with few exceptions (for example, Cherlin and colleagues) they have not looked at the long-term outcomes of living with interparental conflict, nor have they looked at how conflict can interfere with the normal developmental course of children.

Most early studies did not discriminate among conflict domain, tactics, and hostility (for example, Rutter). More recently, however, there have been attempts to compare the effects on children of exposure to domestic violence with those of living in highly conflictual but nonviolent homes. Further distinctions are now being made about the effects on children of witnessing violence compared with being directly abused (see review by Jaffe, Wolfe, and Wilson). The consistent conclusions of these reviews indicate that interparental

Case Illustration

Alan (11 years) is the only child of bitterly disputing parents who separated suddenly three years ago and who have been in conflict over custody and visitation ever since. Both parents are vocationally successful but are economically stressed by the divorce. Both feel humiliated by the perceived rejection inherent in the failed marriage and especially by the counterattacks in the custody litigation that has followed.

The mother is overtly rageful and vengeful; she has physically attacked the father on occasion. She has a focused paranoid belief that her ex-husband is out to destroy her and her child. In turn, the father is smug, obsessively controlling and financially withholding. He uses his ex-wife’s distressed behavior to thoroughly denigrate her parenting, in carefully written documentation submitted to the court. The mother also claims that Alan’s visits to his father are negatively affecting the boy and should be reduced or eliminated.

Although Alan is not directly asked to take sides in the fight, he is presented with two starkly contrasting realities from parents both of whom love him. Likewise, he is attached to them both; he has painful loyalty conflicts and fears losing each of his parents.

In accord with his father’s expectations of him, in his father’s home Alan is overly bright, competent, and entertaining. When Alan returns to his mother’s home, he regresses to a dependent, demanding, and irritable child who has many irrational fears and panic attacks. Somatic symptoms include tiredness, stomachaches, and digestive problems, which periodically keep him from attending school. He is withdrawn socially and engages in much solitary play with his collection of toy soldiers.

It is perhaps not surprising that these parents are disputing in court as to whether the boy is in need of therapy.
hostility and physical aggression are moderately associated with more behavioral problems, emotional difficulties, and reduced social competence in children, compared with nonconfictual families. Where gender differences have been investigated, boys tend to show more overt behavioral disturbance and girls tend to have more covert emotional disturbance. These findings indicate that, in general, children who are exposed to physical aggression between parents are more symptomatic than those who experience nonviolent interparental discord and that this symptomatology is even more pronounced in children who have been directly abused.

It is important to note that, while children from hostile and aggressive families, as a group, have more adjustment problems than normally expected, the range of individual outcomes is broad. Some children do very well despite these adverse environments; others appear to be reactive and negatively affected. What makes for these differences? In studies of divorced families, it has been found that interparental hostility and aggression mostly have indirect effects on children, mediated by the quality of the parent-child relationship, with the child’s relationship to the mother being more predictive of child adjustment than is the relationship with the father. This finding implies that a good parent-child relationship can buffer children from interparental conflict. In addition, some characteristics of the individual child (for example, a more adaptable temperament, higher intelligence, and better coping skills) are indicators of more resilience. The problem is, however, that conflict between spouses tends to erode a couple’s capacity to cooperate in the care and guidance of children. As a consequence of divided parental authority and lack of respect given to one another, parenting tends to become more problematic: discipline is more coercive, and expectations are more inconsistent, all of which are predictive of more negative and distant parent-child relationships and an increase in children’s emotional and behavioral problems.

Children’s Adjustment in High-Conflict Divorced Families

It is argued here that family laws as well as court policies are often justified by research findings from the broad population and are insufficiently backed by studies of the special subgroup of the divorcing population to which they are most frequently applied, that is, to families of high-conflict divorce. High-conflict divorce is characterized by all of the following: intractable legal disputes, ongoing conflict over parenting practices, hostility, physical threats, and intermittent violence. To address social policy with respect to the children of high-conflict divorce, it is necessary to evaluate the extent to which child outcomes are multiply determined and to examine the relative impact of interparental hostility and physical aggression, parent psychopathology, and the custody and visitation arrangements on children’s functioning. Only a few such studies can be found scattered throughout the literature. These studies are summarized here in some detail for the first time. Taken together, they begin to paint a picture of a subgroup of children at high risk who have special social policy needs.

In 1988, Brotsky, Steinman, and Zemmelman made clinical observations of 67 children (ages 1 to 15 years) from divorcing families at one, two, and four years after separation. Almost half of the parents were referred by the family courts for counseling because of disputed joint physical custody; the remainder were attempting voluntarily to put together a joint custody plan and had requested help. The sample ranged broadly in terms of socioeconomic status and was 80% white. At the one-year follow-up, 12 families were classified as “successful” in implementing a cooperative joint custody plan and had requested help. The sample ranged broadly in terms of socioeconomic status and was 80% white. At the one-year follow-up, 12 families were classified as “successful” in implementing a cooperative joint custody plan, 20 were seen as “stressed” by this endeavor, and 15 were rated as having “failed.”

These three groups of couples were distinguished by their capacity to respect and support each other’s parental efforts with the child and to keep separate and modulate their own anger and ambivalence toward the ex-spouse. The “successful” and “failed” groups clearly main-
Table 1

<table>
<thead>
<tr>
<th>Name and Purpose of Measure</th>
<th>Factors</th>
<th>Examples of Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict Tactics (CT) scales (Straus, 1979)16 18-item report on self and ex-spouse</td>
<td>Verbal reasoning, verbal aggression, physical aggression</td>
<td>Discussed the issue calmly; insulted or swore at the other; slapped; punched; bit, hit the other; beat up; threatened with/used a weapon</td>
</tr>
<tr>
<td>Brief Symptom Inventory (BSI) (Derogatis and Spencer, 1982)18 53-item self-report by adults</td>
<td>Somatization, obsessive-compulsiveness, interpersonal sensitivity, depression, anxiety, phobia, paranoid ideation, hostility, psychoticism</td>
<td>Dizziness or faintness; difficulty making decisions; feelings easily hurt; feels lonely, blue; feels fearful; feels uneasy in crowds; feels watched or talked about; has urges to beat, injure, or harm someone; has idea that someone else can control thoughts</td>
</tr>
<tr>
<td>Child Behavior Checklist (CBCL) (Achenbach and Edelbrock, 1983)31 112-item parent report on child’s adjustment</td>
<td>Depression, withdrawal, somatic symptoms, aggression, externalizing, internalizing</td>
<td>Cries a lot; sad; worrying; refuses to talk; secretive; feels worthless; stares blankly; asthma; aches and pains; disobedient; physically attacks people; gets into many fights; stubborn; sullen; irritable</td>
</tr>
</tbody>
</table>


tained their profile at the four-year follow-up; four-fifths of the “stressed” group had become more cooperative and satisfied with the coparenting arrangement.

The important finding for social policy is that, at each time of observation, those parents whose joint custody arrangements were court-ordered or court-recommended were more likely to be classified as “failed” or “stressed,” and their children were more likely to be symptomatic or at high risk in terms of their behavioral, emotional, and social adjustment. A cautionary note is sounded in that this study employed a small sample and did not report results based on the standardized measures that were used.

In 1989, Schaefer reported on a four-year follow-up of 83 children (ages 1 to 11 years at separation) whose parents had reached a settlement of custody through court-ordered evaluations and/or judicial decree.19 In half of the cases, the fathers had been awarded custody; these were matched with sole mother-custody cases according to age and gender of the child. The socioeconomic status was predominantly middle- to upper-middle-class, and families were predominantly white. The children’s adjustment was assessed by the Child Behavior Checklist (CBCL) completed by the custodial parent.31 The parents reported their own symptomatic distress on the Brief Symptom Inventory (BSI) and the amount of coparental communication (see Table 1).18

The findings indicated that parents’ reports of their own emotional distress were most strongly related to their reports of the children’s adjustment. However, it could not be determined whether this was evidence of a true relationship or of the parents’ emotional state having biased their perceptions of their children. There were few indications that coparental communication was related to the children’s adjustment. The custodial parent reported significantly more internalizing symptomatology (for example, withdrawal, depression, somatic symptoms) when the children had more frequent access to the other parent. There were no significant
differences found in either the boys’ or girls’ adjustment in mother-custody homes compared with father-custody homes on any of the measures. These findings indicate that the custodial parent’s own adjustment is the best predictor of child adjustment and that children of both genders do as well in the primary care of their fathers as in the primary care of their mothers, when these arrangements have been made after careful psychological evaluations of the best match between parent and child. The value of frequent access to the noncustodial parent is, however, questionable.

Findings indicate that the custodial parent’s own adjustment is the best predictor of child adjustment.

Johnston, Kline, and Tschann studied 100 children (ages 1 to 12 years) whose parents were referred by the family court because of ongoing disputes over their custody and care at the time of litigation and again about two and one-half years later. The children were ethnically relatively diverse (62% white) and from low-middle socioeconomic backgrounds. Children’s adjustment was measured by an average of both parents’ reports on the CBCL. Interparental conflict was assessed by both parents’ reports on the Conflict Tactics Scale (CTS), in which verbal aggression and physical aggression were combined (see Table 1). The custody arrangement was rated in terms of the legal decree, the amount of access (days per month) with the visiting parent, and the number of transitions per week between parents. At the follow-up, 35% of these children were in joint physical custody, 53% in mother custody, and 12% in father custody.

There was no clear evidence that children were better adjusted in either custody type. However, as a group, children who had more shared access to both parents in joint custody arrangements and those who had more frequent visitation with a noncustodial mother or father in sole custody situations were more emotionally and behaviorally disturbed. Specifically, they were more depressed, withdrawn, and/or uncommunicative, had more somatic symptoms, and tended to be more aggressive.

When gender groups were analyzed separately, these findings were significant for girls but, in general, not for boys. This longitudinal study showed that more verbal and physical aggression was generated between parents when children had more frequent access arrangements; consequently, these children tended to get more caught up in the interparental con-
Whereas girls’ adjustment was more adversely affected by more access to both their disputing parents, boys and older children compared to younger ones were more caught up and used in the parental conflict that was generated as a consequence of the more frequent access arrangement, and this, in turn, was related to poorer child outcomes.  

Apart from the small size of this sample, the main limitations of this study were that only averaged parental reports on the children were used as outcomes (possibly obscuring differences between mothers and fathers); that the effects of verbal aggression were not distinguished from those of physical aggression; and that parents’ individual dysfunction (an alternative explanation for the findings) was not measured. Consequently, a second study was designed to correct some of these limitations.

In the second study, Johnston reported on the adjustment of 75 children (ages 3 to 12 years) in disputed-custody divorces. Their parents were referred from the family court because of interparental violence or because there was ongoing conflict of a nonviolent nature. This sample was diverse in socioeconomic status and 80% white. In addition to the same measures used in the first study, teachers rated the children, as did clinicians.27,32,33 Parents’ individual dysfunction was measured by the BSI.18 With respect to the custody of these children, 36% were in joint physical custody, 57% were in sole mother custody, and 7% were in sole father custody.

Boys and girls appeared to differ in their adjustment to the custody and access arrangements. The overall results indicated that girls were functioning better when in the primary care of their mothers in these high-conflict and physically violent families (according to ratings by mothers, fathers, and clinicians, but not those by teachers). There was some weaker evidence that boys did better when they had more access to their fathers (according to fathers’ and some teachers’ ratings, but not to ratings by mothers or clinicians). However, more frequent access arrangements were associated with more concurrent aggression between parents, which offset some of the benefits of access for boys.

When all factors in this study were simultaneously analyzed, the findings were that a history of physical aggression in the family was strongly and consistently associated with emotional, behavioral, and social problems in children. It was not only directly predictive of more child disturbance, it was also associated with mother’s diminished parenting, in that mothers from violent relationships were less warm and more coercive with their children. In addition, the degree of both mothers’ and fathers’ emotional dysfunction independently predicted child disturbance, both directly and indirectly, as it was associated with less warmth and more coerciveness in parenting. Apart from the small sample size, the weakness of this study is that, because family relationships and children’s functioning were assessed at only one point in time, it remains undetermined what is cause and what is effect.

Each of the above studies (conducted by Brotsky and colleagues, by Schaefer, Johnston, and colleagues, and by Johnston) were of children of high-conflict divorce, whose parents had failed mediation, undergone evaluations, or had court-imposed settlements.12,19,29,32 According to Maccoby and Mnookin, these categories represent a small proportion, the top 10th percentile, of legal conflict in the divorcing population.

To what extent are these children seriously disturbed? In each of the studies where standardized measures of maladjustment were reported, these children scored as significantly more disturbed and were two to four times more likely to have the kinds of adjustment problems typically seen in children being treated for emotional and behavioral disturbance as compared with national norms. In general, boys were more symptomatic than girls.

Caution needs to be used in interpreting and generalizing from these findings. Each study used a relatively small sample of unknown representativeness of
An association between joint custody/frequent access and poorer child adjustment appears to be confined to divorces that are termed “high-conflict.”

physical aggression, overt hostility, distrust) and the custodial parent’s emotional distress are jointly predictive of more problematic parent-child relationships and greater child maladjustment. Court-ordered joint physical custody and frequent visitation arrangements tend to be associated with poorer child outcomes, especially for girls.

It is important to note that the finding of an association between joint custody/frequent access and poorer child adjustment appears to be confined to that small proportion of families (about one-tenth) of all divorces that are termed “high-conflict” as defined above. Several other studies of the broader population of divorcing families, where custody arrangements are generally made voluntarily by parents, indicate that joint physical custody and frequent visitation are not more detrimental to the majority of children. In some cases, especially where parents are cooperative, they are more beneficial.

Conflict Resolution Procedures and Programs

Mediation

Mediation here is defined as the use of a neutral third party in a confidential setting to help disputing parents clearly define issues, generate options, order priorities, and then negotiate and bargain differences and alternatives. In this method of dispute resolution, the assumption is that the mediator can contain and deflect the emotional conflicts of the divorcing couple and help them to become rational, focused, and goal oriented. In general, mediation of disputes about the custody and care of children after divorce has been widely advocated as the forum of choice because it empowers parents to make their own decisions, avoids unnecessary state interference in family affairs, and increases satisfaction and compliance with the agreements made. Most states now have some provision for mediation in custody disputes either by statute, court rule, or judicial referral.

Formal outcome studies of mediation and court experiences indicate that rates of success in reaching agreement range between 40% and 70%. It is important to note, however, that the “failures of mediation” have all the characteristics of “high-conflict divorce.” The failures have been described as enmeshed and highly conflicted couples who are ambivalent about their separation and who have severe psychopathology or personality disorders. It is often argued that mediation is inappropriate for many dysfunctional families: where couples are chronically litigious, where there is domestic violence, where there are allegations of child abuse and molestation, and when one or both parents are alleged to have serious psychological difficulties. Furthermore, it is difficult for parents to arrive at some consensus when they have highly divergent perceptions of their children’s needs and a pervasive distrust of each other’s capacity to provide a secure environment. In sum, high-conflict divorcing families have often been identified by their failure to make effective use of mediation methods that rely upon a rational decision-making process.

Evaluation and Recommendations

When attorney negotiations and mediation are ineffective, the courts generally rely upon the expert testimony of mental health professionals to help in the time-consuming task of fact finding and to offer opinions as to how disputes over the custody and care of children should be resolved according to the current legal standard, which is “the best interests of the child.” It is generally believed that mental health evaluators are most useful...
if they serve as impartial experts appointed by the court, or by stipulation of both parties, rather than as an expert retained by one party, who pits his or her professional opinions against that of the expert retained by the other party. Evaluations can be conducted within services that are a part of the court system, or by private practice professionals and community agencies outside the court. They can involve a narrow focus on a particular issue (for example, which school the child should attend) or entail a complete family evaluation (for example, psychological testing of all parties, school and home visits, substance abuse assessments, child abuse and molestation investigations).

Studies of the outcome of the evaluation process indicate that the final court order is in accord with the recommendation in about 85% of cases. In actuality, in about 70% to 90% of the cases, after hearing the recommendations, the parties reach a negotiated agreement which is then entered as a consent judgment. Although evaluations appear to be very effective in reaching an initial agreement, they often bring little relief for those high-conflict couples who harbor great distrust and hostility and have difficulty in cooperating and coparenting their children on a daily basis. A two-year follow-up study by Ash and Guyer of 267 families showed that families who had undergone custody evaluations had a rate of relitigation that was two and one-half times the rate for families who had settled by themselves (19% compared with 7%). Over approximately an eight-year follow-up period, a recent study by Hauser and Straus of 700 families confirmed this difference. Among families who had custody evaluations, 71% relitigated compared with 41% of the divorcing population in general.

**Visitation Enforcement Programs**

Throughout the United States, a variety of court-related services have been established to deal with ongoing coparental disputes over visitation and child care in highly conflictual divorces. Typically, they involve one or more of the following: parent education (usually in groups); assessment and mediation of the visitation dispute; drafting more specific, enforceable court orders; and monitoring visitation by letter or telephone. Increasingly, these services are seen as having a probationlike function, and in some cases they are specifically used as a diversion program in lieu of prosecution for contempt of court orders. In some jurisdictions, particularly litigious families are assigned a “case manager” (for example, a judge or court counselor) who is responsible for coordinating the numerous court actions with the many professionals and others involved in the family dispute. The effectiveness of some of these programs in ensuring the child’s conflict-free access to the noncustodial parent is currently being evaluated. Of particular interest is whether improved access leads to increased compliance with child support orders.

**Therapeutic Remedies**

It is evident that misplaced and escalating personal and spousal conflicts of divorcing couples, whether emanating from long-term difficulties or from separation-engendered conflict, result in resistance to mediation, questionable negotiation strategies, unrealistic custody and access demands in repeated litigation, and ongoing inability to cooperate on behalf of the children. From a therapeutic viewpoint, a more appropriate intervention requires gaining some understanding of why these parents are locked into chronic disputes.

**From a therapeutic viewpoint, a more appropriate intervention requires gaining some understanding of why these parents are locked into chronic disputes.**

Typically, this dispute resolution method involves both parents and their children in a relatively brief, confidential intervention (15 to 25 hours), which can be adapted either to individual high-
conflict families or to groups of such families. The strategy is two-pronged: On one hand, parents are helped to develop some awareness or insight into their psychological impasse (or, there is an intervention with the extended family and significant others, including professionals, which aims to avoid the impasse for those parents who are too disturbed to benefit from direct counseling). On the other hand, parents are educated as to the effects of their conflict on their children and counseled about how to protect their children from the spousal disputes. Subsequently, parents are helped to negotiate a coparenting plan and are provided with some assistance in implementing or modifying their arrangements in scheduled, or intermittent, follow-up sessions. A two- to three-year follow-up of two studies of high-conflict families (n = 80 and n = 60) who received this treatment indicated that two-thirds were able to keep or renegotiate their own agreements regarding custody and access and, consequently, to stay out of court. The group method was found to be 40% more cost-effective than the individual method.

Coparenting Arbitration

This is a relatively new approach, which has been developed for those high-conflict families who need continual structure and help with their parenting and coparenting after divorce over a long period of time. Essentially, it involves a mental health specialist (variously called a court master, custody commissioner, coparenting counselor, guardian ad litem) who is appointed by the court or by stipulation of the parties. This person is then available to the family on an ongoing or “as needed” basis to help with decisions about the children. Depending upon the specific contract with the family, any or all of the following methods may be used: counseling, mediation, recommendation, and arbitration. This kind of intervention can be useful in a variety of cases: those that involve chronic litigation and enmeshed family conflicts; where there are ongoing allegations of abuse (physical or sexual) or there is concern about domestic violence; where there is intermittent mental illness of a parent that needs monitoring; when a child has special needs (for example, physical or mental disability) that require close coordination between parents; or, simply, when children are very young (infants) and the parenting plan must be reworked over time in response to the changing needs occasioned by their rapid development. To date, no known studies have evaluated the effectiveness of these kinds of approaches.

Supervised Visitation

Supervised visitation programs comprise a rapidly growing new social service that has been developed in direct response to intractable divorce disputes. Currently, there are more than 70 such programs nationwide, brought together by a fledgling organization called the Supervised Visitation Network. Largely staffed by trained volunteers or counseling interns and funded variously by local, state, or charitable grants and by advocacy groups (for example, domestic violence agencies), these programs provide a protected setting for visitation to occur between children and their noncustodial parents. This supervision can take a variety of forms, and its extensiveness can vary over time. In the most extreme cases, the supervision may be part of a therapeutic intervention into the parent-child relationship and is undertaken by a trained counselor.

Where the children are at high risk (because of a parent’s psychological disturbance, substance abuse problems, history of emotional or physical abuse, molestation, serious domestic violence, or child abduction), visitation may occur only under the continual surveillance of a neutral third person in a closed setting. In situations of less gravity, supervision may be performed in an open setting (for example, at a park, or in the noncustodial parent’s home) by family members or friends. Where there is no direct threat to the child but there is a possibility of verbal or physical abuse between parents, the supervision may be limited to the time of exchange of the child at a safe, neutral place. There have been no formal evaluations of these programs to date.
Implications for Social Policy

What kind of public policy with respect to custody and visitation is supported by the current body of research on high-conflict divorce? The more conservative approach is to note the limitations of this research and to conclude that there are no policy implications (the studies are too few, comprise small nonrepresentative samples, have not adequately demonstrated causal relationships between different custody/access arrangements and child outcomes, have not differentiated between children of different ages, and have not examined cultural differences). This conclusion, however, leaves no guidelines for daily decision making in family courts. A more helpful approach is to propose a number of principles that should guide custody decision making, recognizing that individual cases raise multiple issues which require good clinical judgment and judicial discretion. It is also important to note that these policy principles may change as more becomes known about these families.

Key Principles

- Children need custody and access arrangements that minimize the potential for ongoing interparental conflict; they especially need to be protected from exposure to violence.

- Children are better off in the care of a parent who is relatively free of psychological disturbance or substance abuse inasmuch as both of these conditions compromise parenting.

- A good parent-child relationship is the best predictor of good outcomes in children. It is this domain that should carry considerable weight in determining a child’s primary residential arrangement in these families.

- The present research base indicates that high-conflict divorced parents have a relatively poor prognosis for developing cooperative coparenting arrangements without a great deal of therapeutic intervention. The fourth principle, then, is that custody arrangements should allow parents to disengage from their conflict with each other and develop parallel and separate parenting relationships with their children, governed by an explicit contract that determines the access plan. A clearly specified regular visitation plan is crucial, and the need for shared decision making and direct communication should be kept to a minimum. This fourth principle implies, therefore, that joint legal and joint physical custody schedules which require careful coordination of the child’s social, academic, and extracurricular activities are generally inappropriate for this special subpopulation of divorcing families, as are frequent transitions of the child between parents for visitation purposes. This principle may need to be modified for very young, preschool children who have difficulty remembering an absent parent unless access occurs at more frequent intervals.

- Where there is concern about the capacity of both parents to protect the child from the interparental conflict and their own disturbed attitudes and behavior, it may be appropriate to give more weight in the custody/access decision to providing the child with continuity in relationships with supportive others (such as teachers, peers, grandparents) and stability of place (such as neighborhood and school). In these more difficult cases, custody and access awards can be made contingent upon either or both parents’ obtaining appropriate counseling (for parenting, violence, substance abuse, and the like). Finally, if conflict continues, children themselves may be better protected if a court order assures them of direct access on an ongoing basis to their own counselor, one who can maintain a positive or equidistant relationship with both parents and help the children directly.

---


5. This focus leaves untouched the serious social policy question of the relationship between disputes over child support and those over custody and access to children, a question that is presently under research in a multisite national study (J. Pearson, Center for Policy Research, 1720 Emerson St., Denver, CO 90218).


51. See note no. 12, Johnston, for a comprehensive set of guidelines for the disposition of custody and access in domestic violence families.
A Feminist Perspective on Divorce

June R. Carbone

Abstract

Feminist perspectives on divorce proceed from the ways in which women’s positions at divorce systematically differ from men’s positions. Although there has been a large-scale increase in mothers’ labor force participation, there has been no corresponding increase in fathers’ domestic contributions, and women continue to bear the overwhelming responsibility for child rearing. In substantial part because of this division of labor within the family, divorcing women, on average, face bleaker financial prospects and enjoy closer emotional ties to their children than do their former husbands. Existing divorce law, with its emphasis on each party’s self-sufficiency, limited provision for child support, and gender-neutral custody principles, does not fully recognize or address these differences.

Feminists differ in the responses they propose to these issues. “Liberal feminists” believe that women’s domestic responsibilities will inevitably place them at a disadvantage and favor policies that encourage men to assume a proportionate share of family responsibilities. “Cultural feminists,” or “feminists of difference,” believe that it is not the fact that women care for children but that child rearing is so undervalued which is the source of the problem. “Radical feminists” believe that it is impossible to know whether women’s involvement in child rearing would differ from men’s in a different society and focus on the ways in which marriage and work force policies perpetuate male dominance. All agree, however, that existing law contributes to the relative impoverishment of many women and children and that, even when the rules purport to be gender-neutral, they are administered in systematically biased ways.

In considering “feminist perspectives” on divorce, it is important to note that there is not one feminist perspective, but many. Feminism generally is defined not in terms of a particular position or set of positions, but by an insistence that women’s experiences, varied as they are, be taken into account.† Accordingly, feminist perspectives on divorce focus on the implications of divorce for the lives of women² and their children.³

The implications of the existing system are stark and relatively uncontroversial. Women generally earn less than men. Marriage increases the economic gap as married women, who bear the overwhelming responsibility for child rearing, earn less than single women, while married men increase their earnings over single men. At divorce, mothers overwhelmingly retain physical custody of their children.

Fineman concludes that, under the present divorce system in which divorce awards neither close the earnings gap nor account for the full costs of child rearing, women are asked to “meet greater demands with fewer resources” than their former husbands.⁵ Mason terms the result “the equality trap.”⁶ In this era of high divorce rates, children have access to a smaller share of society’s resources, and
mothers confront more direct conflicts between their abilities to provide for themselves and to care for their children than in earlier generations.  

Although virtually all feminist analysis of divorce starts with this picture, there is little agreement on the solution. “Liberal feminists” believe that it is the gendered division of labor itself which ensures women’s subordination to men and that, unless there is genuinely shared responsibility for child rearing, equality is impossible. “Cultural feminists,” or “feminists of difference,” believe that the major problem is not that women disproportionately care for children, but that society so undervalues child rearing. In between are many feminists who believe that equality requires both greater sharing of the responsibility for child rearing and greater support for the child-rearing role.

In setting forth feminist perspectives on divorce, this article starts with the critique that animates virtually all feminist writing about the family, that is, identification of the ways in which the gendered division of labor during marriage leads to the effective impoverishment of many women and children, and in which women’s greater involvement with their children increases their vulnerability at divorce. The article then examines the failure of the existing system to provide adequately either for child rearing or for greater equality between men and women, and reviews proposals to change the existing provisions for custody and financial allocations in accordance with their proponents’ respective visions for the future.

The Gendered Division of Family Responsibilities

For women, assessing the impact of divorce starts with an examination of the gendered division of responsibility within the family. This division of labor has two important consequences upon divorce: (1) it increases disparities in earning capacity and (2) it encourages mothers to develop closer relationships with their children than fathers do.

Recent changes in the status of women have been overwhelmingly characterized by the large-scale movement of married middle-class mothers into the labor market but not by a corresponding increase in fathers’ participation in homemaking. Bergmann estimates that working women averaged 28.1 hours of “unpaid” family work per week to their husband’s 9.2 hours and that husbands of wives with full-time jobs averaged about two minutes more housework per day than did husbands in housewife-maintaining families. Combing paid and unpaid labor, Fuchs concluded that, between 1960 and 1986, women increased their total hours by almost 7% while men’s fell by the same proportion. Wives, whatever their work force participation, still assume an overwhelmingly greater share of the responsibility for the family’s domestic needs than do their husbands.

Apart from the earnings gap between men and women generally, there is substantial evidence that married women, because of family responsibilities, experience a drop in earning capacity with life-
long consequences. First, human capital theorists posit that interruptions in labor participation have a major effect on earnings. Polachek finds that, while levels of educational attainment are comparable for men and women, women experience more labor market interruptions than do men and that approximately half of the wage gap between all male and female workers can be explained on the basis of those interruptions. Second, studies show that income varies with family status. Blau and Kahn note that, in the United States during the late 1980s, single women made 95.52% of what single men made while married women made only 59.44% of what men made. By the age of 40, married women make only 89% of the wages per hour earned by unmarried women while married men earn more than unmarried men at every age. Finally, a comparison of age earning profiles for men and women demonstrates that, while women’s earnings lag only slightly behind men’s during women’s early years in the labor force, women miss out on the rapid increase in earnings men experience in their late twenties and thirties, the peak childbearing years for women. Taking these factors together, Fuchs concludes that “I do” has a very different price for women than for men.

The differences between men and women and between single and married workers magnify the disparity between husbands’ and wives’ financial prospects at divorce. Maccoby and Mnookin found that, where both spouses worked during the marriage, the women, on average, earned only half as much as the men. Fuchs’s 1985 data show that, where both spouses worked outside the home, three of four husbands had hourly earnings greater than their wives, and for half the couples, the wife’s wage was less than two-thirds that of her husband. Adding the fact that married women work fewer hours outside the home, Hewlett emphasizes that, on average, married women earn less than half the amount earned by married men. Women’s greater participation in the labor force has not meant participation on the same terms as men.

While there is little dispute that, at divorce, women, on average, face bleaker financial prospects than their husbands and that the division of responsibilities within marriage contributes to the financial gap, there is less recognition of the other major difference between divorcing couples—mothers’ greater, and qualitatively different, attachment to children.

Until Becker’s article, the taboo was particularly strong among feminists and particularly strong in the legal academy. With the first wave of modern feminism focused on the workplace, feminists feared that, by acknowledging the special role of motherhood for many women, all women would be defined exclusively in motherhood’s most restrictive terms.

As Becker documents, there is a growing literature that suggests substantial differences in the way mothers and fathers relate to their children, with important implications for divorce policy. Although this literature is necessarily more subjective than that assessing financial factors, the empirical data that exist supports Becker’s assertions. She notes two studies in particular. Genevie and Margolies, who interviewed a representative sample of mothers, report that more than 90% feel that mothers’ love is different from other forms of love. They describe it as more intense, involving a greater feeling of identity, “a feeling that one’s child is part of oneself.” The mothers surveyed overwhelmingly believed that fathers are less emotionally involved with their children than mothers are, and a “shocking 50 percent . . . did not think much of their husbands as fathers, describing them, in varying degrees, as uninvolved and overly critical.”

While the Genevie and Margolies study interviewed only mothers, a study of what the researchers term “dual-mother families”—families in which both husband and wife “mother”—reports similar results. In this study, both parents identified themselves as the “primary caretaker” and performed at least 35% of the child care. Nevertheless, both mothering mothers and mothering fathers in this study reported that the mothers were more emotionally involved in their children’s lives and felt the connection between self and child as sharper and more unconscious.
more “primary.” The researchers found that both mothers and fathers agreed that it would be the mothers who would actually be more devastated by the actual loss of a child.  

It is difficult to address divorce policy without considering the implications of differences in the way parents relate to their children.

The studies that Becker cites are inherently limited. Nonetheless, the study results correspond to literary attempts to capture the experience of mothering and to much observed behavior. At divorce, mothers are much more likely to seek physical custody of their children than are fathers, and noncustodial mothers are more likely to remain in contact with their children than are noncustodial fathers.

As with financial disparities, there is little dissent regarding the fact that gender differences exist in parents’ relationships with their children; at the same time, there is considerable controversy over the cause and the implications. Radical feminists emphatically reject the attribution of observed gender differences to women’s “true” preferences; they maintain that it is impossible to know what women would prefer in the absence of the patriarchal system which now exists. Liberal feminists fear that any emphasis on the way in which women “mother” differently from fathers will resurrect an ideal of motherhood that precludes women’s access to status, power, and independence; therefore, they prefer, as a matter of strategy, not to call attention to such differences. Only cultural feminists, or feminists of difference, have been willing to address the issue directly.

Nonetheless, it is difficult to address divorce policy without considering the implications of differences in the way parents relate to their children. Fineman, whose work marks the emergence of the feminism of difference within family law, stresses the importance of defining feminist methodology, not in terms of grand theory, but in terms of the concrete impact on the lives of women. Central to that impact, Fineman maintains, are the material and emotional circumstances that arise from women’s greater connection to their children, culturally determined or not. She invokes Fuchs to explain that it is not the fact that women raise children which places them at a disadvantage, but “that, on average, women have a stronger demand for children than men do, and have more concern for children after they are born.” Fineman concludes that taking women’s concern for children into account is essential to effective divorce reform, and that “[c]ontemporary custody discourse trivializes women’s emotional investment in their primary caretaking relationship with their children. It is perhaps on this level that reformist discourse has been least sensitive to women’s reality.”

Feminist perspectives on divorce, in assessing the impact on women and children, proceed from the two important differences men and women experience at divorce: different financial prospects and different perceptions of their relationship to their children. The feminist critique of divorce policy, despite the disagreement on objectives, focuses on the ways in which existing law fails to take those differences into account.

The Limitations of Existing Divorce Policy

Existing divorce law largely reflects the reforms adopted in the wake of recognizing no-fault grounds for divorce. Much of the controversy that attends modern divorce centers on two issues: (1) is the movement from fault to no-fault responsible for the inadequate provision for women and children in modern divorce law, and (2) do the existing grounds for such provisions provide an adequate basis for future decisions?

The Adoption of No-Fault Grounds for Divorce

Historically, the primary societal provision for child rearing has been the insistence that child rearing occur within lifelong unions in which husbands and wives were assigned highly differentiated roles, and the wife’s position was legally and practically dependent on the husband’s. Traditional marriages emphasized the husband’s role as head of household and his obligation to provide support. Wives were expected to subordinate their
own opportunities to the needs of their families. Family law enforced the exchange by making divorce difficult and potentially expensive for the responsible party. The permanence of marriage provided a measure of security but at the expense of the parties’ independence and freedom to manage their own lives.

Reformers justified no-fault initiatives as a way to remove the hypocrisy and deceit inherent in a system that made divorce available only if one party and only one party were at fault. Yet, no-fault did more than simply eliminate abandonment, adultery, and extreme cruelty as prerequisites for divorce; it dismantled the traditional provisions for child rearing without agreement on a new system to take its place. Traditional marriage involved an exchange of promises to remain married “until death do us part.” Breach of those promises, that is, fault, influenced custody and, in many jurisdictions, it determined alimony and property divisions. “Innocent” wives were to be awarded support in accordance with the standard of living enjoyed during the marriage and their husband’s ability to pay; “guilty” wives could find themselves ineligible for alimony altogether. While support awards in practice were rarely generous for the “innocent” spouse and not always draconian for the “guilty,” the law largely succeeded in its principal objective: reinforcing societal sanctions against divorce.

In most jurisdictions, with the passage of no-fault legislation, marriage became, for all intents and purposes, terminable at will. While the no-fault principle in its narrowest sense required only that the absence of desertion, adultery, or extreme cruelty not bar a divorce both parties wanted, a majority of the no-fault states went further and barred consideration of fault altogether. If one party wanted a divorce, the other could not prevent it, and the financial and custody decisions that followed would be made independently of the events that precipitated the break-up. Thus, no-fault necessarily eliminated the fault system’s principal justification for postdivorce adjustments: the guilty spouse’s continuing responsibility for the well-being of the family left behind. At the same time, the fact that the new system was implemented during a period of changing gender roles also reduced the importance of the major practical concern compelling postdivorce support: the dependence of women. The traditional system, which emphasized the exchange of the husband’s support for the wife’s domestic services, viewed women as specially suited for the care of young children and largely incapable of self-support. With the increasing work force participation of married middle-class mothers and women’s growing insistence that they were self-sufficient equals, the very concept of “support” or “special roles” seemed archaic.

Under the Uniform Marriage and Divorce Act (UMDA) of 1970, the primary objective became a “clean break.” Following divorce, there would be no continu-

---

**No-fault divorce dismantled the traditional provisions for child rearing without agreement on a new system to take its place.**

---

ing obligation from one spouse to another. The only surviving relationship would be with the children. To the extent one spouse needed assistance, an adjustment in the property division, rather than a support award, was preferred because the property division could be finalized with the divorce. Support in any form was justified by “need,” and need was defined in terms of a dependent spouse’s ability to become self-sufficient, not in terms of ability to provide for the children or to enjoy a standard of living comparable to that of the other spouse. Given these limited objectives, courts that provided alimony at all favored “transitional” or “rehabilitative” awards, that is, support payments for relatively short periods designed to give dependent spouses time to find a job or to acquire additional education or training. Women who had been full-time homemakers over the course of a marriage spanning a quarter century were expected to become self-sufficient within a few years. Moreover, even this limited provision for support was conditioned on the husband’s ability to pay. The new law contained no recognition that husband’s and wife’s financial positions at divorce might reflect the gendered division of family responsibilities during the marriage, with one party taking from the marriage the financial benefit of those arrangements while the other bore the corresponding loss.
In determining custody, Fineman describes a transformation from a system of “old, tested, gendered rules that permitted predictable, inexpensive decisions” explicitly favoring women to a complex legal determination “in which a man who pursues a custody case has a better than equal chance of gaining custody.” The changes resulted from two factors. First, the traditional rules, which recognized an explicit presumption favoring mothers in determining the custody of children “of tender years,” were eliminated in favor of gender-neutral standards. Second, with the refusal to consider fault came a refusal to consider any aspect of the parties’ relationship. Many states, for example, enacted statutes favoring joint physical and legal custody without regard for whether the parents could cooperate sufficiently to make it work in practice; in other states, courts consider the “best interests of the child” prospectively only. In such determinations, the father’s greater financial resources, even if they are the product of his lack of involvement with the children during the marriage, might outweigh the mother’s greater contact and emotional commitment.

The combination of the changes in the grounds for divorce, support, and custody amounted to a wholesale withdrawal of legal recognition and financial support for the child-rearing role. While mothers still overwhelmingly retained physical custody under the new rules, they did so in part because few fathers sought custody. In a study of two counties in California, for example, researchers found that the courts awarded joint legal custody in 79% of all divorces even though mothers retained sole physical custody in two-thirds of those cases. Fathers thus acquired greater decision-making power without a corresponding increase in responsibility; mothers continued to assume the primary caretaking role with less security and recognition.

The combination of the changes in the grounds for divorce, support, and custody amounted to a wholesale withdrawal of legal recognition and financial support for the child-rearing role. Weitzman chronicled the results in California and concludes: “Just one year after legal divorce, men experience a 42% improvement in their postdivorce standard of living, while women experience a 73% decline.” Although Weitzman’s data were drawn only from select counties in California, the overall picture she presents has been borne out so consistently in different parts of the country that the major part of her findings have become paradigmatic.

So long as divorcing women do not enjoy the employment prospects of their former mates and they bear the disproportionate responsibility for child rearing both during and after marriage, and there is no substantial postdivorce economic adjustment, a precipitous decline in the living standards of divorced women and the children in their custody is inevitable.

The controversy surrounding Weitzman’s work centers on two issues: the size of the disparity she finds, and the suggestion that no-fault is responsible, neither of which is central to the feminist implications of her work.

Duncan and Hoffman, without contesting the drop in per capita income that Weitzman reports or the failure of divorce awards to address such earning disparities, dispute her conclusion that women experience a 73% drop in their standards of living. Weitzman arrived at the 73% figure by taking the per capita income figures and applying them to a needs standard calculated in accordance with the Bureau of Labor Standards Lower Standard Budget for an urban family adjusted for family size and composition. Attempting to perform the same calculations, Duncan and Hoffman find Weitzman’s figure of 73% “suspiciously large”; they recalculate the drop in living standards at 33%. In addition, as Weitzman herself notes, both Weitzman’s and Duncan and Hoffman’s calculations overstate the increase in men’s standards of living to the extent that they lose out on or need to purchase substitutes for the services their wives performed without pay, but underestimate the drop in women’s income to the extent that there is less than full compliance with support orders, a common occurrence in the families studied. As Duncan and Hoffman acknowledge, however, these methodological issues go to the magnitude of the decline women and children experience, not to the existence of serious gender-based inequities.
The second issue, of somewhat greater concern to feminists, is the suggestion that no-fault is responsible for the dire economic circumstances women and children face at divorce. Singer uses Weitzman’s own data to emphasize that the financial awards made under fault-based divorce never lived up to the law’s promise to protect the standard of living enjoyed during the marriage, and Jacob concludes that, because of shortcomings in Weitzman’s research design, her “evidence falls far short of conclusively demonstrating that changes in no-fault, property and custody law are responsible for the economic plight of divorced women.”

Garrison’s data demonstrate that, at least in New York, changes in the underlying rules governing divorce allocations had a much more significant impact on divorce awards than the adoption of no-fault grounds for the divorce itself.

Even if the empirical data were less equivocal, however, there would be little feminist support for a return to fault. Weitzman herself does not advocate reintroducing fault principles, and Kay emphasizes the importance of taking out of divorce the “blackmail” that prompted no-fault reforms in the first place. Singer, invoking a liberal feminist perspective, emphasizes the ways in which the fault system constituted a “double-edged sword” that reinforced the value of a woman’s domestic activities in ways that restrict “women’s options outside the home and risk hurting women in the long run by suggesting that the causes and cures for inequality lie solely in the domestic sphere.” Fineman, while otherwise rejecting much of the liberal feminist concern that family law reform will hurt women’s position in the workplace, rejects altogether the emphasis on the traditional family that is central to the fault system. Given the myriad difficulties with the fault system, the larger issue is not whether no-fault grounds for divorce are an improvement over fault grounds, but whether the property, support, and custody provisions adopted in the wake of no-fault reform provide an adequate basis for the future.

The Adequacy of Existing Divorce Doctrine

The true divorce revolution concerns not the generosity of divorce awards, but the permanence of marriage. Fault principles, which arose during an era in which marital bonds were treated as sacred obligations that no “man” could put asunder, were never intended to treat marital dis-
Weitzman documents the elements that prevent the existing system from responding more adequately. First, the expectation that divorce would represent a clean break with no continuing obligation from one spouse to another was realistic only to the extent that the property settlement constituted an appropriate resolution of the couple’s combined affairs. Few marriages end with significant accumulations of property, and, in those marriages with some property, it consists overwhelmingly of the family home. Therefore, even if all available property were awarded to the custodial parent, it is unlikely to be enough to meet the family’s postdivorce needs, and there is little evidence that any state has ever attempted to use the property division in that way.

Although the law recognizes a clear continuing obligation to children, fathers bear relatively little of the postdivorce responsibility for child rearing.

Under no-fault, California mandates a fifty-fifty division of community property. In other states, despite clear statutory authority to use the property division to redress need, Reynolds’s work demonstrates that divisions in which a custodial mother receives more than 50%, that is, more than the share to which she is entitled without taking need into account, are rare. Accordingly, a clean break with no surviving financial obligation following the divorce would necessarily impose substantial hardship—and constitute a clear denial of the costs of child rearing—in all but the wealthiest families.

Second, existing law provides no coherent legal basis for thinking about spousal support, and the courts do not fully implement the legal bases that exist. The provisions in the UMDA that limit spousal support to cases in which a spouse is incapable of self-support or employment outside the home are minimal at best. Long-term homemakers who earn a fraction of their former husband’s salaries are, in the language of the UMDA, “able to support [themselves] through appropriate employment,” and the custodial mothers of small children limited to low-paying jobs with flexible hours do not have children “whose conditions or circumstances make it appropriate that the custodian not be required to seek employment outside the home.”

Although a growing number of states also recognize lost earning potential as a basis for spousal support, few fully implement such provisions where they exist, and the recent appellate decisions reversing the failure to award support to long-term homemakers have done little to address the circumstances of mothers who bear responsibility for young children. Weitzman’s California study and the similar studies carried out in other states demonstrate that spousal support for any period is rare. Weitzman found alimony awarded at all in only 17% of the divorces she examined; Maccoby and Mnookin claim that the current California rate in the two relatively wealthy counties they studied is closer to 30%, but put the national total at only 8.1%.

Third, although the law recognizes a clear continuing obligation to children, fathers bear relatively little of the postdivorce responsibility for child rearing, child support awards do not begin to make up the differences, and compliance is poor at the levels awarded. Unlike the provisions for spousal support, child support guidelines permit consideration of the “financial resources of the custodial parent” and often of the impact of custody on the custodial parent’s employment prospects. Nonetheless, child support awards have never accounted for more than a small fraction of child care costs because (1) they tend to focus on immediate expenses, excluding the larger impact of children on the custodial family; (2) they end at age 18 and therefore exclude higher education altogether; (3) they have often been set in accordance with vague standards that permit the courts to decide what is “reasonable and just”; (4) with relatively lower-earning fathers, courts tend to consider the hardship an award would impose without balancing it against the hardship lack of an award would impose on the custodial family; (5) with higher-earning fathers, the courts tend to limit awards to the children’s immediate expenses without considering the different standards of living that result; (6) particularly with custody awards that involve a degree of joint physical custody, the courts may reduce the support award because of the greater sharing of caretaking responsibility without fully considering the impact on the lower-
earning spouse; and (7) in balancing the two parents’ contributions, courts often give undue weight to financial contributions while caretaking efforts remain largely invisible. Compounding the paucity of the awards has been a wholesale lack of compliance. The most frequently cited figures come from a 1981 study that found no payment in 25% of all cases and partial payment in another 25%. While more recent studies show some improvement, overall compliance remains poor and declines over time.

The level of child support has been so egregiously low that Congress has amended federal child support laws five times since 1980. State law now requires employers to withhold child support payments from delinquent parents, and starting in 1994, from all parents, whether delinquent or not. The 1984 legislation required states to adopt discretionary guidelines, and the 1988 legislation made the guidelines mandatory. While feminists have hailed the new laws, particularly the emphasis on mandatory guidelines and automatic withholding, it is much too early to assess their effectiveness. It remains to be seen whether the new laws will be enforced with appropriate rigor for those able to pay without draconian consequences for the poor, whether they will adequately balance financial and non-financial contributions, particularly for noncustodial mothers, and whether they will fully redress what Okin terms the “effect of judges’ tendency to regard the husband’s postdivorce income as first and foremost his.”

Finally, the structure of the new laws leaves women with relatively little leverage in negotiating the settlements that account for the overwhelming majority of divorce awards. The fact that court-ordered spousal and child support awards are relatively low and difficult to obtain places the primary burden on the party who wishes to secure a transfer of assets. Under such a system, those most in need face the greatest difficulty in garnering the resources to retain the legal representation necessary to secure an adequate hearing and, thus, may be the most pressured to accept an adverse settlement. Moreover, game theory predicts that the party with the greater concern for the children will be more willing to trade his or her own well-being to secure custody or other concessions for the benefit of the children, placing women at a further disadvantage. Interview studies demonstrate that many men threaten to ask for custody as a ploy in negotiations to reduce the amount of child support. Others seek joint physical custody in an effort to substitute greater parenting for reduced financial obligation. The impact of this type of strategic bargaining is difficult to test empirically although virtually all theorists, whether conservative economists or family law feminists, emphasize its importance. Maccoby and Mnookin, in one of the few divorce studies not to rely exclusively on court records, tried to measure the impact and found that mothers who obtained sole physical custody in high-conflict cases did not appear to receive less support at a statistically significant level. At the same time, for the smaller group of mothers whose divorce decrees provided for joint physical custody but mother residence (a group of cases settled on average later in the bargaining process), a higher degree of legal conflict appeared to be associated with lower child support awards. Maccoby and Mnookin could not explain these results, but they credited, among other things, the use of support schedules and community property rules which, in California, are far less flexible than elsewhere. Given the low level of support available generally and uncertainty in the resolution of an issue so much more critical, on average, to women than to men, women have no more reason to expect favorable outcomes from the great majority of cases that settle than they do from litigation.

Taking these factors together, Weitzman presents a compelling account of the ways in which women and the children in their custody are disadvantaged in the aftermath of divorce. In entering marriage, fathers, but not mothers, are free to devote the central part of their energies to enhancing their careers, and at divorce, they retain the full advantage from that investment. Mothers devote far more of their energies to the family during mar-
riage, bear the disproportionate share of the child-rearing costs afterward, and receive little recognition or support for their sacrifices. Divorce awards, when they occur at all, reflect reluctance to impose a substantial hardship on former husbands far more than the needs or contributions of former wives and children. Under such a system, Weitzman’s findings of economic hardship are not only unequivocal, but axiomatic.

**Feminist Proposals for Reform**

The overriding factor underlying the feminist critique of existing divorce policy is that child rearing is important and expensive and that it is an expense borne disproportionately by women. The egalitarian model of husbands and wives holding comparable jobs and sharing domestic responsibilities largely does not exist. The pretense that men and women stand on equal footing at divorce effectively assigns custodial mothers primary responsibility for both caring for and supporting their children. When high rates of mother custody are combined with high rates of divorce and low levels of support, what emerges is an overall shift in the responsibility for child rearing from parents to mothers.¹¹³

The consequence of this shift is not just more work for women. Middle-class women, that is, well-educated women with good employment prospects, face a clear choice between family and career. Many have delayed or foregone marriage and had fewer children once married.¹¹⁴ Although the most recent data show that more of these women are now choosing to become single parents rather than forego parenthood altogether, the net result is a smaller cohort of middle-class children as a percentage of the total.¹¹⁵ Moreover, of those children born to middle-class parents, many end up being raised in conditions of relative poverty because of divorce. Finally, children born in working-class or poor families are more likely than middle-class children to experience divorce, and their mothers are less likely to be awarded support at all.¹¹⁶ The hardships divorce imposes on middle-class women and children constitute a disaster for the poor. Taken together, these changes amount to a systematic disinvestment in the next generation. In 1986, the proportion of children living in poverty was almost double that of adults while, in 1960 and 1970, the poverty rate for children was only one-third the adult rate.¹¹⁷ Although divorce is not the only cause, it is a major contributing factor to a wholesale decline in the well-being of American children.¹¹⁸

While there is little dissent from this picture, there is less agreement about why it occurred or about how to fix it. The cultural feminist critique places major responsibility on what Fineman terms “the illusion of equality.” In her 1983 account of divorce reform in Wisconsin, Fineman blames the poverty of existing divorce discourse and the refusal to acknowledge the value of maternal nurturing.¹¹⁹ She claims that divorce reform and, indeed, discussions of the role of women in society generally, focus on two images: women as victims, dependent on men, and handicapped by their inability to participate in the labor market on male terms, and women as equals, fully capable of succeeding on the same terms as men. Missing, Fineman believes, is recognition of the needs of children, of the importance of nurturing for their well-being, and of the fact that mothers, upon divorce, are asked to meet greater demands with fewer resources than their former husbands. Fineman terms the concept of equality an “illusion” that devalues women’s connections to their children and prevents recognition of the support needed for the child-rearing role.¹²⁰ She echoes Weitzman’s conclusion that “... we cannot treat men and women as equals in the divorce settlement. We must find ways to safeguard and protect women, not only to achieve fairness and equity, but also to encourage and reward those who invest in and care for our children and, ultimately, to foster true equality for succeeding generations.”¹²¹

Kay, in her review of no-fault divorce and its aftermath, agrees that the unequal position of men and women at divorce results from the unequal division of labor during the marriage and that, at least in
the short run, there must be legal recognition of the financial consequences of those roles. Kay nonetheless expresses the concern shared by many liberal feminists that we should not encourage future couples entering marriage to make choices that will be economically disabling for women, thereby perpetuating their traditional financial dependence upon men and contributing to their inequality with men at divorce. According to Kay, episodic analysis offers a theoretical structure within which men and women can view their responsibilities to each other and to their children in a different light. By emphasizing the bright line that separates the unique female tasks of pregnancy and childbirth from the common male and female responsibility for child rearing, episodic analysis suggests that, when both parents are available, neither should become the primary nurturing parent. She believes that men, like women, should be able to draw an important aspect of their self-esteem and identity from their parental roles and that women, like men, should be able to lead productive, independent lives outside the family. Female dependency should no longer be the necessary result of motherhood. To implement this view of family life, Kay notes that “since . . . Anglo-American family law has traditionally reflected the social division of function by sex within marriage, it will be necessary to withdraw existing legal supports for that arrangement as a cultural norm.”

While the liberal feminist embrace of shared parenting and the cultural feminist dismissal of the “illusion of equality” seem diametrically opposed, much of the theoretical conflict disappears in practice. Kay’s embrace of shared parenting is aspirational; she sees joint custody, for example, as “draw[ing] strength from shared parenting during the marriage” without addressing whether it is appropriate in a marriage in which one parent bore the entire responsibility for child rearing.

Fineman, in contrast, focuses on the ways in which the concept of equality imposes a straitjacket on divorce decisions made in the context of existing marriages in which there are neither equal employment opportunities nor equal assumption of domestic responsibilities. Czapanskiy observes: “Fathers are given support and reinforcement for being volunteer parents, people whose duties toward their children are limited, but whose autonomy about parenting is broadly protected. Mothers are defined as draftees, people whose duties toward their children are extensive, but whose autonomy about parenting receives little protection.”

We should not encourage future couples entering marriage to make choices that will be economically disabling for women.

She argues that the key to achieving Kay’s goal of shared parenting in a world characterized by the inequalities that Fineman describes is to emphasize the relationship between rights and responsibilities. She is critical of the emphasis of fathers’ rights groups on equal division of family assets (as though the children did not exist) and equal authority over the children’s future (as though differences in parental contribution did not exist) but not equal responsibility for the children’s well-being. Czapanskiy concludes that equal rights should follow from, not precede, and cer-
tainly not be independent of, shared responsibilities.

**Implementation**

Most feminists, whatever their differences in emphasis, would embrace both greater sharing of parental responsibilities and greater support for child rearing as important objectives. In considering the best ways to accomplish these ends, there are both broad areas of agreement and some differences on particular proposals. But there is no dissent regarding the connection between the gendered division of responsibility for child rearing and the disadvantages women experience in the workplace and at divorce. Most feminist scholars would advocate broad-based reform that includes examination of the workplace as well as the family, and public as well as private support for child rearing.

**Workplace Reform**

In considering alternatives, proposals for reform extrinsic to divorce are essential and may well command the broadest support. Virtually all feminist writing about the workplace emphasizes the need to make employment more compatible with child rearing. For fathers to be able to participate more effectively in their children’s upbringing and for mothers to avoid the economic marginalization that presently accompanies their child care responsibilities requires reform of the workplace. Adequate and affordable day care, more flexible hours and leave, and greater provision for interrupted and part-time employment without assessment of a substantial career advancement penalty would contribute to greater recognition and support for the caregiving role. Liberal feminists, like Kay and Okin, who emphasize the importance of shared parenting, view these reforms as essential. Feminists of difference, such as Fineman and O’Connell, who place greater emphasis on the special qualities associated with maternal caregiving, also embrace the reforms as important for women’s protection.

**Public Support**

Virtually all scholars of the family similarly conclude that adequate provision for children requires a greater degree of public support. While divorce reform may improve the quality of life for middle-class children, in many poor families, the parents’ combined postdivorce resources cannot adequately provide for the children. Moreover, the primary private solutions, expanded support obligations and more effective enforcement, work particular hardship on the fathers and mothers least able to pay. As Glendon has extensively documented, the United States “stands at an extreme point” in comparison with Western European countries in its failure to provide either public or private support for the casualties of divorce. Drawing on an extensive body of feminist literature challenging the traditional distinctions between public and private, Rhode and Minow emphasize that “marriage has presented a promise—between the members of the couple and also between the couple and society—that the costs of traditional gender roles will not be borne by women alone but will be spread throughout society.”

**The Allocation of Resources at Divorce**

Addressing divorce itself, feminists emphasize the need for a more equitable allocation of resources and burdens. The single most consistent theme is the need to reexamine the allocation of resources following divorce. Weitzman charges that “[t]he omission of the career assets from the pool of marital property makes a mockery of the equal division rule.” Okin is convinced that it is judges’ tendency “to regard the husband’s postdivorce income as first and foremost his” that best explains judicial reluctance to order adequate levels of support under discretionary standards, and she joins Weitzman in embracing the principle that “[b]oth postdivorce households should enjoy the same standard of living.” Okin is convinced that it is judges’ tendency “to regard the husband’s postdivorce income as first and foremost his” that best explains judicial reluctance to order adequate levels of support under discretionary standards, and she joins Weitzman in embracing the principle that “[b]oth postdivorce households should enjoy the same standard of living.” Fineman and Kay, in the midst of their disagreement on virtually everything else, share enthusiasm for such proposals, commonly referred to as “income sharing,” that would equalize the postdivorce
living standards of the two resulting households.\textsuperscript{134}

There are three principal justifications for income sharing. First, as Singer notes, postdivorce income, particularly in families with children in which the higher-earning spouse is not also the primary caretaker, inevitably reflects the division of labor within the marriage. Wage earners can devote themselves fully to their work and still enjoy children largely because of the contributions of the other spouse. Caretakers who cut back on their own employment do so at least in part in reliance on the income of the other spouse. Given the difficulties of calculating the impact of marriage on postdivorce earning capacity, and the fact that adjustments are inherently limited by the higher-earning spouse’s ability to pay, equalization of postdivorce standards of living offers a certain, easily administered solution that underscores the concept of marriage as a shared enterprise. Singer accordingly proposes that postdivorce income be equalized for a period proportionate to the length of the marriage with separate provision for child support.\textsuperscript{135}

There are two primary criticisms of this model of income sharing. The principal feminist criticism is that an exclusive emphasis on husband and wife does not go far enough in providing for children, particularly if the children are still young and the marriage was a short one. These feminists emphasize, therefore, a second rationale: the continuing responsibility of both parents for the well-being of the custodial family. Rutherford suggests a per capita income division for a period that may exceed the length of the marriage.\textsuperscript{136} Most other proposals, like Okin’s, advocate comparable standards of living (rather than equal income) for the two resulting households, either for a period proportionate to the length of the marriage or until the children reach the age of majority, whichever is longer.\textsuperscript{136,137}

The other major criticism centers on the fact that, while a portion of postdivorce income may be jointly determined, another, potentially larger, portion is individually determined, particularly after short marriages or marriages without children. Ellman argues vigorously that the husband is not responsible for societal discrimination generally or for the choices his wife makes before the marriage and that any adjustment of postdivorce income should therefore be tied to the effects of the marriage.\textsuperscript{138} Glendon has long maintained that “childless and child-rearing marriages involve different social, political and moral issues and should therefore be analyzed separately,”\textsuperscript{139} suggesting that an income-sharing approach justified for one type of marriage might not be appropriate for all. Feminist writers such as Rutherford, however, respond to both types of criticism with a third rationale for income sharing. Noting that all men benefit from the societal discrimination against women and that, even in marriages without children, women assume a much greater share of the domestic responsibilities, she concludes that income sharing ought to redress the general inequality in men’s and women’s prospects even if the income disparity in a particular marriage does not reflect the marital division of labor. Singer, while also advocating that income sharing be independent of the presence of children, bases her conclusion on an investment theory of marriage that treats marriage as an economic partnership in which the spouses exchange implied promises to share postdivorce income.\textsuperscript{140} For Singer, income sharing depends on the same partnership principles that underlie the equal division of marital property, not on the particular arrangements of a given relationship.

Whatever rationale is adopted, the tension between treating marriage as a shared enterprise and doing justice in individual cases acquires particular force when the higher-earning spouse and the primary caretaker are the same person. If the spouse of an unemployed alcoholic both supported the family and provided the only care the children received during the marriage, why should that spouse’s income, the only income available for the support of the children after the divorce,

---

**“Income sharing” would equalize the postdivorce living standards of the two resulting households.**

be shared with the other spouse? While the injustice of the result is obvious, the issue poses particular difficulties for feminists because of distrust of judicial discretion
and a reluctance to recognize exceptions to the concept of marriage as an economic partnership. Rutherford would nonetheless recognize a limited exception where a spouse had contributed neither income nor domestic services during the marriage, unless the lack of contribution resulted from non-self-inflicted incapacity. 141

Income sharing, at least in its broadest forms, represents the clearest feminist response to the financial issues now ad-

Feminists who place the greatest priority on dismantling traditional gender roles have the greatest enthusiasm for joint custody.

dressed by both spousal support and child support provisions. Virtually all feminists emphasize the need to replace discretionary standards with firm and easily administered rules to overcome judicial bias. Most feminists, like Okin and Williams, emphasize the importance, in both symbolic and practical terms, of securing recognition of postdivorce income as jointly rather than individually owned. Many feminists, particularly the feminists of difference, insist on treating the mother-child relationship as a unit rather than addressing the needs of women separately from the provision for children. 142 Finally, many feminists agree with Singer that only income-sharing proposals adequately recognize differences among women and adequately provide both for those women in traditional roles and for those women in nontraditional roles. 143

While there is broad feminist support for income sharing, there is no similar consensus behind any of the other proposals. The leading alternative is recognition of lost career opportunities as an expanded basis for alimony. Family law scholars such as Krauskopf and Parkman have long discussed this concept, there is increasing recognition in the case law, and Ellman recently argued for recognition of lost income potential as the sole basis for alimony. 138,144 Nonetheless, there is considerable feminist hesitation about the concept. O’Connell, drawing on Fineman’s work, criticizes such proposals because of the victim imagery they employ. 145 Women are measured in terms of a male model of full work force participation and compensated to the extent they fall short. Singer further objects that alimony connotes the transfer to a financially needy and deserving wife of assets belonging to her ex-husband and, thus, fails to recognize a wife’s ownership interest in her husband’s career assets. Additionally, she contends that, because alimony is thought to involve the transfer of assets, its availability continues to depend upon both the need of the recipient spouse and the financial ability of the obligor. She believes that each of these can be, and has been, manipulated to the disadvantage of divorcing women. 146 Most feminists, like Singer, prefer income sharing.

A second set of proposals involves expanding the definitions of marital or community property to include professional degrees, pensions, and other assets acquired over the course of the marriage. Although there is feminist support for these proposals, none offers the possibility of a comprehensive approach without including postdivorce income. The dividing line between career enhancement that results from acquisition of a master’s degree and career enhancement that results from ability to work overtime, between retention of an existing career with children and investment in a new one, is highly arbitrary. Only recognition of the full range of interactions between the division of labor within the marriage and postdivorce income offers an adequate basis for adjustment.

Finally, while there is feminist support for recent changes in child support enforcement, child support provisions remain focused on the children’s immediate expenses rather than on the overall well-being of the custodial family. Genuinely shared parenting must include recognition of the impact of child rearing on both parents’ households and of the importance of the postdivorce households to the well-being of children.

Child Custody

The broad consensus of feminists regarding the need to provide greater support for child rearing and to address the financial consequences of divorce does not carry over to the issue of custody. Feminists who place the greatest priority on dismantling traditional gender roles have the greatest enthusiasm for joint custody. Bartlett and Stack present a classic liberal feminist defense of joint physical and legal custody in
arguing that feminist critics have focused on the concrete and immediate effects of joint custody laws but have ignored the law’s expressive or symbolic power to alter social expectations and norms.

According to Bartlett and Stack, “From the point of view of ideology, rules favoring joint custody seem clearly preferable. Joint custody stakes out ground for an alternative norm of parenting. Unlike the ‘neutral’ best interests test or a primary caretaker presumption, these rules promote the affirmative assumption that both parents should, and will take important roles in the care and nurturing of their children. This assumption is essential to any realistic reshaping of gender roles within parenthood. Only when it is expected that men as well as women will take a serious role in childrearing will traditional patterns in the division of childrearing responsibilities begin to be eliminated in practice as well as in theory.” They argue that many of the criticisms of joint custody result from judicial bias and that better implementation, rather than an alternative standard, offers the best way to promote women’s interests.

In contrast, Becker presents the feminist case for a maternal deference standard in which courts defer to a fit mother’s custody preferences, whether she prefers sole maternal custody, sole paternal custody, joint legal and physical custody, or something in between. Becker starts by arguing that “mothering and fathering continue to be different activities; mothers tend to be more intensely involved in their children’s lives and tend to have greater empathy for their children.” They argue that many of the criticisms of joint custody result from judicial bias and that better implementation, rather than an alternative standard, offers the best way to promote women’s interests.

In contrast, Becker presents the feminist case for a maternal deference standard in which courts defer to a fit mother’s custody preferences, whether she prefers sole maternal custody, sole paternal custody, joint legal and physical custody, or something in between. Becker starts by arguing that “mothering and fathering continue to be different activities; mothers tend to be more intensely involved in their children’s lives and tend to have greater empathy for their children.” They argue that many of the criticisms of joint custody result from judicial bias and that better implementation, rather than an alternative standard, offers the best way to promote women’s interests.

While few other feminists have embraced an explicitly gender-based standard, there is strong support for a primary caretaker preference. Fineman, like Becker, emphasizes the “qualitative differences between the contributions of primary caretakers (typically mothers) and primary earners (typically fathers) to the upbringing of children.” She is particularly critical of joint custody statutes “which formally grant fathers equal control over their children, regardless of who provides the day-to-day care and nurturing.” To reward “demonstrated care and concern for children,” Fineman advocates a primary caretaker standard that she believes will “ensure a good future for children in our culture” by encouraging “nurturing and concern for children in a concrete way.” Such a standard, Fineman acknowledges, “may currently operate to the advantage of mothers, but if we value nurturing behavior, then rewarding those who nurture seems only fair.”

Scott, who supports Fineman’s effort to reward demonstrated care and concern for children, is nonetheless critical of a winner-take-all custody system that ignores the reality of the many modern marriages in which caretaking is shared, albeit in a variety of different ways. She proposes a proportional custody system in which par-
The dispute over the nature of the maternal role is central to the divisions in modern feminism. The differences between those who favor dismantling the gendered division of responsibility for children and those who celebrate mothers’ special connections to their children are largely unbridgeable. Nonetheless, there are at least four aspects of custody that command broad feminist agreement: systematic discrimination against women in litigation and mediation; inadequate response to domestic violence; inappropriate resolution of high-conflict disputes; and inequitable distribution of rights and responsibilities following divorce.

Bartlett and Stack, in their defense of joint custody, mention judicial bias against women as an important factor undermining effective implementation; they place particular emphasis on the tendency of judges to take more seriously the demands of men’s jobs than women’s and the failure to restrain male efforts to coerce, antagonize, and manipulate their former spouses. Becker and Fineman base at least part of their appeal for maternal deference and primary caretaker standards, respectively, on distrust of judicial discretion. The fact that outcomes in litigated cases (men win more than 50% of the cases studied) diverge so radically from settled cases (sole maternal physical custody in 80% to 90% of cases nationally) and so often employ gender-stereotyped assumptions persuade virtually all feminists to favor restricted judicial discretion.

Similarly, however much many feminists agree that fathers should remain involved in their children’s upbringing, they also share broad concern about requiring such contact in inappropriate cases. The legal system has historically downplayed the incidence and importance of domestic violence and has responded ineffectually where its existence is indisputable. Many courts do not recognize spousal abuse as grounds for denying custody or visitation despite the evidence linking parents’ conduct to subsequent abusive behavior by children who grow up with such role models and despite the need for continued cooperation between mother and father to make joint physical or legal custody or visitation effective.

More complex is the resolution of high-conflict disputes. A number of studies emphasize the role of conflict as a destructive factor in children’s adjustment to divorce. Fineman fears joint custody creates an incentive for husbands to seek shared physical or legal custody as a form of retaliation against their wives and for courts to impose joint legal or physical custody as a literal splitting of the child to avoid decisions in difficult cases. Joint custody proponents like Bartlett and Stack similarly acknowledge the potential for abuse and argue that strict guidelines are necessary to preclude joint physical or legal custody in inappropriate cases, such as those involving domestic violence, and to guard against the use of shared custody as an extension of marital manipulation and discord.

Finally, virtually all feminists agree that the current allocation of rights, responsibilities, and resources is inequitable. Czapanskiy effectively summarizes the criticisms of many feminists when she concludes that “what is wrong with joint custody is that it adds rights rather than responsibilities. And what many parents and children need are responsibilities rather than rights.” Like Bartlett and Stack, Czapanskiy starts with the proposition that the expressive goal of the new ideal ought to be a fifty-fifty division of parental responsibilities and that both parents’ relationship and responsibilities to the child should continue after divorce. Like Becker and Fineman, however, she also believes that the care women provide is undervalued. To remedy this, Czapanskiy advocates proportionality in the assignment of parental responsibilities with far greater recognition given to the “nonparallel allocation of nonfinancial responsibilities,” that is, the fact that mothers assume a much greater proportion of day-to-day care. Rather than describe the resulting arrangement in terms of either primary caretaker or joint custody preferences, Czapanskiy advocates
a “parenting plan” in which parents discharge their respective obligations through a combination of custodial and financial contributions to the child that bring into better balance the full range of children’s needs (from buttered toast for breakfast to college financing) and the variety of parental contributions.

Conclusion

Despite their divisions, feminists agree that the large-scale movement of married mothers into the labor market has not been accompanied by a correspond- ing increase in men’s assumption of domestic responsibilities and that, in an era of high rates of divorce, women bear a disproportionate share of the burden of child rearing without access to a commensurate share of the family’s resources. While feminists may disagree as to whether genuinely shared child rearing, independent of gender roles, is possible or desirable, they embrace Okin’s conclusion that justice requires protection for those whose assumption of domestic responsibilities renders them vulnerable.

1. See, in particular, Bartlett, K.T. Feminist legal methods. Harvard Law Review (1990) 103:829-88. Despite this broad definition of feminism, many women would reject the feminist label. Much of the rejection is based on the political and symbolic role of feminism over the past two decades. First, feminism is often identified with professional women and their concerns, sometimes to the exclusion of other women. Second, feminism emerged when the primary feminist struggle was to secure greater acceptance in the workplace and is often perceived as denigrating the domestic roles women have traditionally performed and the women who continue to perform them. Third, because feminists have sought to identify the ways in which the existing system subordinates women’s interests, their focus has raised fears that feminists are antimam and, therefore, antifamily. Finally, there is the word itself. “Feminism,” unlike the term “women’s movement,” sounds radical, ideological, and inflexible, like “communism” or “fascism.” For a fuller account of the reaction, see Faludi, S. Backlash: The undeclared war against American women. New York: Crown Publishers, 1991.

Feminism, however, has never been limited to its more radical, elite, or even more egalitarian elements. Indeed, much of the feminist writing of the 1980s and 1990s has sought to address women’s experiences more broadly, recognizing the diversity of these experiences and paying greater attention to the distinctive roles women play. See, for example, Harris, A.P. Race and essentialism in feminist legal theory. Stanford Law Review (1990) 42:581-616; see also Matsuda, M. When the first quail calls: Multiple consciousness as jurisprudential method. Women’s Rights Law Reporter (1989) 11:7-10. Feminists, for example, have been in the forefront of those celebrating the special contributions mothers make and denouncing the straitjacket which the ideology of equality imposes on women. As a movement with any intellectual coherence, feminism, which embraces a wide variety of political positions, can be defined only in terms of its insistence on addressing women’s distinctive perspectives and concerns. For a discussion of these developments, see Dailey, A.C. Book review: Feminism’s return to liberalam. Yale Law Journal (1993) 102:1265-86. See also Villmoare, A.H. Women, differences, and rights as practices: An interpretative essay and a proposal. Law and Society Review (1991) 25:385-410.

2. A thorough feminist critique might well start with questioning the exclusive focus of this volume on divorce. The importance of divorce in modern American society stems from reliance on the nuclear family as the primary mechanism for ensuring the financial well-being of children. There are many feminist critiques of the traditional family and of the work force structure that makes access to a man’s higher earning capacity central to the financial well-being of women and children, but they are beyond the scope of this article. For a review of the relationship between family and workplace, see Williams, J. Woman and property. In A property anthology. R.H. Chused, ed. Cincinnati, OH: Anderson, 1993. For a critique of the traditional family, see Eisenstein, H. The public/domestic dichotomy and the universal oppression of women. In Contemporary feminist thought. Boston: G.K. Hall, 1983. See also Eisenstein, H. The state, the patriarchal family, and working mothers. In Families, politics and public policy: A feminist dialogue on women and the state. I. Diamond, ed. New York: Longman, 1983.

Moreover, the emphasis on divorce necessarily focuses on those families with enough money to fight over. See, for example, Weitzman, L.J. The divorce revolution: The unexpected social and economic consequences for women in America. New York: Free Press, 1985. In poor families, financial awards are less important, and custody is less likely to be an issue than in wealthier families (see p. 233). Accordingly, divorce law, cases, and disputes, and the corre-

3. One of the divisions among feminists is disagreement over the importance of children. Some feminists, particularly “cultural feminists,” or “feminists of difference” (see discussion below), believe that one of the important differences between men and women is that women care about children more than men do, are more willing to sacrifice their own interests for those of their children, and are at a disadvantage in negotiations with men as a result. These feminists believe that increasing the importance society attaches to children will benefit women and that emphasizing the importance of children should be a central part of feminist strategy. Other feminists, particularly “liberal feminists” or “sameness feminists,” have attacked the identification of women’s interests with children’s interests and insisted that women’s interests be considered in their own right. For a discussion of the differences between the two groups, see generally Williams, J. Deconstructing gender. Michigan Law Review (1989) 87:797-845. For a discussion of how these differences affect divorce and other social policy issues, see Joffe, C. Why the United States has no child care policy. In Families, politics and public policy: A feminist dialogue on women and the state. I. Diamond, ed. New York: Longman, 1983. Carbone, J., and Brinig, M.B. Rethinking marriage: Feminist ideology, economic change, and divorce reform. Tulane Law Review (1991) 65:953-1010. Fuchs, V. Women’s quest for economic equality. Cambridge, MA: Harvard University Press, 1988, pp. 67-72.


6. The higher incidence of divorce and the inadequacy of divorce awards is part of a more general shift away from the traditional family (a two-parent household consisting of a breadwinner and a caretaker) as the exclusive societal mechanism for child rearing. For a discussion of the combined impact of these changes on children, see below. For a discussion of the conflicts women experience in an era of both greater employment opportunities and lesser recognition of the domestic roles they continue to perform, see note no. 5, Mason, for a feminist account and, for an economic account, Parkman, A. No-fault divorce: What went wrong? Boulder, CO: Westview Press, 1992. For a comparison of the feminist and the economic perspectives, see note no. 3, Carbone and Brinig; see also Carbone, J. Equality and difference: Reclaiming motherhood as a central focus of family law. Law and Social Inquiry (1992) 17:437-90.


9. See, for example, notes nos. 3 and 4. Cultural feminists agree with those who favor traditional family values in their emphasis on the importance of motherhood and child rearing. They disagree in that they believe women should be able to devote themselves to children without becoming dependent on or subordinate to men in doing so.

10. See, for example, Czapanskiy, K. Volunteers and draftees: The struggle for parental equality. U.C.L.A. Law Review (1991) 38:1415-81. In addition, there is a radical feminist perspective that rejects both accounts. Catharine MacKinnon argues that there is no reason to believe that women’s existing preferences reflect women’s true preferences, that is, the preferences women would choose in a society free from patriarchal oppression. See MacKinnon, C. Feminism, Marxism, method and the state: Toward feminist jurisprudence. Signs (1983) 8:635-58. See also Littleton, C. Restructuring sexual equality. California Law Review (1987) 75:1279-337, and Lerna, G. The creation of patriarchy. New York and Oxford: Oxford University Press, 1986, p. 229. Radical feminists, however, tend to concentrate their critique on marriage and the traditional family rather than on divorce. For example, see note no. 2, Eisenstein.

11. The labor force participation of women generally increased from 35% to 51% in the period from 1960 to 1986; for mothers of young children, the percentage rose from 20% to

13. See note no. 3, Fuchs, p. 78.


15. See note no. 5, Mason, pp. 123-24. Mason observes that the wage gap remained relatively constant, with women earning about 60 cents for every dollar earned by men, for more than half of a century. For a comprehensive examination of the differences between men and women’s earnings, see Goldin, C. *Understanding the gender gap: An economic history of American women*. New York and Oxford: Oxford University Press, 1990. See note no. 3, Fuchs, p. 49. By the late 1980s, however, the wage gap finally began to narrow. See also Okin, S.M. *Justice, gender and the family*. New York: Basic Books, 1989, p. 144. Susan Moller Okin notes that, in 1987, women who worked year-round at full-time jobs earned 71% of the amount earned by full-time working men and that the increase to 71% was as much the result of a drop in men’s income as of a gain in women’s. For comparison, see also Younger, J. *Light thoughts and night thoughts on the American family*. *Minnesota Law Review* (1992) 75:891-915. By 1991, the hourly gap, as opposed to Okin’s earnings gap, had narrowed to 78%. See, again, Goldin, p. 73. Economists attribute some of the change to an increase in women’s human capital.

16. See note no. 3, Fuchs, p. 56. Economists differ significantly in the importance they attribute to discrimination at least in part because they disagree on how to define and measure it. Victor Fuchs explains that some economists attempt to measure the extent to which the wage gap is the result of differences in human capital (typically about half of the gender differential) and then assume that the rest is the result of discrimination. He finds these studies flawed, partly because the characteristics controlled for, such as experience, may themselves reflect discrimination and partly because these studies fail to account for other gender-based differences such as those in mortality. See note no. 14, England and Farkas, pp. 159-63. England and Farkas note that statistical measures of discrimination are difficult because “we seldom have data containing information on the qualifications of applicants and employees, their preferences for job placement and promotion, and the resulting occupational distribution” and because of the feedback problems that Fuchs emphasizes. They rely, therefore, on studies of managerial attitudes that reveal consistent prejudices favoring male applicants over female applicants for higher-paying jobs to demonstrate the existence of discrimination, although the studies on which they rely fail to indicate the degree to which such discrimination has changed over time.

Fuchs and England and Farkas agree with other economists, however, that a major factor in the wage gap is the tracking of women into lower-paying jobs. Economists attribute between 6% and 39% of the wage gap to such occupational segregation, depending on the methodology and number of positions used. For a review of these studies, see Hewlett, S.A. *A lesser life: The myth of women’s liberation in America*. New York: Warner Books, 1986, p. 430. Hewlett sets the overall figure at about 15%. Economists argue that discrimination excluding women from higher-paying “male” jobs “crowds” women into the lower-paying occupations open to them, depressing wages further as supply increases. See note no. 14, England and Farkas, pp. 166-72. England and Farkas observe, though, that this thesis does not correspond sufficiently well with empirical data to provide a full explanation, and they argue that other factors, including employer discrimination against positions identified with women and the interaction of discrimination with family responsibilities, are necessary to provide a complete picture. For a comprehensive review of these issues, see note no. 15, Goldin.

17. In what England and Farkas, note no. 14, termed in 1986, “the most exhaustive analysis to date,” Corcoran and Duncan attributed 44% of the earnings gap between white men and women to experience, that is, years out of the labor force since completing school, years of work experience prior to one’s current job, years with present employer, the proportion of working years that were full time, absences due to illness of oneself or others, limits placed on hours or location, and the like. Corcoran, M., and Duncan, G.J. Work
history, labor force attachment, and earning differences between the sexes. *Journal of Human Resources* (1979) 14:3-20. The relationship between the earnings of African-American men and women is more complex, given the interaction of race and gender. For a summary of the statistics showing the gap between African-American men and women to be narrower than that between white men and women, see Bruch, C.S., and Wikler, N.J. Economic consequences. *Juvenile and Family Court Journal* (Fall 1985) 36:5-26.

18. See note no. 16, Hewlett, p. 74. Conservative economists attribute a higher percentage of the wage gap to differences in human capital and family responsibilities; liberal economists attribute a higher percentage to discrimination.

19. See note no. 3, Fuchs, pp. 60-64. Fuchs emphasizes that “[w]omen’s homemaking responsibilities reduce their earnings, and, in a feedback loop, the lower earnings induce behavior that further depresses women’s labor market opportunities.” See also note no. 14, England and Farkas, for an explanation of the feedback effects that they find pervasive between the employment and household aspects of sexism. For a discussion of the differences among economists on the relative importance of discrimination, see Bergmann, B. Feminism and economics. *Academe* (September/October 1983) 69:22-25.


24. See note no. 3, Fuchs, pp. 59-60.

25. See note no. 16, Hewlett, pp. 83-84. The author also notes that the number and spacing of children affect the wage differential as well.

26. See note no. 3, Fuchs, pp. 58-60.

27. Maccoby, E.E., and Mnookin, R.H. *Dividing the child: Social and legal dilemmas of custody*. Cambridge, MA: Harvard University Press, 1992, p. 59. Some 53% of the divorcing women, however, had not worked full time during the marriage, 31% had not worked outside the home at all, and the others had been employed less than 30 hours a week.

28. See note no. 3, Fuchs, p. 52.

29. See note no. 16, Hewlett, p. 82. See also Bianchi, S.M., and Spain, D. *American women in transition*. New York: Russell Sage Foundation, 1986, p. 202. Bianchi and Spain observe that the 26% of all wives who work full time earn 63% as much as the average full-time working husband while the average wife who works for pay earns only 42% as much as the average husband.

30. Becker, M. Maternal feelings: Myth, taboo, and child custody. *Review of Law and Women’s Studies* (1992) 1:133-224. Becker terms maternal feelings, “myth and taboo.” The myth is that all women find their greatest emotional fulfillment in children, especially infants, while all fathers are emotionally distant from their children, especially infants. The taboo is one “against realistically exploring either the intense pleasures or the difficulties and the pains of women’s relationships with their children” (see p. 136).

31. See note no. 4, Fineman. Becker cites Martha Fineman as one of the first family law scholars to acknowledge the different positions of mothers and fathers. See Sanger, C. M is for the many things. *Review of Law and Women’s Studies* (1992) 1:15-67 for a review of the literature on motherhood. Outside family law, there has been greater discussion of these issues. See, in particular, Chodorow, N.J. What is the relation between psychoanalytic feminism and the psychoanalytic psychology of women? In *Theoretical perspectives on sexual difference*. D.L. Rhode, ed. New Haven, CT: Yale University Press, 1990.

33. See note no. 32, Genevie and Margolies, p. 84.

34. See note no. 32, Genevie and Margolies, p. 319.


36. In the first study, the researchers interviewed only mothers; in the second, a nonrandom sample of mothers and fathers. Both studies relied on self-reports, and both are inevitably influenced by cultural reinforcement of existing gender stereotypes. Moreover, the studies focus on perceptions of mothers’ emotional involvement and identification with their children; they do not establish that all mothers experience the same involvement, that fathers are incapable of similar feelings, or that these emotional connections necessarily make for better parenting.


38. For a systematic review of the data suggesting that women have a greater demand for children than men, see note no. 3, Fuchs, pp. 67-73. Fuchs concludes that the “evidence concerning a gender difference with respect to children is not air-tight, but its appearance in so many different contexts makes this explanation more credible than any other that has been proposed.”

39. There is not necessarily a “feminist” position as to whether gender differences in nurturing exist just as there is no necessary feminist position on the existence of earning disparities between divorcing spouses. Rather, there is a feminist critique of the studies employing economic or other social science methodologies to the extent those studies exclude women’s perspectives or otherwise reflect systematic bias. See, for example, note no. 4, Fineman, pp. 127-43.

40. See, in particular, note no. 10, MacKinnon.

41. See Williams, J. Domesticity as the dangerous supplement of liberalism. *Journal of Women’s History* (1991) 2:69-88. Williams, for example, says of Carol Gilligan’s work on gender differences in moral reasoning that “Gilligan identified, not differences in women’s actual behavior, as she assumed, but instead women’s ‘voice’ in a much more literal sense: she gave a status report on female gender ideology in the late twentieth century.” (Emphasis in original.) Williams’s critique would apply with similar force to the studies on which Becker relies.

42. See note no. 4, Fineman, p. 8.

43. See note no. 3, Fuchs, p. 68. The author observes: “Suppose women were better than men at producing and caring for children but had no particular desire to do so, while it was the men who wanted the children and cared more about their welfare. We would probably still see the same division of labor we see now, but men would have to pay dearly for women’s services. The present hierarchy of power would be reversed.”

44. See note no. 3, Fuchs, p. 8.

45. See note no. 4, Fineman, p. 174.

46. See note no. 8, Kay, p. 78.

47. See note no. 8, Kay, p. 62.


49. State law varies considerably, however, in the degree to which fault considerations can still be taken into account. See note no. 8, Kay, pp. 68-77.

50. See note no. 11, Chafe. Working-class mothers had never had the luxury of staying out of the labor force.

51. The 1970 Uniform Marriage and Divorce Act (UMDA), for example, authorized a court to award maintenance only if the spouse seeking the award “(1) lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, and (2) is unable to support himself through appropriate employment or is the custodian of a
child whose conditions or circumstances make it appropriate that the custodian not be re-
quired to seek employment outside the home.” UMDA Sec. 308(a)(1), (2) (1970). This language was retained in the 1973 version. The UMDA did allow, however, the custodial parent’s resources to be considered in determining child support. See UMDA Sec. 309 (2) (1970).


53. See note no. 2, Weitzman, pp. 189-90.

54. The two clearest examples are the ones most often cited in the divorce literature: the spouse who puts the other through school only to find the marriage ending upon graduation (that is, just as the return on the investment is about to be realized) and the spouse who sacrifices her own earning capacity to raise the children so that the other spouse is free to pursue his career. In both instances, the married couple undertook investments in which, so long as the marriage lasted, they both expected to share the costs and the benefits. In both instances, the divorce separated the costs from the benefits, assigning the gain to one party and the loss to other. For a more systematic discussion of these issues, see note no. 3, Carbone and Brinig, pp. 998-1000.

55. See note no. 4, Fineman, p. 221. Fineman does not distinguish between physical and legal custody in this passage, and the studies she cites refer to both forms of custody.

56. See note no. 4, Fineman, pp. 79, 80, 90. The author cites two studies: note no. 2, Weitzman, pp. 231-35, and Polikoff, N. Why mothers are losing: A brief analysis of criteria used in child custody determinations. Women’s Rights Law Reporter (1982) 7:225-43. Weitzman’s figures show that, in 1977 in Los Angeles, 63% of the small number of fathers who requested either physical or legal custody received it, a figure that includes both contested and uncontested cases. Polikoff cites Weitzman and four other studies of court records. Three of the studies show men winning about half the time; the other, 38% of the time. See also note no. 30, Becker, pp. 182-83, 192-201. Becker further reports two studies, one in a North Carolina county under a best interests standard and her own study of West Virginia appellate cases applying a primary caretaker standard, in which fathers received sole physical custody in more than 60% of litigated cases at the trial level. Becker and Polikoff also review individual cases to demonstrate the bias toward women in the decisions. See also note no. 27, Maccoby and Mnookin, p. 273. The authors suggest selection bias to the extent that only the fathers with the strongest claims pursue them through the conclusion of litigation. Maccoby and Mnookin find that, where custodial conflicts are resolved after a court-appointed evaluation, through negotiations on the courthouse steps or through adjudication, there is a fifty-fifty division between mothers and fathers.

See note no. 4, Fineman, p. 174. In the end, Fineman’s point is not so much that mothers are losing custody, but that the legal system trivializes mothers’ emotional connections with their children by failing to grant express legal recognition of the importance of those connections and increases the likelihood of biased decision making in the process.

57. The express maternal presumption common earlier in the century has disappeared and is widely believed to be unconstitutional. Virtually all states decide custody in accordance with a “best interests of the child standard.” Thirty-seven states authorize joint legal and physical custody awards, with a few states requiring the agreement of both parents and a few states recognizing a rebuttable presumption that joint custody is in the child’s best interests. One state, West Virginia, has adopted a primary caretaker standard in which sole legal and physical custody is awarded to the parent who assumed the greater responsibility for the child’s care during the marriage. See Bruch, C.S. And how are the children? Internal Journal of Law and the Family (1988) 2:106-26.

58. See note no. 27, Maccoby and Mnookin, pp. 273-74. “Our most disturbing finding . . . concerns the frequency with which joint physical custody decrees are being used by high-conflict families to resolve disputes.” See also note no. 57, Bruch, pp. 109, 122 for a review of the studies assessing joint custody.

59. See note no. 30, Becker, p. 178, at notes nos. 173 and 174; see also note no. 4, Fineman, p. 132, and note no. 57, Bruch, p. 113.

60. See note no. 5, Mason, p. 87.

61. See note no. 27, Maccoby and Mnookin, pp. 107-108.
62. See note no. 2, Weitzman.
63. See note no. 2, Weitzman, p. 339 (emphasis in original deleted).
65. See note no. 64, Duncan and Hoffman.
67. See note no. 2, Weitzman, pp. 324, 341.
69. See note no. 48, Singer, pp. 1106-10.

The second argument, which I have explored at length in this article, is that, contemporaneously with the change to no-fault grounds, legislatures changed the substantive bases for divorce awards. Garrison's empirical findings lend support to this hypothesis.

The third argument is that divorce awards have been lower under no-fault because of judicial misapplication of the new rules. See, in particular, note no. 8, Kay, p. 77; note no. 2, Weitzman, pp. 358-61.
72. See note no. 2, Weitzman, pp. 366, 382-83.
73. See note no. 8, Kay, p. 62.
74. See note no. 48, Singer, p. 1113.
75. See note no. 4, Fineman, pp. 11-12.
76. Fault is relevant to this issue in only one limited respect. Fault-based divorce treated marriage as a contract in which the parties promised to remain married for life and in which the “remedies” imposed at divorce could reflect breach of that promise. Recognition of no-fault grounds for divorce did not eliminate those remedies, but barring consideration of fault for any purpose did. Without identification of the party responsible for the divorce, there could be no recognition of the benefits of the parties expected from the continuation of the marriage. See note no. 3, Carbone and Brinig, p. 958.
77. For a review of the economic and empirical literature on the relationship between the divorce rate and the adoption of no-fault, see note no. 6, Parkman, pp. 71-79. Parkman ar-
gues that “[i]t appears that no-fault divorce was a response to rather than a cause of the forces that caused an increase in the divorce rate” and that, following adoption of no-fault, there was an increase in the divorce rate for a short period which reflected, at least in part, pent-up demand. For a review of the historical and sociological forces underlying no-fault, see note no. 8, Ray, pp. 66-67.

78. See note no. 6, Parkman, pp. 71-79.

79. See note no. 6, Parkman, pp. 72-73.

80. See note no. 15, Okin, p. 160. Okin also notes that divorce rates are dramatically higher for African Americans. In 1983, there were 126 divorced white women for every 1,000 married women; for black women, the ratio was 297 to 1,000. In 1985, 28% of ever-married white women and 49% of ever-married black women were separated, divorced, or widowed.


82. Rhode, D.L., and Minow, M. Reforming the questions, questioning the reforms: Feminist perspectives on divorce law. In Divorce reform at the crossroads. S.D. Sugarman and H.H. Ray, eds. New Haven, CT: Yale University Press, 1990. See note no. 15, Okin, p. 160. Okin also notes: “Contrary to popular prejudice, female-maintained families with children consist in only a fairly small percentage of cases of never-married women raising children alone. They are in the vast majority of cases the result of separation or divorce.” From 1980 to 1990, however, census data show that, of the children living in single-parent families, the percentage living with a divorced or separated parent fell from 73% to 62% while the percentage living with a never-married parent increased from 14.6% to 30.6%. U.S. Bureau of the Census. Households, families, and children: A 30-year perspective. Current Population Reports, Series P-23, No. 181. Washington, DC: U.S. Government Printing Office, 1992, p. 39. See note no. 113 below. The increase in births to never-married parents is likely to accelerate the declining importance of marriage but without any necessary implications for the well-being of divorced mothers and their children.

83. See note no. 2, Weitzman.

84. See note no. 8, Ray, pp. 42-43.


86. See note no. 51, UMDA Sec. 308(a)(1),(2) (1970).

87. Estin provides a systematic examination of the lack of support in existing legal provisions for family caregivers. She argues that recognition of lost earning capacity is most commonly invoked to justify support for older women divorced after a long marriage and is rarely awarded to younger women capable of self-support. Estin, A. Maintenance, alimony, and the rehabilitation of family care. North Carolina Law Review (1993) 71:721-803.

88. See note no. 2, Weitzman, pp. 32-36.

89. See note no. 27, Maccoby and Mnookin, pp. 129-30. The authors note that the level of the California awards is slightly lower than the U.S. average and that compliance is also lower. They suggest that, in other states, only fathers with relatively high incomes are ordered to pay spousal support and that these men have greater ability and propensity to pay.

90. See note no. 8, Ray, p. 49.

91. See note no. 2, Weitzman, pp. 270-74. Maccoby and Mnookin report that child support payments constitute no more than a fraction of mothers’ postdivorce family income. See note no. 27, Maccoby and Mnookin, p. 130.

92. See note no. 2, Weitzman, pp. 278-81.


94. See note no. 15, Okin, p. 165. It is also rare for combined spousal and child support payments to exceed a third of a man’s income. See note no. 6, Parkman, p. 82.

95. See note no. 93, Hunter, p. 206.

96. See note no. 93, Hunter, p. 208. See also note no. 57, Bruch, p. 115. Bruch, however, notes some improvement on this issue. See also note no. 27, Maccoby and Mnookin, p. 155, indicating a negative correlation between joint physical custody and child support in high-conflict cases.

97. See note no. 10, Czapanskiy.
98. See note no. 15, Okin, p. 165.

99. See note no. 27, Maccoby and Mnookin, pp. 250-51. Maccoby and Mnookin’s more recent study in two California counties found that more than half (57%) of the fathers fully complied, 23% paid nothing, and 19% made partial payments. On average, fathers paid between two-thirds and three-fourths of the child support awarded, and compliance diminished over time.


101. See note no. 81, Krause, p. 170.

102. See note no. 81, Krause. Krause argues that child support enforcement laws have now gone about as far as they can without imposing unfair hardships on men, and he joins David Chambers in maintaining that such laws are already being enforced in counterproductive and unduly harsh ways on teenage fathers, particularly those from poor and minority backgrounds. See also, in particular, note no. 93, Hunter, pp. 207-14. Many feminists who otherwise favor strict child support enforcement are concerned about the possible disproportionate effect on poorer men and believe that the only possible satisfactory solution is a greater assumption of public responsibility. See also note no. 27, Maccoby and Mnookin, p. 265. Maccoby and Mnookin conclude: “In sum, not only could most fathers in our sample afford to pay the full amount of support awarded; they could afford to pay more.”

103. While feminists generally applaud the principle that all parents are responsible for their children, they are concerned about the lack of recognition of nonfinancial contributions. Noncustodial mothers often contribute more in nonmonetary ways than noncustodial fathers, and the insistence that all parents contribute some child support whatever their income may work a particular hardship on a noncustodial mother who earns much less than the custodial father and yet contributes more than the average noncustodial father to the child’s upbringing. See generally note no. 10, Czapanskiy.

104. See note no. 15, Okin, p. 165.

105. See note no. 27, Maccoby and Mnookin, pp. 109-12. The authors found that legal representation had a strong impact on custody outcomes.

106. See note no. 3, Fuchs, pp. 67-73. See note no. 6, Parkman, pp. 81-82. *Game theory* is defined as “a theoretical approach to interactive decision making, used in economics to analyze situations where prices and quantities are the outcome of bargaining by individual participants, rather than the automatic result of a competitive market.” See also note no. 3, Fuchs, p. 71.

107. See note no. 2, Weitzman, p. 310. Weitzman puts the figure at one-third. See also note no. 5, Mason, p. 83, and note no. 64, Arendell, pp. 23-24. See also note no. 27, Maccoby and Mnookin, p. 102. Maccoby and Mnookin found that 20% of the fathers in their study who told the researchers that they wanted maternal custody in fact requested joint physical custody or paternal custody.

108. See note no. 93, Hunter, p. 208.


110. See note no. 27, Maccoby and Mnookin, p. 158. In the group of mothers who obtained sole physical custody, high conflict was a negative factor in predicting support awards, but the results were not statistically significant.

111. See note no. 27, Maccoby and Mnookin, p. 157. The authors also note the possibility that the custody threats, on average, were not that credible. One wonders if the difference between the two populations—mothers who received sole custody as opposed to mothers who received joint physical custody but mother residence—may not have been that the fathers in the latter sample had more credible threats. See p. 151, Table 7.6, indicating that 40% of the cases settled after evaluation resulted in joint physical custody compared with 25% of the cases settled after mediation and 19% of the cases settled earlier.

112. Mandatory mediation also complicates women’s prospects, although the effect is not the product of mediation per se, but of the interaction of mediation with women’s weaker economic position and the existence of laws favoring joint custody and limiting economic support. See Grille, T. The mediation alternative: Process dangers for women. *Yale Law Journal* (1991) 100:1545-610.

113. The other part of this picture is an increase in births to never-married mothers. See note no. 2, Weitzman. While such an increase has no particular implications for divorce policy, any comprehensive child care policy needs to address the issue directly. Most feminists
posit that it is not single-parent families per se that are the problem, but the inability of single mothers, given the gendered nature of market employment, to provide adequately for their families. Joan Williams, who provides a liberal feminist critique of Carol Gilligan’s work, and Martha Fineman, who presents a cultural feminist defense of female-headed families, agree on this point. See notes nos. 2 and 4. See also note no. 3, Williams.

114. See note no. 3, Fuchs, pp. 96-104.

115. For higher-earning women, the increase is a small but sharp one: from 3% to 6.4% for college-educated women and from 3% to 8.3% for professional women in the period from 1982 to the present. Ingrassia, M. Daughters of Murphy Brown. Newsweek, August 2, 1993, p. 58, citing U.S. Bureau of the Census figures released in July 1993. According to these figures, 62.5% of all American children were considered middle class in 1989 compared with 74.6% in 1969. During the same time period, the percentage of low-income children rose from 19.4% to 29.1% and the percentage of high-income children grew slightly, from 6.0% to 8.4%. See note no. 82, U.S. Bureau of the Census, pp. 23-181.

116. See note no. 3, Fuchs, p. 89; note no. 15, Okin, p. 160; note no. 2, Weitzman, pp. 178-82.

117. See note no. 3, Fuchs, p. 107.

118. See note no. 3, Fuchs, pp. 104-10.


120. See note no. 4, Fineman, p. 175.

121. See note no. 2, Weitzman, pp. 365-66.

122. See note no. 8, Kay, p. 79.

123. See note no. 8, Ray, p. 80, at note no. 388. Ray defines episodic analysis as “an analysis that accords legal significance to biological reproductive sex differences only during the specific episodes when those differences are being used for reproductive purposes.”

124. See note no. 8, Ray, pp. 80-81, 85.

125. See note no. 8, Kay, p. 85.

126. See note no. 10, Czapskiy, p. 1416.

127. See note no. 3, Williams.


129. See, for example, note no. 81, Krause, pp. 166-90.


131. See note no. 82, Rhode and Minow, p. 194.

132. See note no. 2, Weitzman, p. 388 (emphasis in original deleted).

133. See note no. 15, Okin, pp. 165, 183 (emphasis in original deleted).


135. See note no. 48, Singer, p. 1120. Singer undertook the article, in part, as an effort to set out a justification for Weitzman’s income-sharing suggestions, suggestions that also rest on the principle of recognizing the spouse’s equal contributions to the marriage.


137. See note no. 137, Glendon, p. 1560.
140. See note no. 48, Singer, pp. 1113-18.
141. See note no. 136, Rutherford, p. 589.
142. See note no. 4, Fineman, p. 11; see note no. 137, Glendon, p. 1560. It is for this reason as well that feminists reject the assertion of fathers’ rights groups that mothers’ benefits from custody should be balanced against fathers’ financial advantages. Divorce divisions are not two-way affairs; the children’s interests are independent from the parents’, not identical with the mother’s. A mother’s strong preference for or benefit from a particular custody arrangement should not justify the child’s impoverishment.
143. See note no. 48, Singer, pp. 1117-18.
144. See note no. 68, Krauskopf; see note no. 6, Parkman.
145. See note no. 128, O’Connell, p. 503.
146. See note no. 48, Singer, p. 1116.
147. See note no. 8, Bartlett and Stack, pp. 28, 32-33.
148. See note no. 31, Chodorow, p. 142.
149. See note no. 31, Chodorow, p. 167.
150. See note no. 30, Becker, pp. 195-97. Becker notes an unusually high rate of reversal on appeal in these cases but emphasizes the often prohibitively high cost of appeal.
151. See note no. 4, Fineman, p. 181.
152. See note no. 4, Fineman, pp. 91-92.
153. See note no. 4, Fineman, pp. 183-84.
155. See note no. 8, Bartlett and Stack, pp. 37-39.
156. See note no. 8, Bartlett and Stack, pp. 20-21.
158. See note no. 4, Fineman, pp. 6, 94, 180.
159. See note no. 8, Bartlett and Stack, pp. 35-37. The authors, however, favor imposition of joint custody even when “both parents do not at the outset agree to such an arrangement” and support additional research and experimentation to promote increased use of joint custody in relatively difficult cases. As evidence of the successful use of joint custody in acrimonious divorces, the authors cite McKinnon, R., and Wallerstein, J. Joint custody and the preschool child. Behavioral Sciences and the Law (1986) 4:169-83; Greif, J.B. Fathers, children and joint custody. American Journal of Orthopsychiatry (1979) 49:311,318; Roman, M., and Haddad, W. The disposable parent: The case for joint custody. New York: Holt, Rinehart and Winston, 1978; Wolley, P. Shared custody. Family Advocate (Summer 1978) 1:6,7,33; and note no. 64, Wallerstein and Kelly, pp. 130-31, 218.
160. See note no. 10, Czapanskiy, p. 1468.
The Role of the Father After Divorce

Ross A. Thompson

Abstract

Fathers figure prominently in a child’s postdivorce life whether they are involved or disinterested, but concerns about inadequate child support, noncustodial fathers who fail to visit, and the economic plight of single mothers have together raised policy questions about how better to enfranchise fathers with the rights and responsibilities of parenting and ensure them a continuing and meaningful role in the lives of their offspring. This article focuses on obstacles and avenues to ensuring a meaningful postdivorce parenting role for fathers by examining the effects on them of custody standards, visitation policies, child support guidelines and their enforcement, and the other economic arrangements surrounding contemporary divorce. In the end, public policies that foster the child’s unconflicted relationships with each parent in the context of reliable and adequate economic support will require new ways of structuring relations between ex-spouses in the interests of offspring (for example, new approaches to custody and visitation), nonadversarial modes of assisted dispute resolution to accommodate postdivorce changes in family life, child support policies which guarantee that a child’s economic needs will be met when parents are unable to provide adequately (and that assist parents who are unable to provide), and that recognize and ensure both the relational and the economic contributions of each parent to a child’s well-being.

In a recent edition of the popular Sunday comic “The Family Circus,” cartoonist Bill Keane pictures a father listing the assets he shares with his wife. Looming behind the house, car, furniture, investments, and other property are the shadows of the couple’s four children, the most important marital assets they share. If the couple should divorce, they would be required not only to negotiate the division of their tangible property but also to make long-term decisions concerning their intangible assets, such as their relationships with offspring. Because the value of the latter cannot be quantified and therefore cannot easily be divided between them, divorce forces men and women to confront the complex challenges of allocating human resources whose value is personal and inestimable. How they do so dramatically affects not only their individual well-being following divorce, but also the quality of life enjoyed by their children.

In popular portrayals in this country, fathers figure very prominently in the morality tale of divorce and its consequences for children. They are the “deadbeat dads” who are delinquent in their child support payments and who often provide no support at all. They are the absent fathers who fail to see their children for months or years at a time, or who reenter their children’s lives unpredictably and
inconsistently. They are the vindictive former spouses who coerce unfair property settlements and refuse to pay spousal support, thus contributing to the “feminization of poverty” that undermines their children’s economic well-being. In short, to the extent that divorce has always entailed judgments of blame and wrongdoing, fathers are often the villains of contemporary divorce. And based on this portrayal, the remedies proposed to correct the inequities of divorce are equally simple and straightforward. More coercive child support enforcement strategies should be enlisted to force fathers to contribute more to their children’s care. Negotiations over property settlements and spousal support should be conducted under new rules giving women a greater share of marital assets, broadly defined. And if fathers refuse to visit regularly with their children, perhaps their visitation rights should be terminated to end the emotional turmoil and persistent uncertainty that children experience.

This contemporary view contains considerable truth: many fathers abandon responsibility to their children after divorce. But like most portrayals of complex social problems, this portrayal is also misleadingly simplified. Fathers, of course, have their own perceptions of the inequities of contemporary divorce. They protest custody standards that are gender-neutral in name only, that contribute to their lawyer’s recommendation not to ask for more than visitation, and that seem to relegate them to the status of economic providers alone. They question the increasing coerciveness of child support enforcement procedures without equally helpful avenues to ensure that their visitation privileges are not undermined or restricted by a former spouse. And they wonder whether proposed new rules governing economic negotiations that involve long-term income sharing and equalized standards of living are punitive rather than equitable, emphasizing only a few of the diverse mutual accommodations that spouses contribute to marriage and recognizing few of their own sacrifices for the family. Above all, fathers experience many losses from divorce which make their characterization as the villains of contemporary divorce seem unjust and unfair. Primary among these, for many fathers, is the painful loss of a meaningful and satisfying relationship with offspring.

The most important reason for thoughtfully considering the experience of fathers in divorce is not merely fairness to fathers, however. It is to advance the welfare of children. Children strongly miss the absent father who does not visit long after he has ceased to be part of their everyday experience. Children benefit when their mothers and fathers can cooperate satisfactorily on their behalf regarding issues of visitation, financial support, health care, educational costs, and other concerns that affect their well-being. Children suffer significant economic disadvantages from a father’s failure to provide adequate child support and, conversely, gain from his reliable financial commitment to them. Fathers thus figure prominently in a child’s postdivorce life whether they are involved and supportive or distant and disinterested. To better enlist fathers in advancing the welfare of children, therefore, it is essential to understand the obstacles and difficulties men experience in their efforts to remain involved and to appreciate why so many men abdicate their responsibilities to children after divorce. Characterizing fathers as the villains of contemporary divorce does little to advance the goal of creating arrangements that can maintain a child’s unconflicted
relationships with each parent in the context of financial support that is reliable and adequate to the child’s needs.

This discussion seeks to advance that goal by describing the experience of fathers in divorce, not to advance a “father’s rights” perspective, but to foster a more multifaceted understanding of divorce and its consequences for the family. The author is a developmental psychologist who also teaches about family policy. His experiences in these areas have convinced him that public policy concerning divorce is too blunt an instrument for use in regulating complex and individualized private relationships, but it can provide incentives and supports that may strengthen family functioning. Given the difficult contemporary experience of children and their custodial parents after divorce, and the significant role of fathers in shaping that experience, it is essential to consider how fathers can be given more multifaceted and meaningful roles in their children’s postdivorce lives.

**Values and Goals**

Public values concerning divorce and custody have changed appreciably in recent years. A traditional concern with the assignment of responsibility for marital failure and a view of children as marital property has evolved into a preeminent concern with children’s welfare in the context of a no-fault divorce regime. At the same time, divorce, custody, and child support statutes have evolved to reflect changing gender roles—both realized and idealized—in contemporary family life and, more recently, growing concern about the well-being of single mothers and their offspring. As a consequence of these changes, contemporary discussions of divorce and custody, visitation, child support, and other features of postmarital life reflect a variety of implicit goals, priorities, and value assumptions. It is important to think clearly about value preferences in this area not only to clarify the basis for preferring one policy proposal over another, but also to foster coherent public policy concerning divorce and its consequences which is designed to advance clear public purposes.

**Changing (Not Terminating) Relations Between Parents**

In the minds of most people, divorce signifies a “clean break” between two adults who have decided that they can no longer live together. As the final termination to an unhappy marriage, divorce is intended (among other things) to permit former spouses to inaugurate new relationships with other partners and begin new lives apart. But even within this traditional conception of divorce, many things keep former partners in contact with each other. The most important of these are children, who require that their parents coordinate their lives to foster visits with the noncustodial parent (or shared custody with each parent), negotiate child support arrangements that may be modified as family conditions change, and occasionally meet congenially on special occasions (like graduations or weddings). After all, divorcing a spouse does not require divorcing offspring. Moreover, as family conditions become increasingly fluid, events like remarriage, the birth of new offspring with a new partner, changes in employment and income, residential mobility, and the break-up of a remarriage can each compel modifications of visitation, support, or custody arrangements. Thus contemporary divorce surprises a couple with the discovery that, even though they are making a “clean break,” they must nevertheless maintain a future relationship.

Should the process of divorce continue to encourage partners to perceive their relationship as ended, or should it instead institute structures for facilitating ongoing interaction between them? Although there are many reasons that adults would prefer to terminate all contact with a former spouse (especially in the context of an unhappy or acrimonious marriage), when children are involved it is difficult to do so, and wise public policy might be usefully devoted to abandoning “clean break” notions and, instead, fostering a new and different postdivorce relationship between former spouses in the interests of their children. The effort to
foster a different postdivorce relationship could include, for example, providing access to mediation not just during divorce negotiations but subsequently as clarifications or modifications in these arrangements seem necessary because of changed family circumstances. It might also include the negotiation of parenting plans by which former spouses make explicit agreements concerning each partner’s long-term postdivorce commitment to the child’s well-being. And it could also mean discouraging former spouses from making private agreements that enable them to terminate contact, such as when fathers pay no child support but make no visitation demands, or when mothers request no child support award to avoid obligations to the father. In these circumstances, a former spouse ensures a “clean break” but at a considerable cost to children—and to the other parent.

To be sure, children may pay a price, as well as receive a benefit, when their parents are required to remain in contact over issues that are important to their well-being, and special provisions are necessary when severe postmarital conflict colors these interactions. But public policies that foster the expectation of a continuing relationship with a former partner after divorce might help to ensure that adults realize that they maintain continuing obligations to offspring—and sometimes to each other—despite their desire to part. Such an expectation may change the negotiations surrounding divorce and the behavior of parents following the end of the marriage, especially if it is in the context of divorce procedures that help to establish the framework for such a future relationship. Even if they might desire it, neither partner should expect to purchase autonomy after divorce at the cost of children or of the former spouse.

Fairness in the Gendered Acquisition and Division of Marital Resources

Historically, divorce and custody standards have reflected prevailing assumptions concerning gender roles and the nature of family functioning. A traditional assumption that the legitimate offspring of marriage were the father’s property evolved, during the past century, into the view that young children’s needs dictated custody to mother during their “tender years.” In similar fashion, alimony payments to a former wife reflected the traditional assumption that marriage created an enduring support commitment, but this assumption eroded with women’s rejection of dependent social roles. More recently, changes in divorce and custody standards have been guided not only by changes in gender roles, but also by efforts to eliminate sexism in domestic policymaking. Today, the most common standard is the gender-neutral “best interests of the child” standard which reflects (among other things) the view that parents should be preferred as custodians not on the basis of gender but rather because of their relationships with children, and gives social recognition to the diverse caregiving roles and responsibilities that mothers and fathers can assume in modern families.

But striving to avoid sexism in divorce standards can be a difficult task because men and women are treated differently and often make different choices in the context of a sexist culture. Contemporary reformulations of marital property and spousal support obligations reflect the broader question of whether divorce standards should provide compensation for gender-based marital roles that jointly contribute to marital well-being but may result in serious postmarital inequities. In the large majority of families, for example, women typically devote more time to the care of offspring while men assume primary economic support responsibility; after divorce, men have their career assets and women have custody of the children. How should the allocation of marital resources at divorce sort through the merging of human capital that marriage entails and avoid serious disadvantages to either partner after divorce? Do only potential economic inequities (such as lost earning capacity) merit compensation or should other potential inequities (such as diminished postdivorce contact with offspring) be considered? How are the benefits balanced against the sacrifices each partner experienced during marriage? To what extent should these determinations be altered by how marital roles were affected

Neither partner should expect to purchase autonomy after divorce at the cost of children or of the former spouse.
by the premarital choices of each partner, or by the fact that their decisions were shaped by broader societal gender roles for which neither partner is responsible? These are indeed difficult questions.

The problem with proposed guidelines for financial arrangements that are intended to compensate former spouses for gender-related inequities arising from marital decisions is that these rules must define which inequities merit compensation and how compensation should be made in a manner that encompasses the range of mutual (and complementary) accommodations that men and women each make to family demands. The fact that each partner both benefits from and sacrifices for their mutual well-being makes this task of awarding compensation through divorce settlements a formidable one if the goal is to accommodate each partner’s marital choices and their long-term consequences. Moreover, the assets that marital partners jointly create are both quantifiable (like income and career growth) and nonquantifiable (such as relationships with offspring). While one partner is justifiably concerned with lost earning potential after divorce, the other may be equally worried about maintaining a meaningful parenting role with offspring.

Effectively Intersecting Private and Public Ordering

Current debate over the financial settlements of divorce also reveals concerns about how such settlements are achieved. In the past, custody standards that explicitly awarded children to mothers or fathers were accompanied by judicial judgments of fault for marital failure that guided alimony awards, property distributions, child support provisions, and other considerations. With the advent of no-fault divorce, these meritorian considerations have been largely abandoned and replaced by less explicit criteria related to the child’s “best interests” in custody decisions and by equity and need in financial arrangements. Not surprisingly, judges have considerable difficulty determining whether a child’s “best interests” mandate custody to mother or father (or both) and deciding on appropriate levels of child support when divorcing spouses remain in conflict about these issues. Therefore, one reason for emphasizing the private ordering of these decisions—that is, offering incentives for the disputants to negotiate their conflict rather than relying on a third party, such as a judge—is that divorcing spouses best know the interests and needs that should predominate in making these decisions. In addition, private ordering of divorce-related decisions through mediation is more efficient (by reducing demands on courts and other public agencies), is more cooperative (because decisions are negotiated rather than disputed in an adversarial forum), and often results in greater satisfaction with the outcome.3

But enthusiasm for private ordering of divorce matters has waned recently for several reasons.4 Many concerns focus on the process of mediation itself. Some critics have noted, for example, that children are absent from private negotiations between parents which affect their interests. Others comment that the training and values of the mediator can significantly affect divorce negotiations and that publicly sponsored mediation efforts may be perfunctory exercises because of limited public resources. Most important, however, is how private ordering can be affected by the relative bargaining power of

While one partner is justifiably concerned with lost earning potential after divorce, the other may be equally worried about maintaining a meaningful parenting role with offspring.
The Role of the Father After Divorce

Each spouse. Divorcing spouses may bargain unequally because of their relative financial resources or a relational history of dominance or abuse or because of a willingness to adopt bargaining positions that threaten valued interests of the partner (for example, by asserting a non-serious claim to child custody). As a consequence, the agreements that result from private ordering may be inequitable for a spouse or for offspring. Critics of private ordering have proposed that negotiations over divorce-related issues be constrained by mandatory guidelines that will ensure equity in the resulting settlements, accompanied by strong enforcement procedures to ensure that partners maintain fidelity to these settlements. For example, the Family Support Act of 1988 mandated that states establish guidelines to define the framework within which child support negotiations may occur. In this respect, private ordering occurs within publicly defined parameters.

What should be the relative balance of public versus private ordering of divorce matters? Although mandatory, enforceable guidelines for child support awards and other settlements have the appeal of ensuring minimally adequate levels of financial support for custodial parents and offspring, strictly enforced rules have traditionally had several disadvantages for ordering domestic relations. Because these rules are written to apply to general cases, they can be difficult to adapt to the range of family conditions that often emerge from divorce negotiations. Mandatory child support guidelines based on income and number of children, for example, are sometimes inequitable when applied to situations in which one parent has physical custody of offspring, but the other parent assumes exclusive care of offspring during frequent and/or extended visitation periods.

The inflexibility of strict guidelines, combined with strong enforcement procedures, also poses problems for the kinds of informal modifications of caregiving arrangements that often occur during the years following divorce. A longitudinal study of California families after divorce revealed, for example, that children often changed their primary residence within two or three years after the divorce, and parents accommodated these changes with informal modifications of their child support and visitation agreements. It is unclear how easily such informal changes could be accommodated within mandatory guidelines combined with a strict enforcement regime. In short, simple rules are often inadequate when applied to complex and changing family conditions, which is why private ordering (and reordering, as necessary) of divorce-related matters is often preferred.

The inclusion of public ordering in the private negotiations of divorce settlements also raises a broader question concerning public responsibility when financial arrangements prove inadequate to the child’s well-being. Does the public have an obligation not only to ensure equity in divorce settlements, but also to ensure adequate economic support to the offspring of single mothers when the father’s support capabilities prove inadequate? In other words, do public responsibilities accompany public ordering of divorce negotiations? As we shall see, many fathers who are in arrears in their child support obligations are incapable of contributing much more to their children’s welfare. An affirmative regard for public responsibility in such situations suggests that public support guarantees to their children may be necessary.

Child Custody Concerns

Although the advent of joint and shared custody alternatives has broadened the range of options that divorcing couples can consider when negotiating the physical custody of offspring, mothers still overwhelmingly predominate in physical custody awards. By some estimates, 85% to 90% of children of formerly married parents reside with their mothers while only about 10% live with their fathers. While joint physical custody arrangements alter these figures somewhat, children in joint custody are still much more likely to end up with their mothers than their fathers.

To a great extent, these arrangements reflect prevailing social realities concern-
ing who cares for children. Despite recent evidence for enhanced paternal involvement with offspring (and the popularization of "involved dads"), the consensus of current research indicates that mothers assume primary responsibility for domestic labor and child rearing, even when they also work outside the home. Given that many mothers assume a disproportionate role in the lives of their children, it is reasonable that, when custody requires a choice between mothers and fathers, mothers are more often awarded physical custody of offspring. Indeed, because the large majority of custody arrangements are privately negotiated by parents and judicially accepted, the predominance of maternal custody might be viewed as parents’ consensual decisions rather than the outcome of judicial judgments.

But the overwhelming predominance of maternal custody remains surprising even in light of these social realities and suggests that other processes may also be at work. For example, fathers may agree to maternal custody awards because they believe that they could achieve no better than a visiting relationship with offspring if they were to dispute such a claim. Fathers may agree to maternal custody awards because they believe that they could achieve no better than a visiting relationship with offspring if they were to dispute such a claim, even if they believed they deserved a more generous arrangement (such as joint or sole custody). There is some evidence that this might be true in an important longitudinal study of 1,100 divorcing California couples with children conducted recently by Eleanor Maccoby and Robert Mnookin of Stanford University. In the mid-1980s, these scholars and their colleagues interviewed parents periodically throughout the divorcing process, beginning with the initial separation and continuing for several years after the divorce. They compared each parent’s preference for the custody award shortly after the petition for divorce was filed with what that parent formally requested, as well as with the actual custody award in the divorce decree.

They discovered that the overwhelming majority of mothers (82%) wanted sole physical custody of offspring, and this is what the large majority of them requested and, eventually, achieved from the court. By contrast, fathers initially wanted a broader variety of custody arrangements—paternal, maternal, and joint custody in roughly equal proportions—but more than one-third of them did not actually request as much physical custody in the divorce petition as they wanted. That is, fathers who wished for sole or joint physical custody did not file a request for it or, instead, requested maternal custody. In short, mothers were far more likely to act on their stated desires for custody than were fathers.

Why was this so? Maccoby and Mnookin suggested that many fathers may have decided that their efforts to achieve a more generous physical custody arrangement were likely to fail in the face of the mother’s determination to have sole physical custody of offspring. There was, in fact, considerable reason for their fear. The Stanford study reported that, when parents made conflicting physical custody requests, mothers’ requests were granted about twice as often as fathers’ requests. Indeed, even when both parents agreed that fathers should have sole custody of offspring, judges contravened this agreement about one quarter of the time. The authors concluded that: "[A]lthough gender stereotypes are no longer embedded in the statute books themselves, and California law is certainly viewed as sympathetic to more androgynous forms of physical custody, the actual custodial outcomes still reflect profound gender differentiation between parents: the decree typically provides that the children will live with the mother."
necessary to justify such a decision, regardless of the meaning to the child of the relationships she or he shares with each parent. Indeed, the preeminence of maternal custody awards could reflect, in part, the continuing influence of the “tender years doctrine” in the minds of many judges and their belief that mothers are better suited than fathers for the care of children. Fathers who must negotiate with their wives over custody issues realize that, if their dispute comes to court, their chances of achieving a more generous custody settlement are remote at best. As a consequence of this “bargaining in the shadow of the law,” fathers may not press for the kind of custody arrangement that they prefer and that, they might believe, reflects children’s best interests because it allows them a more meaningful, continuing role in the child’s life.

The “Primary Caretaker” Presumption

The vagueness of the “best interests of the child” standard has led to a search for presumptive standards that can more reliably guide custody decision making. A presumption that has been long advocated by legal scholars and social scientists is to award custody to a fit parent who is the child’s “primary caretaker.” By ensuring the child’s continued contact with the parent who has assumed the predominant role in parenting, it is argued, courts can advance the child’s best interests. How do courts determine who is a child’s “primary caretaker”? The criteria used in West Virginia have been articulated by Richard Neely, Chief Justice of the West Virginia Supreme Court of Appeals. According to Neely, the “primary caretaker” may be defined as the parent who (1) prepares the meals; (2) changes the diapers and dresses and bathes the child; (3) chauffeurs the child to school, church, friends’ homes and the like; (4) provides medical attention, monitors the child’s health, and is responsible for taking the child to the doctor; and (5) interacts with the child’s friends, school authorities, and other parents engaged in activities that involve the child.

Similar criteria are enunciated in other standards. Are these adequate criteria for identifying the parent whose relationship to the child merits custody? Are they appropriate for children of all ages? Although efforts to identify the child’s “primary caretaker” have the appeal of providing a straightforward, apparently valid, and readily assessable means of distinguishing parenting roles and relationships, it is not necessarily an easy task to define this status in a manner that is appropriate to children’s changing developmental needs and competencies. Chief Justice Neely’s criteria are obviously well-suited to infants and very young children for whom, as he remarks, “[t]his list of criteria usually, but not necessarily, spells ‘mother.’” But as children mature, their psychological growth demands far more multidimensional parental roles and responsibilities. Where, among these criteria, is the importance of play, moral instruction, gender socialization, and academic encouragement—responsibilities mothers and fathers share more equally in typical families and in which fathers often assume a leading role? Indeed, as I suggested ten years ago when advancing the primary caregiver presumption in custody decision making, it is not at all clear that distinctions can be made between primary and secondary caregiving roles in many families with children above age four because of the diversity of children’s needs and the multidimensionality of parenting roles and responsibilities. Because both parents assume meaningful but different roles and relationships with offspring, custody decisions might better focus on maintaining relationships with each parent rather than just the “primary” one.
ing, bathing, and chauffeuring can be readily assumed by either parent regardless of the level of his or her predivorce responsibility for these concerns. Many of these responsibilities are activities done for the child rather than with the child.\textsuperscript{21} The focus of a custody inquiry should properly be the meaning and significance of each parent’s relationship with the child, which is far more difficult to assess and which is not easily indexed by inquiring which parent regularly dressed and bathed the child. Substituting quick evaluations of parental responsibility for maintenance care for a searching inquiry into parent-child relationships does not contribute to valid or meaningful child custody decisions.

Alternatively, one could regard the award of custody to the primary caretaker as a reward for prior caretaking involvement, regardless of the relative significance of parenting relationships to the child.\textsuperscript{22} Legal scholar Martha Fineman offers such an argument in which she explicitly urges disregarding the quality of the relationship between parents and children. In response to criticism that such an approach disadvantages fathers in application, she notes, “[i]f fathers are left out, they can change their behavior and begin making sacrifices in their careers and devoting their time during the marriage to the primary care and nurturing of children. Men can exercise the same ‘free’ choice that women traditionally have in these matters, adjusting their outside activities to care for their children.”\textsuperscript{23}

But is this realistic? The same sexist society that denigrates the earning potential of women makes it harder for men to make career sacrifices in favor of enhanced caregiving involvement with offspring when they are primarily responsible for supporting the family. For many parents, in fact, the mutual allocation of economic and domestic responsibilities is based on a realistic assessment of each spouse’s current and potential contribution to family income that partly derives, however unfairly, from cultural sexism in earning power for which neither is responsible. The result is that, for many men, assuming a lesser-paying (but more flexible) job or taking a leave of absence to help care for offspring simply is not an option without undermining the family’s standard of living. But under the “primary caretaker” presumption, this decision is penalized because “good providers” are also “secondary caregivers”; moreover, their prior economic support responsibilities oblige them to postdivorce support responsibilities also. Just as the postdivorce earning potential of mothers
The Role of the Father After Divorce

is hampered by their predivorce caregiving commitment, the capacity of fathers for a meaningful postdivorce caregiving role is undermined by their predivorce economic support responsibility under the “primary caretaker” standard. Sexism in our society functions both ways.

Fathers as Caretakers

Defining the child’s “primary caretaker” in terms of the basic maintenance responsibilities commonly assumed by mothers might also be justified if we believed that men were, in general, inadequately prepared to assume a primary caretaking role. But of all the arguments supporting the criteria for defining “primary caretaker” status as outlined above, this is the least convincing. A large research literature examining the caretaking capabilities of fathers reveals extraordinary competence in child care, even of infants, for whom greatest doubt has traditionally existed concerning male caretaking competency. Although fathers typically defer to their wives the basic maintenance care of young children (a responsibility their spouses also often prefer to assume), researchers have consistently found that, when fathers are asked to feed, bathe, and otherwise nurture their young offspring, they behave very much like mothers. They are comparably sensitive and responsive to infant cues, they show comparable concern and attention, and their nurturance is comparably successful (that is, infants are adequately fed and bathed). And not surprisingly, infants respond to paternal caretaking as they do to maternal care: infants develop deep emotional attachments to their fathers that do not depend on the security they derive from their attachments to mothers. As children mature, fathers are involved in the lives of offspring in increasingly more diverse ways as role models, teachers, homework consultants, and disciplinarians. In short, caretaking competence—defined narrowly or broadly—is not gender-specific.

The same conclusion applies to studies of single fathers, whether their parenting status occurs through a divorce custody award or in other ways. Although single fathers often express concern about their ability to assume the responsibilities normally shared by two parents (as do many single mothers), researchers have consistently found that children living with single fathers are well-adjusted. In single-father households, domestic tasks are adequately managed, and employment and domestic responsibilities are satisfactorily juggled (with some effort). There is some evidence that sons fare better with single fathers than do daughters, but children of each sex receive good care. Moreover, children in single-father care are more likely to enjoy positive relationships with both their mothers and their fathers than are children with single mothers, partly because noncustodial mothers have more success maintaining continuing contact with offspring. In short, studies of single fathers reveal that their personal experiences and their child care practices are strikingly similar to those of single mothers.

Taken together, therefore, it appears that differences between men and women are not primarily in caregiving competence but in the assumption of caretaking responsibilities. Why, then, do fathers not normally assume a stronger role in the basic care of young children? Summarizing the diverse answers that have been offered to this question is beyond the scope of this discussion, but any answer is incomplete which Neglects the gender-typed socialization that contributes to how fathers perceive their roles and responsibilities in relation to offspring. In a sexist society that continues to address child-rearing advice almost exclusively to women, that calls fathers-to-be “coaches” (a replaceable role in the sports world) in Lamaze classes and “donors” in surrogate parenting cases, and that still regards the paternal role primarily in terms of economic support, it is perhaps not surprising that men approach the role of fatherhood with considerable uncertainty concerning role expectations, responsibilities, and options. The same society also offers powerful images of fatherhood that alternate idealized “good (involved, nurturant, responsibility-sharing) dad” portrayals with demonized “bad (dead-
beat, absent, career-oriented) dad” images when the reality involves deeper conflicts, compromises, and contingencies. The expressive function of the law itself should not be ignored: the enforcement of the economic obligations of divorced and unwed fathers for offspring without assurances of a meaningful parenting role in the child’s life also provides powerful messages to men concerning the limits of their paternal role. In the end, while there is evidence that paternal caregiving involvement is incrementally increasing, parity with the high levels of maternal investment in children is unlikely to occur soon in a society that is itself ambivalent about the father’s role.

**Joint Custody as an Option**

In light of these considerations, it is perhaps apparent why many fathers have welcomed the movement toward joint custody as a viable custody option in many jurisdictions. In the face of a spouse with a concerted claim to custody, joint physical custody presents fathers with the opportunity to assume a significant parenting role in the lives of offspring without having to deny mothers their legitimate interests also. Moreover, when parents are capable of reasonable cooperation on behalf of offspring, joint custody can potentially benefit children by enabling them to maintain access to each parent in a manner that preserves some of the beneficial qualities of predivorce family life. Although joint custody can be a disadvantage to children when parents remain in serious conflict, it is not yet clear how much interspousal cooperation is required to ensure the benefits of joint custody. For example, many parents remain distant and disengaged after divorce, but not acrimonious. (See the article by Johnston in this journal issue.) At its best, joint custody presents the possibility that each family member can “win” in postdivorce life rather than insisting that a custody decision identify “winners” and “losers”: mothers and fathers each win a significant future role in the lives of offspring, and children win as a consequence.

The controversy surrounding joint custody concerns how joint custody is awarded. Few argue that joint custody should be denied divorcing spouses who mutually wish to share custody of offspring (although some critics would reasonably seek to ensure that this did not result from coercive predivorce bargaining). Disagreement exists, however, over whether courts should have the option of awarding joint custody over the objections of one parent. The reason for this concern is that the success of joint custody—especially its potential benefits to children—depends on the capacities of each parent to cooperate on behalf of offspring, and a parent who is coerced into a joint custody arrangement may be unlikely to cooperate. Moreover, critics contend that, if judges are capable of awarding joint custody over the objections of a parent—typically the mother—it adds to the bargaining leverage of the partner, who may negotiate unfairly by raising a nonserious claim to joint custody of offspring. This unfair bargaining leverage is enhanced when statutory joint custody provisions are accompanied by “friendly parent” provisions that instruct courts to consider, if joint custody is not awarded, which parent would best facilitate the child’s continuing relationship with the other parent. The parent who requests joint custody is more likely to be regarded as the “friendly parent” and may be at an advantage in seeking sole custody if joint custody is denied.

These objections have merit. But it is important to remember that remedies to correct potential bargaining inequities may create new inequities in their place. When joint custody is awarded only by the mutual consent of both parents, the parent who would otherwise receive sole custody has a significant bargaining advantage over the partner because it is only with this parent’s consent that the partner can achieve joint custody. Thus under current conditions, mothers can effectively veto the prospect of joint custody—or threaten to do so—with the assurance that doing so will not hinder their future contact with offspring. Indeed, in the Stanford study, mothers received sole custody of offspring more than two-thirds of the time when their request for sole custody conflicted with fathers’ request for joint custody.
It seems unfair to invest so much bargaining leverage in one partner, especially when reasons for the denial of joint custody need not be demonstrably tied to children’s needs or interests. A wiser course is to institute a judicial presumption concerning the desirability of joint custody contingent on the agreement of both parents, children’s preferences, and other evidence concerning the workability of joint custody for the particular family in question. In such circumstances, one partner’s objection to joint custody would not be sufficient to impede this option without additional evidence that joint custody is inconsistent with children’s best interests in the custody decision. Merely to assume that a parent who initially objects to joint custody would make this arrangement untenable underestimates the capacity of parents to adapt to caretaking arrangements that benefit offspring and neglects the adaptations that are inherently required of each parent by the transition to postdivorce life. Moreover, the transition to a successful joint custody arrangement could be facilitated by predivorce counseling and/or mediation that would help parents create a plan to implement joint custody in a manner that accommodates the needs and concerns of each. Just as parents must strive to adapt successfully to patterns of single parenting and noncustodial visitation in the interests of offspring—and usually they do—so also must they adapt to make joint custody successful in the interests of offspring, even though one parent may not have initially sought this arrangement.

Future Directions

In the end, the preeminence of maternal custody awards not only disadvantages men but may also work against children, whose interests (especially after the early years) may be misrepresented by the perpetuation of “tender years” assumptions in judges’ applications of the “best interests” standard and the “primary caretaker” presumption, and by the effects of these judicial assumptions on their parents’ predivorce bargaining over custody. As Herma Hill Kay has noted concerning the “primary caretaker” standard, “The predictability that such a presumption brings to custody awards is purchased at the cost of legitimating the maternal preference under an easily penetrated veneer of gender neutrality that effectively excludes the vast majority of fathers as potential custodians. Contemporary social, cultural, and economic factors all tend to inhibit fathers from any realistic commitment to qualifying as the primary caretaker of children. Indeed, the normative effect of such a legal preference actually might tend to discourage fathers from participating in the care of their children during marriage while reinforcing the existing cultural directive that women ought to regard mothering as their primary role.”

The preeminence of maternal custody not only reinforces undesirable cultural portrayals of the capacity and willingness of men to nurture but also does so for women, whose postdivorce options are shaped by the expectation that they will assume sole custody of children.

In an insightful recent analysis, Elizabeth Scott has criticized contemporary custody standards for failing to maintain the complementary parental roles and responsibilities that characterized predivorce life. She urges an alternative standard that would seek to approximate, in custody and visitation arrangements, the sharing of responsibilities that had previously existed. Moreover, if one of the goals of wise public policy concerning divorce is to foster the child’s continued, unconflicted relationships with each parent, it is perhaps desirable to guide parents’ private ordering of custody matters under new rules that encourage joint parenting after divorce, either in formal joint custody arrangements or in parenting plans that provide each partner with a meaningful future relationship with children. Such plans would emphasize the responsibility of each parent for maintaining continuing obligations to children after divorce for care, financial support, and other responsibilities in the context of explicit guidelines concerning parental obligations and prerogatives. A presumption that joint legal custody would be shared by each parent after divorce might also help to encourage shared parenting. Greater explicit consideration of the child’s wishes in custody-related matters may also be desirable, especially as they are incorporated...
into parenting plans and future modifications of custody and visitation agreements. Unfortunately, current rules that enable one parent to veto the option of joint custody and that portray “primary caretakers” as mothers will only continue the status quo.

**Visitation**

**The Father’s View of Visitation**

To many fathers, equitable child custody arrangements are essential in light of the alternative. It is very difficult to maintain a successful “visiting” relationship with offspring as a noncustodial parent, especially as a father. It is not hard to see why. Consider the following description of this relationship from researchers who have long studied families of divorce:40 “At its core, the visiting relationship is ambiguous and therefore stressful. A visiting father is a parent without portfolio. He lacks a clear definition of his responsibility or authority. He often feels unneeded, cut off from the day-to-day issues in the child’s life that provide the continuing agenda of the parent-child relationship. The narrow constraints of the visit are often reflected in the need to schedule a special time and place to be with one’s child, the repeated leave-taking, and the need to adapt flexibly to the complex changing needs of the child. The forced interface with new adult figures within what sometimes is the father’s former home, and the continued crossing and recrossing of new family boundaries in the child’s life, are murky and burdensome aspects of the visiting parent’s role because they are largely undefined and therefore unsupported by social convention. They generate a changing mix of frustration, anxiety and gratification. The conflicting psychological strains on the visiting father usually pull him between the need to remain close to his children out of his love, dependence, sense of commitment, and legal obligation, and the countervailing desire to take flight in order to escape the painful feelings associated with the failed marriage. For a significant number of fathers, the urge to take flight can be irresistible.”41

Studies of divorced fathers support this conclusion. Although a substantial minority of fathers maintain or enhance the frequency of visitation over time, for most men, contact with children may initially increase immediately after the divorce but then it typically declines, sometimes strikingly, during each successive year.6,42 The same reports indicate that, when visits occur, they are often social and recreational in nature, confirming the popular stereotype of the visiting father as a “Sunday Santa” or activities director. The absence of the visiting parent from the ordinary variety of daily activities that children experience—from helping with homework to sharing domestic tasks—undoubtedly contributes to the artificiality of their relationship and the feeling that the visiting parent has ceased to function as a genuine parent in the child’s life. As an indication of this fact, in one study only half the children interviewed included their noncustodial fathers in their list of family members, and very few children did so when the father rarely visited.43 These researchers concluded, “[m]arital disruption effectively destroys the ongoing relationship between children and biological parents living outside the home in a majority of families.”44

Some researchers have concluded from survey data that children’s well-being is not significantly altered by whether fathers choose to remain involved after the divorce.45 But these findings, based only on children 11 to 16 years old, must be regarded cautiously because they are inconsistent with children’s own preferences to see more of their fathers.46 In one study, more than 85% of children wished for their parents’ reconciliation three years after their divorce.47 Moreover, as we shall see, patterns of involvement as a visiting father are strongly related to the reliability of child support payments, implicating the child’s economic well-being in this relationship also.48

**Difficulties in Maintaining the Visiting Relationship**

Why, then, is the visiting relationship of the noncustodial father so difficult to maintain? Explanations vary and are multiply influential.6,49 The residential mobility of
either parent can pose formidable geographical obstacles to regular visitation. The remarriage of one or both parents can likewise pose relational challenges to the maintenance of visitation, especially if it entails the assumption of responsibility for new offspring. The passage of time itself can impede the continuation of a visiting relationship, especially as noncustodial parents and children each develop new interests and relationships that they do not share with each other. Socioeconomic status is likewise also a positive predictor of the maintenance of visitation, probably due to the resources a noncustodial parent can devote to frequent visits with children. The manner in which the divorce was negotiated (involving litigation or private mediation) and the acrimony surrounding these negotiations also influence patterns of visitation because visitation is more likely when former spouses are cooperative. Even the way that visitation occurs—through overnight visits, weekends together, or only day visits—can predict whether visitation will be maintained. The significance of these diverse postmarital influences is reflected in the fact that, when researchers have examined the influence of the father’s predivorce involvement with children on visitation, expecting that fathers who were strongly committed to their offspring during their marriage would likewise become committed noncustodial parents, they have been surprised to discover that predivorce parenting does not predict postdivorce visitation. The quality of a noncustodial father’s relationship with offspring is shaped primarily by influences in postdivorce life.

Among the more salient obstacles to visitation is the desire of parents to limit the amount of mutual contact they must endure. Fathers may do so by neglecting to visit with offspring. Custodial mothers may do so by being unavailable when visits are to occur, by rescheduling visits for inconvenient times, or by raising objections to new visitation plans. Although mothers are usually not primarily to blame for fathers’ lack of visitation, researchers have reported that they impose obstacles to visitation to a surprising extent: by some estimates, one quarter to one-half of fathers report serious visitation problems with their ex-spouses.

Part of the problem is the ambiguity with which visitation expectations are sometimes defined in divorce statutes: by contrast with the precision by which child support awards are outlined in many jurisdictions, “reasonable” visitation can be interpreted in various ways. The broader problem, however, is that visitation almost inevitably requires contact between ex-spouses. Although custodial mothers often complain that fathers assume too little responsibility for children, they also report few efforts to consult with fathers concerning child-rearing matters and little interest in having more contact with the former spouse. In the words of one researcher, “coparenting conflicts with the preference of the vast majority of divorced individuals to establish as much distance as possible from their ex-spouses.” The “clean break” they desire after divorce may undermine the success of visitation.

It is important to note that a substantial minority of noncustodial fathers succeed in maintaining an ongoing relationship of frequent visitation despite these factors. About 15% to 25% of noncustodial fathers maintain weekly visits even several years after divorce, and the proportion may be growing. In the recent Stanford study, 64% of children reported seeing their fathers during the preceding month after more than three years had passed since parents separated. Thus diminished visitation is neither a necessary nor an inevitable long-term accompaniment of noncustodial parenthood.

It appears, however, that events of the early postdivorce years significantly shape a noncustodial father’s expectation of whether he will be able to play a meaningful role in his child’s future that guides his behavior concerning visitation, child support, and other postdivorce issues. Fathers who encounter significant obstacles to visitation may progressively withdraw from offspring and, in so doing, lessen their own discomfort and anxiety in the visiting relationship. Conversely, fathers who anticipate a meaningful future role in the child’s life are likely to persist in
visitation despite the impediments they encounter. The first year or two after divorce, therefore, may be the crucial period for establishing cooperation between former spouses that allows fathers a meaningful future parenting role with offspring. One way of doing so is with more explicitly defined visitation arrangements that have clear enforcement mechanisms and accessible modes of dispute resolution when visitation disagreements arise. Parenting plans that are jointly negotiated by parents, perhaps with mandatory visitation expectations—or “dual parenting orders”⁵⁴—might help to foster continued involvement of fathers in the child’s postdivorce life.

Involving fathers is important because, in the end, children are likely to benefit the most when fathers remain involved. To the extent that children desire continuity in parenting relationships after divorce, efforts to strengthen the noncustodial father’s commitment to offspring are worthwhile. To the extent that children may benefit, as they grow up, from access to their fathers for guidance and support, efforts to ensure that noncustodial fathers do not disappear from the child’s life are valuable. The tragedy of declining visitation is that children may lose any possibility of future access to a parent who may be capable of providing not only love and support but also a link to the child’s heritage. And because the regularity of visitation and fidelity to child support orders are so closely linked, enfranchising fathers relationally also has important economic benefits for offspring.

**Dual parenting orders might help to foster continued involvement of fathers in the child’s post-divorce life.**

Child Support

Visitation and child support are related attitudinally, empirically, sometimes even legally.⁶⁶ But their linkage is complex. Fathers who do not visit with their children are less likely to pay child support, but this may be because fathers who refuse to pay child support lack the commitment to visit regularly with offspring or because fathers who encounter obstacles to visitation feel less fidelity to child support orders. It is also true that fathers who cannot maintain child support payments are likely to otherwise disappear from their children’s lives either because they wish to avoid detection or because they are denied access by the children’s mother or because they cannot justify visiting offspring whom they cannot help support. Sometimes child support and visitation are linked to common influences: when mothers remarry, fathers sometimes feel excluded from their children’s lives and also believe there is less need for child support payments now that a stepfather is in the picture. Or the father’s own remarriage may diminish his interest in visitation and his perception of his capacity to pay child support. The geographic relocation of either parent can have similar consequences. In short, visitation and child support are complexly, but strongly, tied to each other. Perhaps unsurprisingly, although unfortunately, fathers too often show inconsistent and faltering fidelity to child support orders in a manner similar to their declining visitation with offspring.⁶⁶

Child support is among the most important obligations of out-of-home fathers to their children, and provision of adequate support is central to a child’s economic well-being. Current estimates indicate that only about half of single mothers due child support payments receive the full amount from fathers, with half the remaining women receiving partial payments and the remainder, none at all.⁵⁷ Yet the problem of child support is more complex than the simple portrayal of the “deadbeat dads” of divorce. These reports typically aggregate, for example, the child support payments of divorced fathers with those of unwed fathers, who present far more formidable problems with child support enforcement and typically provide much less support than do divorced fathers. The feminization of poverty—and the poverty of children—clearly has origins in the plight of never-married women, as well as in divorce.⁵⁸ (See the article by Shiono and Quinn in this journal issue.)

In addition, one of the reasons for inadequate child support is that more than 42% of single mothers never receive a child support award. Of these, about 22% do not want such an award.⁵⁹ Their reasons for this decision vary: some mothers may doubt the father’s capacity or
The Role of the Father After Divorce

willingness to pay, others may have their own resources to draw upon, and still others may decline a child support award to avoid any obligations to the father deriving from his support.6,59 Another 19% want a support award but, for various reasons, do not pursue it, and another 14% believe that the father is financially unable to pay and, for this reason, do not request child support payments.57 In short, when children suffer economically, their suffering may be the result of their living with a never-married mother or of the absence of a support award rather than of a divorced father’s noncompliance with court-ordered child support.

Nevertheless, child support payments have remained small even when women have an award. By many estimates, the total amount of child support awarded a mother is inadequate to the true costs of raising children. Moreover, even when payments are received, they are often partial or inadequate, averaging $3,322 per family in 1989 for divorced women.57 Of course, this picture is likely to change substantially with the mandatory child support guidelines and enforcement mechanisms required under the Family Support Act of 1988 discussed below.5 Fathers may also contribute to a child’s economic well-being in ways that are not accounted for in child support payments. They may directly purchase clothing, gifts, and other material items for children; they may pay dental or medical bills; they may subsidize school fees, lessons, or other activities—all of which are unlikely to be included in court records or other reports. Moreover, about 44% of fathers were required to include offspring in their own medical coverage.57 In general, however, these informal sources of support tend to supplement rather than to substitute for formal child support payments.60 Fathers who support the child economically through checks to the mother are most likely to do so in other ways also.

Explanations

What factors can account for whether fathers will maintain fidelity to their child support obligations? One set of explanations focuses on child support in the context of the maintenance of other parenting responsibilities toward children: fathers are more likely to provide reliable child support when they have other meaningful roles in the child’s life. Judith Seltzer and her colleagues61 have argued that, just as fathers in intact homes expect to spend time with children, provide for their material needs, and exercise authority over them, so also divorced fathers define their parenting role in terms of these three responsibilities. Seltzer’s data suggest that these obligations tend to correlate in fathers’ postdivorce relationships with offspring: those who participate with the mother in decisions concerning children tend also to visit and maintain child support obligations; conversely, the abdication of one or two of these responsibilities tends to diminish them all. Thus a father’s fidelity to child support obligations should be regarded within the context of the other commitments and responsibilities that define a father’s postdivorce parenting role.53

Other research findings support this view. The association between visitation and fidelity to child support obligations has already been noted: fathers are more likely to provide regular child support payments when they enjoy regular visitation with offspring.55 A father’s maintenance of child support is also affected by the geographic distance between fathers and offspring (child support is more forthcoming when the father and children live in close proximity), and the quality of the relationship between ex-spouses.60,62 Custody arrangements may also be pertinent to a father’s capacity to maintain a sense of involvement with offspring. A higher proportion of fathers in joint custody maintain their child support obligations than fathers in other custody arrangements, and they are also more likely to provide children with other benefits not included in support payments.60,63 Thus if Seltzer is correct, child support is part of an overall constellation of obligations to children that noncustodial fathers either feel committed to or tend to default on. Visitation and custody arrangements that foster fathers’ perception of a meaningful
parenting role are likely to enhance their fidelity to child support obligations.

The father’s financial capacity to provide reliable child support is another factor. More than 60% of the women due child support, but not receiving regular payments, cite the father’s inability to pay as the cause. Although many fathers who default on child support obligations are fully capable of making regular payments, a number of studies indicate that one of the best predictors of the amount of child support provided by fathers is their income and employment status. It is not hard to see why. Lower-income fathers face multiple strikes against them: not only do they have fewer resources for satisfying their support obligations but also their child support payments typically constitute a higher proportion of their income, they have fewer ancillary resources on which to draw if they should fall behind in their support payments, and they are more aggressively prosecuted for failing in their support obligations (partly because they are already involved with social service agencies and can less easily frustrate child support enforcement efforts). Thus, these fathers are caught between limited income, few other resources, and rigorous child support enforcement.

Taken together, these factors suggest that their failure to maintain child support obligations does not confirm the popularized portrayal of “deadbeat dads” who are more interested in devoting their financial resources to personal pleasures rather than their children’s needs. Instead, their support compliance can best be predicted by their more general financial circumstances and/or the kind of parenting role they can achieve in their postdivorce lives. Even when they refuse or cannot comply with their support obligations, most fathers accept their general responsibility for doing so and affirm the legitimacy of their children’s postdivorce economic needs. As Haskins, who has studied these fathers, has commented, “I find no support in the empirical literature for either the claim that fathers believe child support to be unjustified or that they accept the validity of various reasons often cited as justifications for not paying child support. Fathers know they have an obligation to pay child support and that this obligation cannot easily be broken.”

**Remedies**

One of the most important advances in divorce reform in the 1980s was the move to more systematic, coercive, and (not surprisingly) effective means of child support enforcement. As described more fully by Irwin Garfinkel in this issue, congressional action throughout the decade—culminating in the Family Support Act of 1988—provided strong incentives for states to establish consistent guidelines for child support awards and to strengthen enforcement efforts significantly through salary withholding, interstate cooperation in locating delinquent fathers, and other means. As a consequence, the nation is moving toward a system of child support enforcement that has long been envisioned by those concerned with the impoverishment of single mothers and their offspring: clear guidelines that reduce judicial discretion, instituted through mandatory withholding to avoid default and other enforcement processes that enlist the government—rather than the mother—as the enforcement agent.

Such a system has many strengths, including the consistency of child support orders across different local jurisdictions and enforcement procedures that help to avoid direct, and often acrimonious, confrontations between former spouses. The likelihood that women will be coerced, in divorce negotiations, to eliminate or reduce the father’s child support obligation is reduced within a framework of mandatory state guidelines. Moreover, when wage withholding is supplemented by public guarantees of assured benefits to recipients of support, these procedures help to ensure the economic well-being of single mothers and their children.

There are also disadvantages to these approaches. As earlier noted, mandatory support guidelines coupled with strict enforcement procedures provide little flexibility to adapt to atypical or changing family conditions absent options for periodic review. Fathers who assume an enhanced noncustodial parenting role may...
be penalized, for example, by quantitative guidelines for calculating child support that assume more traditional patterns of visitation. Moreover, this system fails to address many of the important issues that complicate the determination of child support obligations. Should support awards be adjusted for inflation (especially when the cost of children’s care rises with inflation, even though father’s income often does not)? To what extent should support obligations be altered by events like the mother’s remarriage (that may provide additional sources of financial support for the child), the father’s remarriage (that may increase his other legitimate support obligations), significant changes in the employment of either parent, and other life circumstances? How much should child support obligations be affected, if at all, by the custodial parent’s decision to work or not? Can mandatory guidelines help to ensure that children are the beneficiaries of child support payments? Perhaps most important, is it possible to estimate, in calculating universal support guidelines, the true costs of raising a child and how these costs are likely to change with the child’s maturity and special needs?

Alternative methods of calculating child support obligations have advantages and disadvantages. The most popular proposed approach, which involves “taxing” the noncustodial parent’s income by a predetermined percentage, has the advantage of straightforward simplicity and efficiency, as well as an inflation adjustment. But taxation approaches do not, taken alone, provide adequate support for the offspring of lower-income or unemployed fathers and do not take into account other resources that are (or are not) available for the child’s support. By contrast, cost-sharing approaches include the custodial parent’s contributions but require estimations of difficult-to-determine expenses of child rearing and have limited flexibility concerning later changes to the income of either parent. Consequently, a number of commentators have questioned whether these mathematical guidelines can really ensure equity in child support awards.65

What is most curious, this emergent system of child support enforcement fails to address the two most important causes of fathers’ failure to maintain their support obligations. First, mandatory salary withholding does little to strengthen the father’s involvement in other features of the child’s life—such as visitation and participation in child-rearing decisions—that best predict fidelity to support obligations. In a sense, the strong enforcement of financial support responsibilities in the context of few efforts to strengthen visitation or coparenting helps to reinforce cultural portrayals of fathers as economic providers alone, and this is an undesirable outcome of divorce policy.

Second, mandatory salary withholding does little to strengthen the capacity of fathers to pay when they are underemployed or work in low-wage jobs unless it is accompanied by job training and placement efforts. Although it is arguable that, when fathers are in difficult economic straits, their children still continue to need support, it makes little sense to accrue growing arrearages in child support payments that some fathers have little hope of paying and then to prosecute them aggressively for their inability to pay. By emphasizing enforcement over enablement in such instances, the emergent system of child support may, in the end, do little to improve the living conditions of children who are economically most in need. Conversely, by combining child support enforcement with programs to promote employment for underemployed fathers, the goal of advancing children’s economic best interests can be advanced.

---

**Emphasizing enforcement over enablement may, in the end, do little to improve the living conditions of children who are economically most in need.**

---

In sum, a system of mandatory income withholding (combined, in the ideal if not in reality, with public guarantees of assured benefits) accomplishes only the worthwhile but minimal goal of child support enforcement: ensuring greater cash transfers from noncustodial to custodial parents. To be sure, this is an important first step, but it is necessarily incomplete. It does little to foster a postdivorce fathering role beyond that of economic provider and thus does little to make fathers an integral part of their children’s postdivorce lives. It provides little assistance to fathers who cannot make ade-
quate child support payments and wish to do so. It fails to address thorny policy problems concerning the scope of child support obligations, the basis for modifications of support awards, and how best to estimate the actual expenses of raising children.

Is it fair to fathers (and children) to emphasize their economic provider role without also enhancing other parenting functions in the child’s life?

Greater thought is needed on these issues in the context of the broader values they reflect. Is it fair to fathers (and children) to emphasize their economic provider role without also enhancing other parenting functions in the child’s life? Given the changeability of family life during the postdivorce years, is it reasonable to expect that child support awards instituted at the time of divorce will remain valid years afterward, when patterns of child care and visitation, parental employment, and geographical relocation and remarriage will have significantly altered the children’s needs and the resources upon which they can rely? Or are avenues for the periodic reworking of child support obligations most desirable as part of the continued relationship shared by former spouses after they divorce? Should the economic arrangements of child support provide significant incentives, or disincentives, for either parent to remarry and have additional children or to work? In light of these diverse considerations, current progress in this area must be regarded as incomplete.

One additional question must also be pondered: with the growing effectiveness of child support enforcement promised by mandatory income withholding, together with strengthened means for locating delinquent fathers and standard award guidelines that reduce judicial discretion, the problem of inadequate child support will increasingly become a matter of the economic impoverishment of fathers themselves.67 As earlier noted, it makes little sense to prosecute aggressively unemployed or underemployed fathers who do not have the capacity to pay (although doing so may send important signals to other fathers who are contemplating nonpayment),67 especially if the needs of children are central to this policy problem. Increasingly, commentators with various perspectives on child support issues have agreed that public responsibility to these children may be the most important future direction for public policy.66,68 Such a view is reflected in the concept of the assured benefit plan that has, unfortunately, not been adopted as eagerly as mandatory income withholding by states that have pondered divorce reform (see the article by Garfinkel in this journal issue). It is not hard to see why: assured benefits require public expenditures and a public commitment to non-welfare-based child support that many policymakers find difficult to contemplate in an era of shrinking public budgets. Nevertheless, if the interests of children are truly central to future reform of the child support system, further exploration of public obligations—accompanying public enforcement—is needed.

Other Economic Consequences of Divorce

Divorce requires not only consideration of custody, visitation, and child support concerns, of course, but also property division and, in some instances, negotiations over spousal support (formerly known as alimony). While these economic consequences of divorce are less central to the interests of children than are the former topics, they nevertheless have far-reaching consequences for the quality of life that children and their mothers are likely to experience. Unfortunately, formulating clear public policy on these additional economic concerns is even more difficult than for custody and child support concerns.

One reason for this difficulty is lack of a clear consensual theory to guide public policy concerning spousal support.69 This may be why relatively few divorces have included alimony provisions, both prior to the no-fault revolution and afterward. The concept of spousal support strikes discordant notes in popular perceptions of divorce and its aftermath: the importance of a continuing support obligation by the (typically) better-earning husband versus efforts to ensure a “clean break” between divorcing spouses; the avoidance of dependent roles for women versus recognition of the disadvantages women face in a sexist society; compensation for one spouse’s caretaking commitments...
during marriage versus appreciation that each spouse makes significant, although different, contributions to marital life; acknowledgment of the joint contributions of divorcing partners to the human capital they share during marriage versus the inherent indeterminacy of dividing that capital upon divorce; recognizing the shared construction of marital assets versus the notion that one’s career, income, and other human assets are one’s own after divorce. Furthermore, current conceptualizations of spousal support accord well with neither contract theory nor partnership concepts and sometimes entail controversial notions of marital property (construed in terms of career assets) that make the development of a coherent theory of spousal support an even more challenging task.  

Added to these difficulties is ambiguity concerning what spousal support is meant to accomplish. Is it to compensate a former spouse for marital commitments that later result in career disadvantages? If so, what is the range of marital responsibilities meriting compensation in divorce negotiations? Is it to ensure that children are adequately supported after divorce? If so, what is the theoretical distinction between spousal support and child support obligations? Is it to provide a marital partner with a period of transitional support to develop educational or job skills preparatory to fully independent living? If so, what are the rules determining when, and for how long, such support is justified? Is it to ensure that spouses have a comparable postdivorce standard of living based on their joint contributions to the marital living standard? If so, how is this affected by the length of the marriage and the premarital resources contributed by each partner? Does it derive from the need to accommodate, in financial terms, the merger of human resources that occurred during marriage? If so, how is this justly translated into monetary support? Because these questions submit to no easy or clear answers, it is difficult to derive a coherent theory of spousal support to guide policy reform.

Furthermore, a theory of spousal support is ambiguous because the marital accommodations it is intended to reflect are also influenced by broader societal incentives for which neither partner is really responsible but to which each responds. As earlier noted, the differential domestic and wage-earning roles assumed by men and women during marriage are often responsive to their realistic assessment of relative earning power and other incentives that characterize the culture at large. The roles husbands and wives assume are often constrained by how men and women are treated by society. As a consequence, when it comes to renegotiating marital assets upon divorce, it may be hard to disentangle the relative disadvantages suffered as a result of marital commitments from those suffered as a result of cultural membership. When a woman in a long-term marriage devotes herself exclusively to caretaking, by mutual agreement of husband and wife, it is reasonable to regard spousal support as a means of accommodating her contributions.  

But in the more typical case of marital partners each approaching divorce with career assets, is spousal support really an appropriate means of equalizing differences in postdivorce living standards that derive, in large measure, from gender-based differences in earning power for which neither is really responsible? As Deborah Rhode and Martha Minow have noted, “Not all the gender disparities associated with divorce can, of course, be addressed through changes in divorce law. Particularly when marriages end after a relatively short period or the couple lacks adequate re-

---

**It may be hard to disentangle the relative disadvantages suffered as a result of marital commitments from those suffered as a result of cultural membership.**

---

sources, husbands cannot be expected to compensate for all the disadvantages facing their divorced wives. Many of these disadvantages stem from deeper structural inadequacies in employment, welfare, health, pension, and child-care policies, and from the continuing legacy of sex-based stereotypes and socialization patterns. Although divorce faces women, as the authors note, with “the full costs of uncompensated family duties and labor market disadvantages,” there is no clear theory to explain why or how spousal support should buffer the impact of these challenges in a manner comparable to the protections offered by marriage.
In the end, it seems likely that there will continue to be ambiguity in discussions of spousal support because of the inherently difficult issues—concerning the gendered acquisition and division of marital assets, the independence or mutual dependency of former marital partners in later life, and the relations between a child’s economic well-being and that of the mother—that alimony has traditionally represented in popular thought.

Conclusion

The dilemma of fathers and divorce centers on the challenges inherent in contemporary paternity: a status whose defining characteristics have become blurred by changes in men’s and women’s roles in our society and whose redefinition is still to come. As a consequence, paternity has become unfortunately (but perhaps inevitably) defined in popular forums by what is lacking: the assumption of responsibility for children, an equal sharing with women of domestic responsibilities, and a willingness to invest relationally as well as economically. At the same time, contemporary portrayals of fatherhood, including those associated with divorce, continue to emphasize their economic support obligations and their alleged disinterest in—child care. It is in this context of conflicting and largely denigrating cultural images that men seek to redefine fatherhood for themselves, both in marriage and in postmarital life.

There are important voices in the law and social sciences arguing that policy reform should begin with the assumption that men will increasingly distance themselves from their obligations to offspring, and that child support reform, visitation policies, and other issues in domestic policy should begin from the assumption that fathers will be absent or disinterested. But this is a defeatist attitude and one that may encourage a continuance of the conditions which led to these proposals. Because the law expresses as well as institutionalizes social values, roles, and relationships, divorce policies that treat fathers primarily as economic providers and not as caretakers will tend to reinforce these roles in private life.

As an alternative, public policy could be devoted to creating incentives and roles that make fathers an integral part of the postdivorce lives of offspring: through nontraditional custody and visitation arrangements that ensure fathers a meaningful parenting function; through the availability of nonadversarial modes of assisted dispute resolution to negotiate difficulties in visitation, economic support, and other issues with a former spouse; through child support procedures that assist lower-income fathers with their economic obligations while providing guaranteed assistance to all children; and through divorce procedures that encourage (indeed, require) former spouses to recognize and structure their mutual postdivorce commitments to offspring and to each other. Policy reform that encourages a meaningful parenting role for fathers in postdivorce life provides the best hope of redefining paternity in the twenty-first century.

I am grateful to Michael Lamb and Anne Mitchell for helpful comments and ideas throughout the preparation of this article.

1. Acrimony between spouses or ex-spouses undermines children’s socioemotional well-being; see for example, Emery, R.E. Interparental conflict and the children of discord and divorce. Psychological Bulletin (1982) 92:310-30; see also the article by Johnston in this journal issue.


12. See note no. 6, Maccoby and Mnookin, pp. 113-14.


17. See note no. 16, Neely, p. 180.


21. See note no. 15, Elster.


24. Such a view is sometimes advanced by “difference feminists” who, drawing on the seminal work of Carol Gilligan, emphasize the deeply rooted divergence between men and women in values and outlook (particularly with respect to nurturance and emotional connectedness) over the commonalities shared by men and women. See Gilligan, C. *In a different voice*. Cambridge, MA: Harvard University Press, 1982.


27. Although infants respond somewhat differently to mothers and fathers owing to parental differences in caregiving roles and play behavior (for example, they become more exuberant when playing with fathers but turn to their mothers when distressed), they develop emotional attachments to each parent which provide a comparable basis for the security they experience; see Lamb, M.E., Thompson, R.A., Gardner, W., and Charnov, E.L. Infant-mother attachment. Hillsdale, NJ: Lawrence Erlbaum Associates, 1985; see also note no. 20, Thompson, and note no. 9, Lamb, Pleck, Charnov, and Levine.


31. See note no. 9, Parke and Stearns.


33. I focus on joint physical custody over joint legal custody because the former ensures fathers the more significant postdivorce role in the lives of children. Although I shall argue later that a presumption in favor of joint legal custody to both parents may help to guarantee fathers a role in the care and guidance of offspring after divorce, the perfunctory award of joint legal custody may do little to accomplish this goal. By contrast, joint physical custody helps to advance the goal of continued shared parenting in a way that has meaningful benefits to fathers and children.

34. As Amato’s article in this issue indicates, children’s postdivorce well-being depends on many things, including continued contact with both parents, the extent to which parents remain conflictual (and enlist the child into their conflicts), and other factors relevant to children’s experience of joint custody.


36. See note no. 30, Furstenberg and Nord.


41. See note no. 40, Wallerstein and Corbin, p. 114.


It is important to note that most reports of fathers’ postdivorce visitation are obtained from mothers, who have been found to underestimate—compared to fathers’ own reports—the frequency and reliability of the father’s visits with children; see Braver, S.H., Wolchik, S.A., Sandler, I.N., et al. Frequency of visitation by divorced fathers: Differences in reports by fathers and mothers. *American Journal of Orthopsychiatry* (1991) 61:448-54. Nevertheless, although the absolute levels of postdivorce contact with noncustodial fathers may therefore be questioned, the consistent report that visitation typically declines during the years following divorce is probably valid.

43. See note no. 30, Furstenberg and Nord.

44. See note no. 30, Furstenberg and Nord, p. 902.


48. Another important problem of the widely cited study by Furstenberg, Morgan, and Allison (see note no. 45) is that it does not examine any of the factors (such as degree of marital conflict) that might determine the ways in which postdivorce paternal involvement affects children’s well-being, including those discussed extensively by Amato in this issue (see also Amato, P.R., and Rezac, S.J. Contact with nonresident parents, interparental conflict, and children’s behavior. Paper presented at the Annual Meeting of the Midwest Sociological Society. Chicago, 1993). The study by Furstenberg and colleagues is noteworthy also for the fairly low levels of postdivorce paternal contact characterizing the sample they studied, such that the effects of genuinely high levels of paternal postdivorce involvement could not be carefully examined. This is important if, as some have suggested (see note no. 9), levels of paternal postdivorce involvement are generally increasing.

49. See note no. 30, Furstenberg and Nord; and Furstenberg, Nord, Peterson, and Zill. See note no. 40, Hetherington and Hagan. See note no. 42, Seltzer; and Seltzer and Bianchi. See note no. 46, Wallerstein and Kelly.


51. See note no. 50, Furstenberg.

52. See note no. 30, Furstenberg, Nord, Peterson, and Zill; see note no. 42, Seltzer; and Seltzer and Bianchi.

53. Such a view has also been formalized in the “social exchange” model of nonresidential parent involvement proposed by Sanford Braver and his colleagues. In their formulation, many noncustodial fathers implicitly balance the emotional and interpersonal costs against the rewards of regular involvement with offspring, such that the regularity of visitation, fidelity of child support, and other contributions to the child’s life depend, in part, on the ease of visitation, relations with the ex-spouse, perceived benefits (and costs) to the child, reactions of significant new partners, and the father’s personal commitment to this parenting role in a complex calculus. It is important to note that this implicit cost-benefit analysis may change over time, with significant implications for the father’s long-term involvement with offspring. See Braver, S.I., Wolchik, S.A., Sandler, I.N., and Sheets,

54. See note no. 39, Bruch.

55. For research on the association between postdivorce visitation and child support, see note no. 7, Chambers; Seltzer, Schaeffer, and Charn; Teachman; and Wallerstein and Huntington. Czanski, K. Child support and visitation: Rethinking the connections. Rutgers Law Journal (1989) 20:619-65. See note no. 50, Furstenberg; and Pearson and Thoennes. See note no. 30, Furstenberg, Nord, Peterson, and Zill. See note no. 42, Seltzer.

56. This problem is not limited to noncustodial fathers. Despite the fact that mothers are more likely to maintain visitation with offspring in the care of custodial fathers, a high proportion (nearly 50%) of custodial fathers with child support awards from their former spouses fail to receive child support. See Meyer, D.R., and Garasky, S. Custodial fathers: Myths, realities, and child support policy. Journal of Marriage and the Family (1993) 55:73-89.


It is important to note that accounts of child support payments, as with visitation, rely primarily on reports from the mothers themselves. Several studies have noted that custodial and noncustodial parents differ significantly in their reports of child support payments—with the latter reporting higher payments and greater regularity in child support obligations than the former—that probably derives from bias in each source. See note no. 7, Braver, Fitzpatrick, and Bay. See also Wright, D.W., and Price, S.L. Court-ordered child support payment: The effect of the former-spouse relationship on compliance. Journal of Marriage and the Family (1986) 48:869-74.

58. National Center for Children in Poverty (NCCP), Columbia University, New York. Five million children: A statistical profile of our poorest young citizens. New York: NCCP, 1990; see note no. 57, U.S. Bureau of the Census. For example, according to the U.S. Bureau of the Census, the poverty rate in 1989 for never-married women was 53.9%, compared with a poverty rate of 23.1% for ever-married women. What is even more pertinent, in 1989 never-married women received only an average of $1,888 in child support payments, compared with an average of $3,322 for divorced women.

59. Many observers are concerned that, as a result of unfair bargaining, mothers may agree to reduced child support or no support at all in exchange for ensuring the custody of children. However, the only study in which this problem was systematically explored found no evidence that mothers achieved custody of offspring at a price of reduced child support. (For this study, see note no. 6, Maccoby and Mnookin.)


62. See note no. 7, Teachman.


64. See note no. 7, Haskins, p. 325.


67. See note no. 7, Chambers.


69. Similar considerations apply to marital property distributions, especially under proposals to expand significantly conventional definitions of marital property (for example, including “career assets” and other nontangible assets). However, because most divorcing couples have relatively little property to allocate between them, most of the focus of divorce reform in this area has been on spousal support, and this is the area on which I will focus as well.


71. Current demographics indicate, however, that these circumstances are likely to characterize a markedly declining proportion of divorcing couples as many more couples begin, or resume, dual-earner status shortly after the birth of children. Thus, most couples will approach divorce negotiations in the future with each having career assets resulting from the marriage.

72. See note no. 68, Rhode and Minow, p. 204.

73. See note no. 68, Chambers; see note no. 32, Furstenberg.
Immunization of Young Children

Eugene M. Lewit
John Mullahy

Vaccination is the most important medical intervention to prevent disease. Not only are immunized individuals themselves protected from developing a potentially serious illness, but also, if enough of the population is immunized, transmission of the disease in a community may be interrupted.1 This indirect, so-called herd immunity, provides protection even to those who are not themselves immunized. Vaccines have been developed, and more are currently being developed, to protect children and adults from a number of potentially serious diseases. Failure to achieve adequate and timely rates of immunization among young children with available vaccines risks outbreaks of serious diseases with a resulting increase in unnecessary death and disability. Because certain vaccine-preventable diseases (especially measles, pertussis, and Haemophilus influenzae type b infection) can have devastating effects on young children, this Child Indicators article focuses on the immunization status of children 19 to 35 months old (classified as two-year-olds for reporting purposes).

In essence, a vaccine provides a controlled exposure to a disease as a way of priming the body’s natural defense against infection. Traditionally, vaccines have consisted of components of disease-causing organisms which have been treated to reduce their virulence.

Frequently, multiple doses of a vaccine are necessary to gradually build up the body’s defenses against future infection while minimizing the possibility of adverse effects from the vaccine itself. Also, as immunity may wane with the passage of time, so-called booster doses of the vaccine may be necessary to sustain protection.

To date, vaccines have been developed to protect young children from a number of infectious diseases including, but not limited to, diphtheria, tetanus, and pertussis or whooping cough (DTaP vaccine); measles, mumps, and rubella or German measles (MMR vaccine); polio (OPV); hepatitis B (HBV vaccine); and Haemophilus influenzae type b (Hib vaccine).2 Recommendations for use of a vaccine depend on balancing the benefits and risks of vaccination with the risks of disease. Recommendations must be reassessed periodically. For example, children are no longer vaccinated against smallpox because smallpox was eradicated by the late 1970s.3

Recommended Immunizations

Recommendations regarding the routine immunization of
Healthy infants and children have traditionally been developed and promulgated by the Committee on Infectious Diseases (CID) of the American Academy of Pediatrics (AAP) and by the Advisory Committee on Immunization Practices (ACIP) of the U.S. Centers for Disease Control (CDC) and Prevention. Although effort is expended to ensure that recommendations from these two bodies are not discrepant, their recommendations do not always agree. Recommendations for immunization for children through 5 years of age as of January 1994 are summarized in Figure 1.

Unfortunately, immunization recommendations are complex and can be confusing to health professionals and parents alike. In part, problems arise because multiple doses of disease-specific vaccines and thus multiple interactions with providers are required to achieve adequate levels of immunity. Also, vaccines are not all given on the same schedule, and recommendations change primarily because of the availability of new vaccines and new criteria for vaccination.

There are also alternative recommendations for children at high risk for specific diseases such as those who are HIV positive or immunocompromised, for children beginning immunization at or after 15 months but before 7 years of age, and for those beginning immunization after 7 years of age (primarily new immigrants). There have been several recent important changes in the childhood immunization schedule. In response to measles outbreaks among older children in the mid-1980s, it is now recommended that children be reimmunized against measles either at school entry (age 5 to 6 years) or at entry into middle or junior high school (age 11 to 12 years). Because of the continuing occurrence of hepatitis B among adults despite the availability since 1982 of an effective and safe vaccine, universal childhood immunizations against hepatitis B with HBV vaccine are now recommended. There are however, two alternative schedules recommended for HBV vaccinations: (1) at birth, 1 to 2 months, and 6 to 18 months; or (2) at 1 to 2 months, 4 months, and 6 to 18 months.

In early October 1993, the ACIP revised its recommended childhood immunization schedule for OPV and MMR vaccinations. The committee recommended that the third dose of OPV be administered at 6 months rather than 15 months of age. This change simplifies the immunization schedule because OPV can now be given to infants on the same schedule as DTP and Hib vaccines (see Figure 1). In addition, the recommendation regarding the first dose of MMR was liberalized to 12 to 15 months of age rather than 15 months of age. The situation with regard to immunization for Haemophilus influenzae type b disease, an important cause of meningitis in young children, is complex. Four Hib vaccines and a combination vaccine that combines Hib vaccine with DTP are currently licensed in the United States.

Current recommendations are that Hib immunization begin at 2 months of age in a schedule of three or four immunizations with completion by 12 to 15 months of age depending on which vaccine is given. Confusion over the administration of Hib vaccine may arise because parents and providers may not know on subsequent visits which product and schedule the child began with. Recently published recommendations from the CID attempt to minimize confusion by providing detailed protocols for children of different ages, for the different vaccines, and for the possible combinations of different vaccines.

The new combined vaccine, Tetramune, that protects infants against diphtheria, tetanus, and pertussis (whooping cough) as well as Haemophilus influenzae type b, is to be administered in the form of shots at 2, 4, 6, and 15 months of age. Combined vaccines (such as DTP and MMR) reduce the number of shots infants receive and simplify the immunization schedule. Accordingly, the new four-in-one vaccine should improve im-

Recommendations for use of a vaccine depend on balancing the benefits and risks of vaccination with the risks of disease.
Summary of Recommendations for Immunizations as of January 1994

<table>
<thead>
<tr>
<th>Immunization</th>
<th>Dosage Timetable</th>
<th>School Entry Booster</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Birth</strong></td>
<td>1 mo. 2 mos. 4 mos. 6 mos. 12 mos. 15 mos. 18 mos.</td>
<td>between</td>
</tr>
<tr>
<td><strong>DTP</strong>&lt;sup&gt;a&lt;/sup&gt; Diphtheria, tetanus, pertussis (whooping cough) vaccine</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Hib</strong>&lt;sup&gt;b&lt;/sup&gt; Haemophilus influenzae type b vaccine</td>
<td>between</td>
<td></td>
</tr>
<tr>
<td><strong>HBV</strong> Hepatitis B virus vaccine option 1</td>
<td>between</td>
<td>between</td>
</tr>
<tr>
<td><strong>Hepatitis B virus vaccine option 2</strong></td>
<td>between</td>
<td>between</td>
</tr>
<tr>
<td><strong>MMR</strong>&lt;sup&gt;c&lt;/sup&gt; Measles, mumps, rubella (German measles) vaccine</td>
<td>between</td>
<td></td>
</tr>
<tr>
<td><strong>OPV</strong>&lt;sup&gt;d&lt;/sup&gt; Oral polio vaccine</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<sup>a</sup> A tetanus booster is recommended at the age of 14 to 16 years.
<sup>b</sup> Certain Hib vaccines do not require a dose at 6 months of age.
<sup>c</sup> CDC recommends the MMR booster at school entry; AAP recommends the booster at entry to middle or junior high school.
<sup>d</sup> AAP recommends third dose of OPV at 6 to 18 months of age.

According to committees of the U.S. Centers for Disease Control (CDC) and Prevention and the American Academy of Pediatrics (AAP), children should have received a total of 14 or 15 immunizations for childhood diseases by the age of two plus DTP, MMR, and OPV boosters at school age. Multiple doses of most vaccines are required to achieve adequate and sustained levels of immunity. Immunization schedules that require multiple visits to health care providers are inconvenient and increase the probability that children will not be fully immunized. Scheduling multiple vaccinations to occur at the same visit where possible and combining vaccines for several diseases into a single vaccine (such as the DTP or MMR immunizations) makes vaccination easier and less uncomfortable and increases the likelihood that children will be fully immunized.

- Further progress in this dimension was made in 1993 when Tetramune, a new combined DTP and Hib vaccine, was approved for sale in the United States. Use of the combined vaccine would reduce from eight to four the number of injections necessary to protect young children against these four diseases.

- In October 1993, the childhood immunization schedule was revised so that administration of the third dose of OPV is now recommended for 6 months of age instead of 15 months and the first dose of MMR is now recommended for 12 to 15 months of age. These changes are intended to simplify the immunization schedule and thereby to increase coverage with these vaccines.

munication rates, but it may be a while before it is possible to evaluate the utility of this new vaccine.

Because recommendations with regard to immunization of young children for Haemophilus influenzae type b and hepatitis B virus infections are very recent, the adequacy of the vaccination status of preschool-age children has historically been measured by the rate at which these children have been adequately immunized for diphtheria, tetanus, pertussis (whooping cough), polio, measles, mumps, and rubella (German measles).

These are the measures of vaccination status highlighted in this article. Attention to this so-called basic subset of vaccines should, however, not be interpreted as suggesting that immunization of young children for Haemophilus influenzae type b and hepatitis B virus infections is not important.

Data

Assessing the immunization coverage of young children in the United States is quite difficult. Some countries with national health systems maintain computerized immunization registers that can be used both to monitor the immunization status of the population and to track children who are not meeting recommended schedules for vaccination. The closest arrangement to such a data system in the United States is the disease surveillance system which, by monitoring the incidence of vaccine-preventable diseases, can identify gaps in immunization coverage after they occur and help characterize high-risk populations.

In addition, because children are required to provide proof of immunization status at time of entry into school in all states, data collected at school entry can provide retrospective estimates of the immunization status of young children, although the information will be three to four years out of date and perhaps subject to substantial error.7

The United States has relied, intermittently, on national survey data to provide timely estimates of the immunization status of young children.7 Through 1985, information on immunization status was collected in the United States Immunization Survey (USIS). This survey was a section of the annual Current Population Survey conducted by the Bureau of the Census.

The USIS was suspended after 1985, but following large outbreaks of measles in the late 1980s, national immunization surveillance was reinstated by adding questions on immunization status to the National Health Interview Survey (NHIS) in 1991. The NHIS is administered annually to approximately 50,000 households. Data from the NHIS immunization sample are presented in this article and are based on information about the immunization status of only one child aged 0 to 5 years per survey household. Information was obtained from a written immunization record if the record was available.

Written immunization records may have been supplemented by adult oral recall information, and if written records could not be produced, the information on immunizations was based completely on adult recall. Information on DTP/DT, polio, MMR/measles, and Hib vaccines are included in the 1991 survey.7 The NHIS immunization survey component was also conducted in 1992.

The NHIS immunization survey is useful for monitoring national trends but of limited value in implementing remedial programs. The survey is not designed to provide reliable estimates at the state and local level or to give reliable estimates for narrow age groups. There also is a time delay of more than a year between the time survey data are initially collected and the time they become generally available.

Beginning in 1994, as discussed below, new modalities of data collection will be implemented to measure immunization coverage at various levels, from national down to individual clinics. Some data will be reported quarterly.5

Immunization Status

Because there are different vaccines with different dosage schedules, there are many possible ways of assessing the immunization status of young children. Objectives are frequently stated in terms of the proportion of children of a specified age who are fully immunized at a point in time.

The United States had established for 1990 an objective that at least 90% of all children should have fully completed their basic immunization series (four doses of DTP, three doses of OPV, and one dose of MMR) by age two.7 This objective, however, was not met.

For two-year-olds, disease-specific immunization levels were 52% for OPV, 67% for DTP (at least three doses), and 80% for MMR in 1991.

Based on the 1991 NHIS, only 37% of two-year-olds were fully immunized for these seven diseases.7

The United States, however, recently relaxed its criteria for DTP immunization so
Because certain vaccine-preventable diseases (especially measles, pertussis, and Haemophilus influenzae type b infections) can have devastating effects on very young children, current national objectives focus particularly on the immunization status of two-year-olds (defined as children 19 to 35 months old). Immunization rates have been tracked by national surveys, the United States Immunization Survey in years prior to 1986 and the National Health Interview Survey in 1991 and 1992. Fluctuations in reported vaccine coverage rates may reflect actual changes in the immunization status of children from one year to the next or changes in data collection and reporting.

- Immunization rates for measles increased substantially between 1985 and 1991, apparently in response to an extensive national campaign that followed a large outbreak of the disease between 1989 and 1991. Coverage for measles, however, remains below 90% of preschool-age children.

- Immunization coverage against diphtheria, tetanus, pertussis (whooping cough), and polio had declined between 1970 and 1985 and were basically unchanged between 1985 and 1991. Reported rates of DTP and OPV immunization increased substantially between 1991 and 1992 because of increased efforts to immunize children and because of a change in the methodology for measuring immunization status based on parent recall information. Whether the large reported increments in DTP and OPV vaccination coverage between 1991 and 1992 reflect an important increase in the immunization status of two-year-olds or at primarily statistical artifacts has not yet been determined.

that children with at least three doses by age two are counted as immunized. Under these less stringent criteria, 49% of two-year-olds were adequately immunized in 1991.10 Using a comprehensive criterion for measuring immunization status yields lower measures of immunization than are recorded for disease-specific immunization levels. For two-year-olds, disease-specific immunization levels were 52% for OPV, 67% for DTP (at least three doses), and 80% for MMR in 1991.

In contrast to the relatively low levels of full immunization recorded for young children, recently released data suggest that about 97% of children in the United States are adequately immunized before or shortly after starting school.9,11

Figure 2 presents data on disease-specific immunization rates for two-year-olds for 1985, 1991, and 1992. The immunization rates presented are not strictly comparable over time because the data from 1985 are from the USIS and data for 1991 and 1992 are from the NHIS. There have been changes over time in the way refusals, unknowns, and “don’t know” responses were handled. In addition, between 1991 and 1992, there was a change in how responses based on parental recall were handled. In 1991, parents were required to specify the exact ages at which vaccinations were administered for the full number of doses to be credited. Beginning in 1992, a parental response that a child had received all doses of a particular vaccine was accepted even if the time of immunization was not specified. The CDC expects this change in methodology to enhance the accuracy of the data. It also has the effect of increasing reported vaccination levels, perhaps substantially.12

Immunization levels for measles increased considerably between 1985 and 1991, apparently in response to an intensive national inoculation campaign that followed a large outbreak of the disease between 1989 and 1991.13 As a result, in part, of increased levels of vaccination, only 175 cases of the disease were reported in the first half of 1993, down from nearly 14,000 cases reported for the same period in 1990, the height of the epidemic. In contrast, the percentage of two-year-olds immunized against polio, diphtheria, tetanus, and pertussis (whooping cough) was essentially unchanged between 1985 and 1991. Rates of immunization for these diseases registered substantial increases between 1991 and 1992, but it is too soon to tell whether of children in national surveys is unknown. Because an important function of the shot record is to facilitate following the complex maze of recommended child immunizations, it is probable that children for whom shot records can be readily consulted in response to a survey interview are more likely to have received immunizations on recommended schedules than are children for whom documentation is not available. To improve the measurement of immunization coverage through the NHIS, beginning in 1994, a subsample of responses from parents without records will be verified with providers to ad-

---

**Rates of immunization registered substantial increases between 1991 and 1992, but it is too soon to tell whether these increases reflect intensified efforts to immunize preschool children or changes in the way immunization status is measured.**

---

These increases reflect intensified efforts to immunize preschool children or changes in the way immunization status is measured. There is some question as to how accurately national survey data that are based largely on adult recall of a series of pediatric health system encounters reflect true immunization levels among two-year-old children. In the 1991 NHIS, only 49% of white respondents and 41% of respondents from other racial groups consulted immunization (“shot”) records for all the vaccination questions or reported no vaccinations.7

As illustrated in Figure 3, reported immunization rates are substantially higher for children for whom shot records are available at the time of the survey interview. Whether immunization levels are systematically underestimated because shot records are not consulted at the time of interview for more than half just survey results to better reflect true immunization levels.5

Preschool-age white children are more likely to be fully immunized than black children of the same age.10 As illustrated in Figure 4, the primary difference in the immunization status of white and black children, particularly with regard to DTP and OPV, is that white children are more likely to be fully immunized by age two while a larger proportion of black children are only partly immunized by age two. Yet, because there are many more white children than black children in the general population, almost 75% of all undervaccinated two-year-olds are white.12 Note also that, because almost 90% of children are at least partly immunized at age two, most children will require only an abbreviated series of inoculations to be fully immunized at school entry. This may account, in part, for the high level of immunization.
Figure 3

Immunization Status of Two-Year-Olds by Source of Information, 1991

<table>
<thead>
<tr>
<th>Percentage</th>
<th>DTP</th>
<th>OPV</th>
<th>MMR</th>
<th>Hib</th>
</tr>
</thead>
<tbody>
<tr>
<td>All respondents</td>
<td>80%</td>
<td>60%</td>
<td>80%</td>
<td>60%</td>
</tr>
<tr>
<td>Respondents with shot records</td>
<td>90%</td>
<td>70%</td>
<td>90%</td>
<td>70%</td>
</tr>
</tbody>
</table>

Two-year-olds = children aged 19 to 35 months; DTP = diphtheria, tetanus, pertussis (whooping cough) vaccine; Hib = Haemophilus influenzae type b vaccine; MMR = measles, mumps, rubella (German measles) vaccine; OPV = oral polio vaccine.

Written immunization (“shot”) records can serve an important function in helping parents navigate the complex maze of recommended childhood immunizations. These records also supply information to providers on the immunization status of children so that remedial action can be taken to vaccinate children who are off schedule.

In national surveys, children whose parents consult written shot records are more likely to be reported as fully immunized than children whose status is based on unaided recall. Because immunization status for about 50% of children in national surveys is based on parental recall, it is possible that immunization status is underestimated if parents who rely on recall systematically underreport the number of doses of vaccine their children receive. It appears probable, however, that children whose parents use shot records are more likely to be adequately immunized than children whose parents do not use written shot records to track immunizations. The net effect on national immunization coverage rates of relying in almost equal proportions on shot record and unaided parental recall data has not been determined.

At age two, white children are more likely to be fully immunized for diphtheria, tetanus, pertussis (whooping cough) and polio than black children; however, approximately 75% of underimmunized two-year-olds are white.

Approximately 90% of all children have been at least partly immunized for these diseases. As a result, most children only require an abbreviated series of vaccine doses to be fully immunized at school entry. That most children only have to catch up to meet school entry immunization requirements may help explain why more than 95% of school-aged children in the United States are fully immunized. Children who are not fully immunized until they enter school, however, are at risk for potentially serious, preventable diseases during their preschool years.

Source: 1991 National Health Interview Survey, calculation by authors.
coverage among children at school entry.

**Why Are Immunization Rates So Low?**

The increase in the immunization rate for measles among preschool children between 1985 and 1991 suggests that it is possible to raise immunization rates among young children to more satisfactory levels than currently exist in the United States. Yet, the fact that rates remain below the 1990 objective of at least 90% coverage of children under age two with the basic immunization series suggests that the United States still faces many obstacles to effectively protecting young children from preventable illnesses.

Many reasons have been cited for the low level of immunizations among preschool children in the United States.

In response to unacceptably low levels of immunization among very young children, the federal government announced the President’s Childhood Immunization Initiative in December of 1993. Designed to make immunization of preschool children one of the nation’s highest priorities, the initiative attempts to marshal resources in the private sector and at all levels of the public sector to achieve 90% immunization coverage of preschool children by 1996. Previously, when the United States failed to achieve 90% immunization coverage of preschool children by 1990, this level of coverage was carried over as an objective for the year 2000. This new program attempts to accelerate that timetable.

Costs may prove a serious impediment for many families, especially those with low or moderate incomes, without health insurance, or with insurance policies that do not cover immunizations. Vaccines to fully immunize a child cost more than $230 in the private sector and more than $160 in the public sector in 1992—a tenfold increase in the past decade. Several factors account for this increase, including the costs of new vaccines (Hib and HBV), general inflation, and a federal excise tax to provide compensation for vaccine-related injuries.

Rising out-of-pocket costs of vaccines appear to have led to an increase in the number of families that seek immunizations at public health clinics. Many of these facilities are overburdened and have curtailed services in response to budget cuts. Barriers associated with accessing these facilities—including long queues, inconvenient hours and locations, and prerequisites for service such as a comprehensive physical exam or an appointment for an inoculation—all contribute to low vaccination rates.

Providers and parents also contribute to the problem. Providers’ failure to take advantage of every medical opportunity to check a child’s immunization status and overly conservative behavior about giving vaccines to children with minor respiratory infections have been cited as important failings in this regard. The recently released Standards for Pediatric Immunization Practices, developed by a 35-member expert working group and endorsed by the U.S. Public Health Service, the AAP, and a number of other professional organizations, presents 18 provider-related standards to eliminate health care delivery system barriers and obstacles to the efficient and effective delivery of vaccinations.

Some experts believe that the failure of some parents to appreciate the seriousness of vaccine-preventable diseases and the value of immunization presents another barrier to achieving high levels of immunization among young children. In part, this complacent attitude may reflect the success of the vaccines themselves. Because the incidence of vaccine-preventable diseases is very low by historic standards, the complicated immunization process may frequently be regarded as an inconvenient procedure to prevent diseases hardly anyone has actually experienced rather than as a miracle of modern medicine.

In addition, some parents may resist vaccinations because of exaggerated fears of side effects. Community education and outreach programs may be necessary to counteract parental complacency and ignorance.

**Conclusion**

In response to unacceptably low levels of immunization among very young children, the federal government announced the President’s Childhood Immunization Initiative in December of 1993. Designed to make immunization of preschool children one of the nation’s highest priorities, the initiative attempts to marshal resources in the private sector and at all levels of the public sector to achieve 90% immunization coverage of preschool children by 1996. Previously, when the United States failed to achieve 90% immunization coverage of preschool children by 1990, this level of coverage was carried over as an objective for the year 2000. This new program attempts to accelerate that timetable.

One aspect of this initiative, simplifying the immunization schedule to improve compliance, has already been discussed. Other important components include the following:

- National vaccine coverage goals are now provided for individual vaccines over several years (see Table 1). This is a change from a national objective which included 90% coverage with all vaccines by the year 2000. It is hoped that looking at coverage with individual vaccines one year at a time will allow programs to focus their efforts on the specific immunization practices...
### Table 1


<table>
<thead>
<tr>
<th>Vaccine</th>
<th>Number of Doses</th>
<th>Percentage Reported Adequately Covered</th>
<th>Annual Goals: Percentage Adequately Covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTP</td>
<td>3 plus</td>
<td>83</td>
<td>80</td>
</tr>
<tr>
<td>Hib</td>
<td>3 plus</td>
<td>59</td>
<td>75</td>
</tr>
<tr>
<td>HBV</td>
<td>3</td>
<td>NM</td>
<td>30</td>
</tr>
<tr>
<td>MMR</td>
<td>1</td>
<td>83</td>
<td>85</td>
</tr>
<tr>
<td>OPV</td>
<td>3</td>
<td>72</td>
<td>75</td>
</tr>
</tbody>
</table>

*1991 data; DTP = diphtheria, tetanus, pertussis (whooping cough) vaccine; Hib = Haemophilus influenzae type b vaccine; HBV = Hepatitis B virus vaccine; MMR = measles, mumps, rubella (German measles) vaccine; OPV = oral polio virus vaccine.

In a departure from previously stated goals that considered only full coverage with all vaccines, the U.S. Centers for Disease Control (CDC) and Prevention established annual individual vaccine coverage goals for the President’s Childhood Immunization Initiative. The goals specify the percentage of two-year-olds to be vaccinated with one dose of MMR, three doses of OPV, at least three doses of DTP, at least three doses of Hib, and three doses of HBV vaccines. For HBV, 90% coverage is the goal for 1998. The actual coverage rates as reported in the 1992 NHIS indicates approximately how far the initiative has to go to reach specified targets. (The rate of immunization coverage with Hib and HBV was not reported for 1992.)

- Although four full doses of DTP are recommended for adequate coverage, the first three doses, which offer the greatest biologic advantage, will be used to assess the DTP goal of 90% coverage.
- In part, because of a change in survey methodology, reported vaccine coverage rates for DTP and OPV increased substantially between 1991 and 1992. Reported rates for the “basic” set of vaccines (DTP, OPV, and MMR) for 1992 are almost equal to 1994 targets.


...that are most in need of improvement.
- Measurement of vaccine coverage will be improved nationally through enhanced use of the NHIS and new random-digit dialing surveys to obtain immunization coverage levels for specific states and large urban areas. In addition, a method to conduct clinic-level assessments of immunization practices is being disseminated. Information from these site-specific audits can be used almost immediately to improve practices at clinics.
- A National Immunization Outreach Campaign is planned to strengthen state and community-based mobilization programs and to promote targeted use of communications channels to increase awareness and improve education.
- Beginning October 1, 1994, through the Vaccines for Children Program, the federal government will purchase vaccines directly and provide them free of charge to a variety of health care providers for administration at no cost (for the vaccine) to children eligible for Medicaid, children without health insurance, and Native American children. Insured children who do not have coverage for vaccines will also be able to obtain no-cost vaccinations at community health centers under this program.

In addition, the CDC will build on its experience with various demonstration projects to provide technical assistance to state and local immunization programs to improve their function.

The Childhood Immunization Initiative is an ambitious program. To get it under way, Congress increased the 1994 immunization budget of the CDC by almost 55% over
its 1993 budget. However, relatively costless policy changes, such as revising the immunization schedule or disaggregating vaccine coverage goals, may be important factors in whether the program is ultimately judged a success.

Already, changing the methodology for recording parental recall information in the NHIS may have contributed substantially to reaching the objective of 90% coverage by 1996. In fact, data in Table 1 suggest that 1994 objectives had almost been reached in 1992, more than a year before the initiative was launched. Efforts to adjust future survey data for possible underreporting associated with relying on parental recall may boost reported coverage levels further toward the 90% objective.

The considerable changes in the methodology by which immunization status is measured in vaccine coverage goals, and in the immunization schedule pose dilemmas for those concerned about children’s health and health policy. If the process of moving toward national vaccination coverage goals relies too heavily on changing the way vaccination status is assessed, the new initiative may do little to actually improve the health status of children although the statistics may improve. If the new procedures result in an overestimate of the true immunization coverage rate among young children, then a large group of children may remain inadequately immunized and at risk for serious disease even if the initiative appears to reach its objectives.

If, however, immunization coverage rates had been underestimated in previous data, it may be difficult to assess the real impact of the program and resources may be wasted attempting to reach children who are already adequately immunized. In any event, it will be important to assess honestly the extent to which programmatic activities lead to substantial increases in immunization coverage and improvements in children’s health and the extent to which the achievements result from changes in the way the score is kept.

The helpful comments and information provided by Steven Sepe and Martha Mayfield are gratefully acknowledged, as are the comments of Richard Behrman, Howard Bauchner, Carol Larson, Linda Quinn, and Pat Shiono. Cheri Gaither helped with manuscript preparation. The usual cautions apply.

2. Peter, G. Childhood immunizations. New England Journal of Medicine (December 17, 1992) 327:1794-800. Vaccines for a number of other diseases, such as tuberculosis (BCG vaccine) and varicella (chicken pox), have been developed but are not recommended for general use in the United States.
3. Although smallpox was eradicated by the late 1970s, attempts to eradicate measles and rubella from the United States have not been successful.
8. For statistical purposes, two-year-olds are children aged 19 to 35 months.
10. Calculations by the authors from 1991 NHIS public use tapes.
11. Nearly complete immunization coverage of children at school entry is desirable but should not lead to complacency. The large gap between the immunization coverage of two-year-olds and school-age children suggests that many young children remain inappropriately at risk for potentially serious diseases for several years.


Children and National Health Care Reform

Sara Rosenbaum

The Summer/Fall 1993 issue of The Future of Children examined how to make the overall process of reforming the health care system work for the benefit of children. That earlier issue discussed the ways in which a health care benefits package might be tailored for children, the effects of managed care on children and pregnant women, ways to reform the private health insurance market, how to pay for children’s health care, the impact of alternative health care funding arrangements on families with children, and other topics.

Just days after the publication of the journal issue on health care reform, the Clinton Administration officially unveiled its plan to overhaul the nation’s health care system. Coming, as it does, on top of a whirlwind of activity in the health care arena, the administration’s strong commitment to health care reform has focused congressional and public attention on the issue. In addition to the Clinton Administration’s bill, the Health Security Act (H.R. 3600/S. 1757), introduced by Sen. George J. Mitchell (D-ME) and Rep. Richard A. Gephardt (D-MO), there are several other major national health care reform bills currently pending in Congress. This article, based on a review by Sara Rosenbaum of the Center for Health Policy Research at The George Washington University, of six bills introduced during the first session of the 103rd Congress, concentrates on issues of particular importance to children. Principal features of the six bills are summarized in Table 1. This overview compares the proposals on 11 major issues and highlights the degree to which each bill would achieve three basic objectives: universality of coverage and access to health care; equity in the treatment of children regardless of income or residence; and care that is comprehensive and of good quality.

Coverage

A basic issue in national health care reform is the nature and extent of the coverage envisioned under a proposal. As the accompanying table indicates, all of the bills would extend coverage for children, but the similarities end there. Only the President’s proposal and the McDermott/Wellstone bill unconditionally guarantee coverage for all eligible persons. The Thomas/Chafee bill conditionally guarantees coverage if sufficient savings are achieved through reductions in Medicare and Medicaid and through other cost containment measures to underwrite subsidies for lower-income persons. The measures sponsored by Cooper/Breaux, Michel/Lott, and Stearns/Nickles attempt to make coverage more affordable but do not guarantee coverage.

Beyond the issue of guaranteed coverage are the eligibility criteria used to determine coverage: legal residency status,
state residence, membership in a unified purchasing pool, and place of residence.

**U.S. citizenship or legal residency status:** Of the six measures reviewed here, four (the President’s bill, McDermott/Wellstone, Thomas/Chafee, and Cooper/Breaux) contain legal residence requirements. Cooper/Breaux limits the legal residence test to employees only. The three other measures require legal residence for all other persons as well; however, the McDermott/Wellstone measure allows the American Health Security Board to override this exclusion if it is in the public interest to do so. Legal residency requirements will leave many undocumented immigrants without health insurance. Children of undocumented immigrants who are themselves legal residents technically would be covered as individuals under several proposals; however, enrolling them in the system could be quite messy.

**State residency:** Because all six measures are state administered, all contain a state residency test. For children in families that move for work-related or other reasons (such as children of migrant workers), a state residency test may pose barriers to coverage, particularly if these children are required to reside in each state for a period of time before being permitted to register for health coverage in that state.

**Unified coverage:** Mechanisms for creating unified systems of coverage are important to achieve equity in coverage, payment levels, and benefits and to eliminate the current problems associated with separate types of public and private coverage depending on family income. The McDermott/Wellstone plan achieves this unity by extending identical, government-sponsored coverage to all eligible persons and by incorporating Medicare, Medicaid, and other public programs into a single system.

The other plans rely on insurance purchasing pools to achieve a more unified health care system. The President’s bill uses very large health insurance purchasing pools known as regional health alliances. Enrollment in alliances is compulsory for all persons not receiving Medicare who reside in families with a family member who is employed in a firm with 5,000 full-time workers or fewer. The other bills call for far smaller purchasing pools comprised of small employers and non-working and publicly subsidized individuals. Several bills make membership in a purchasing pool voluntary. Small pools increase the likelihood that children in poorer families with more health problems and fewer resources may be segregated into less-well-financed purchasing arrangements.

**Children living apart from their families:** Students, children living in foster care and other out-of-home arrangements, and children residing in institutions live apart from their families. They would be covered as individuals under the McDermott/Wellstone plan and would be subject to special coverage rules under the President’s plan.

## Benefits

Of the six bills, only the President’s bill and the McDermott/Wellstone bill guarantee coverage for a specific benefit package. Both bills extend first-dollar coverage for preventive services, as well as coverage for vision and dental care.

The McDermott/Wellstone bill is particularly notable for its coverage of benefits used by children with disabilities. Mandatory benefits include items and services specified in a child’s individualized treatment plan under Part B or H of the Individuals with Disabilities Education Act (IDEA). Also covered as mandatory benefits are services furnished by school health clinics and other “community-based primary health care” services.

Unlike the McDermott/Wellstone bill, however, the President’s bill does not include either long-term care or rehabilita-
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage/ Approach</td>
<td>Universal, mandatory coverage of all citizens and legal residents by 1998 through a “Canadian-style” single-payer system of federal-government-sponsored health insurance administered by states.</td>
<td>Universal, mandatory coverage by 1998 of all citizens and legal residents who do not receive Medicare through a system of subsidized private group health insurance administered by states and purchasing alliances. Financed through a combination of individual, employer, and federal payments, and state contributions for low-income persons and small employers.</td>
<td>Universal, mandatory coverage by 2006 of all citizens and legal residents who do not receive Medicare through use of a system of subsidized private group health insurance administered by states and purchasing alliances. Financed through a combination of individual premiums, voluntary employer premiums, and federal and state contributions for low-income persons and small employers.</td>
</tr>
<tr>
<td>Benefits/ Cost Sharing</td>
<td>Comprehensive, explicitly defined benefit package providing primary, acute, and long-term care benefits, with no cost sharing.</td>
<td>Explicitly defined benefit package consisting of primary and acute benefits, with specific permissible cost-sharing levels. Health insurance benefits supplemented with services for persons with developmental, chronic, and long-term care illnesses and conditions through continuation of Medicaid and a new long-term care block grant.</td>
<td>Broadly described benefit package; legislation indicates several categories of items and service coverage, with an emphasis on primary and acute care benefits. Cost sharing permitted.</td>
</tr>
<tr>
<td>Financing</td>
<td>Both insurance coverage and other reforms financed through a combination of new taxes, consolidation of Medicare and federal Medicaid expenditures, state contributions, and premiums for long-term care.</td>
<td>Insurance coverage financed through mandatory employer contribution, individual premiums, state and federal contributions, reductions in Medicare and Medicaid spending, taxes on large corporations, and sin taxes. Other provisions financed through special taxes on insurers and general revenues.</td>
<td>Insurance and other reforms financed through individual contributions, voluntary employer contributions, and Medicare and Medicaid spending reductions. Other reforms financed through general revenues.</td>
</tr>
<tr>
<td>Cost Containment</td>
<td>Enforceable federal budget accompanied by the elimination of private insurance and government spending controls over pricing.</td>
<td>Enforceable federal budget for insurance premiums paid by employers, individuals, and the federal and state government, supplemented with reforms designed to increase price competition among private insurers. Limitations on the deductibility of private insurance premiums to spur competition, accompanied by Medicaid and Medicare spending reductions.</td>
<td>Increased price competition among insurers through market reforms, limits on the deductibility of health insurance to spur competition, caps on Medicaid spending, Medicare cuts, and Medicaid spending reductions.</td>
</tr>
<tr>
<td>Administration</td>
<td>Federal and state administration.</td>
<td>Federal and state administration, with use of mandatory regional and employer purchasing cooperatives.</td>
<td>Federal and state administration, with use of small employer and individual purchasing cooperatives.</td>
</tr>
<tr>
<td>Medicare</td>
<td>Consolidated with new insurance plan.</td>
<td>Retained, but with state option to consolidate with new insurance plan.</td>
<td>Retained.</td>
</tr>
<tr>
<td>Medicaid</td>
<td>Consolidated with new insurance plan.</td>
<td>Partly consolidated into new system with respect to those Medicaid benefits now covered by the health benefit plans. Medicaid benefits not covered by health plans generally still available to Medicaid-eligible persons.</td>
<td>Consolidated with health plans at state option. Medicaid benefits not covered by health plans still available to Medicaid-eligible persons.</td>
</tr>
<tr>
<td>Access to Care</td>
<td>A defined portion of health budget allocated to resource development for underserved.</td>
<td>Requests funding for resource development for underserved.</td>
<td>Requests funding for new resource development for underserved.</td>
</tr>
</tbody>
</table>

| Managed Competition Act of 1993  
H.R. 3222/S. 1579  
Cooper/Breaux | Affordable Health Care Now Act of 1993  
H.R. 3080/S. 1533  
Michel/Lott | Consumer Choice Health Security Act of 1993  
H.R. 3698/S. 1743  
Steams/Nickles |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Expanded, voluntary coverage through group-purchased private insurance for persons not covered by Medicare through a system administered by states and regional purchasing pools. Financed through individual and voluntary employer contributions; state and federal subsidies available for low-income persons and small employers.</td>
<td>Expanded access to private health insurance for persons not covered by Medicare through insurance practice and coverage reforms and through new program of insurance subsidies for Medicaid beneficiaries and other low-income persons.</td>
<td>Requirement for individuals not eligible for Medicare to purchase private health insurance through system administered by federal government and financed by individual premiums and subsidies for low-income persons.</td>
</tr>
<tr>
<td>Details of a benefit package left to a national commission, which is given broad direction to develop coverage rules within certain guidelines that assure coverage of preventive and diagnostic services. Cost sharing permitted.</td>
<td>Broadly defined minimum requirements for standard and catastrophic benefit packages to be offered by employers and to individuals, with authority delegated to the National Association of Insurance Commissioners (NAIC) to develop actuarial coverage standards. Benefits not stated in terms of defined content but rather in terms of actuarial value. Cost sharing permitted.</td>
<td>Broadly defined categories of benefits that must be offered by participating health insurance plans, with authority in the Department of Health and Human Services and in state insurance commissions to develop and enforce coverage standards. Cost sharing permitted.</td>
</tr>
<tr>
<td>Insurance financed through individual and voluntary employer contributions and through Medicare and Medicaid spending reductions. Other reforms financed through general revenues.</td>
<td>Insurance financed through individual and voluntary employer contributions and through Medicare and Medicaid spending reductions. Other reforms financed through general revenues.</td>
<td>Insurance financed through individual contributions and through Medicare and Medicaid spending reductions. Other reforms financed through general revenues.</td>
</tr>
<tr>
<td>Increased emphasis on price competition through market reform, accompanied by limits on the deductibility of private insurance costs. In addition, Medicaid is repealed and replaced with low-income assistance capped program. Medicare spending is reduced, and all federal contributions for state long-term-care Medicaid programs are ended.</td>
<td>Increased emphasis on price competition through market reform. Reductions in Medicaid spending through caps on the cost of acute care and the creation of a new capped health allowance program. Medicare spending reductions also proposed.</td>
<td>Termination of employer insurance expense deductions and employer exclusion, limitations on the deductibility and favorable tax treatment of individual tax expenditures. Caps on federal payments for Medicaid acute care coverage expenses, other Medicaid spending reductions, and Medicare savings.</td>
</tr>
<tr>
<td>Federal and state administration with use of mandatory purchasing cooperatives for individuals and small firms.</td>
<td>Federal and state administration.</td>
<td>Federal and state administration.</td>
</tr>
<tr>
<td>Repealed and replaced by low-income assistance program. Responsibility for Medicaid services not covered by health plans relegated entirely to states without federal financial participation.</td>
<td>Revised to give states authority to purchase private insurance for Medical beneficiaries and other low-income persons. Medicaid spending capped.</td>
<td>Medicaid revised to permit states to buy insurance for beneficiaries and low-income persons. Medicaid spending capped.</td>
</tr>
<tr>
<td>A defined portion of health budget allocated to resource development for underserved.</td>
<td>Requests funding for new resource development for underserved.</td>
<td>Requests funding for new resource development.</td>
</tr>
</tbody>
</table>
tion and associated services for children with birth-related conditions in the guaranteed benefit package. Instead, these benefits are covered through a separate long-term care program for severely disabled children and supplemental Medicaid coverage for services used by low-income children with chronic conditions and disabilities. The other four measures specify no benefit package but, instead, leave to the rule-making process the development of a standard benefit package.

All measures use a “medical necessity” standard to determine the amount and scope of covered benefits. None of the bills, however, amplifies what is meant by medical necessity in the context of pediatric care or other care, for that matter. This may make it difficult to obtain coverage for treatment services which promote child health and prevent disease and disability. Services at an early, preventable stage of illness rather than after the onset of disease is measurable and more serious are covered under the liberal medical necessity standard in the current Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

All six measures contain provisions curbing discrimination in the coverage of benefits based on preexisting conditions. However, the Cooper/Breaux, Chafee/Thomas, Michel/Lott, and Stearns/Nickles bills permit the application of six-month waiting periods for preexisting conditions except for pregnant women and newborns.

**Financing**

Financing is likely to be one of the most contentious health care reform issues. Regardless of the immediate source of funds to pay for health care, the costs of health care are borne by the citizens of the United States as a group. The precise set of mechanisms used to finance health care will determine the distribution of the burden in the population as well as provide incentives to purchase coverage in voluntary systems.

Under the McDermott/Wellstone bill, health care is financed entirely through an increase in employer payroll taxes (capped at 8.4% of payroll), a 2.5 percentage point increase in the personal income tax, and higher sin taxes. Insurance premiums are eliminated. How families with children are affected by this bill depends on the net offset they experience between higher taxes and the elimination of health insurance premiums.

All of the other reform bills impose premiums on families with varying subsidies for low-income families. Under the President’s plan, families receiving either Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) have 100% of their premiums paid. Working families would have 80% of their premiums paid by employers with subsidies for employers of low-wage workers. Low-income working families would also receive subsidies to help cover the cost of the remaining 20% of their premiums.

All of the other bills provide subsidies for low-income families, but the amount of assistance is less generous than under the President’s plan. Subsidies for low- and moderate-income families generally phase out more rapidly than under the President’s plan so that, as wages rise, premiums may increase enough to offset much of the wage increase.

Plans such as Cooper/Breaux, Thomas/Chafee, and Michel/Lott, which rely on voluntary purchase of coverage, run the risk of leaving uninsured children in families of moderate means for whom coverage is deemed too costly despite modest subsidies. Plans that rely on an employer mandate (the President’s proposal) or a payroll tax (the McDermott/Wellstone proposal) will cover all eligible children but run the risk of increasing unemployment or depressing wages, particularly among low-wage workers, as employers attempt to recoup higher compensation costs by adjusting their work forces.

**Cost Sharing**

All of the measures except the McDermott/Wellstone bill use cost sharing. The McDermott bill allows no payment for covered benefits at the point of service. Instead, all health care is financed through the tax system.

The President’s bill exempts prenatal and preventive services from cost sharing and subsidizes cost sharing for low-income
families enrolled in health maintenance organizations (HMOs) or other similar plans. Low-income families that wish to remain in a fee-for-service plan are responsible for all copayments and deductibles.

The McDermott/Wellstone bill, the President’s plan, and the Cooper/Breaux plan prohibit providers from billing patients for more than allowed charges. The other measures do not regulate provider billing practices.

**Treatment of Children with Chronic Illness and Disability**

Only the McDermott/Wellstone bill places in one comprehensive benefit package virtually all medical care and services needed by children with chronic illness and disability, regardless of whether services are needed because of an illness or injury or a condition existing at the time of birth. Under the President’s bill, certain benefits are covered in the basic benefit package only if needed to treat an illness or injury which occurs after birth. Thus, a child born with cerebral palsy would not be covered for speech therapy because the child’s condition existed at birth.

The President’s plan moves toward addressing these limitations by supplementing the basic guaranteed benefit package with a long-term care benefit package subsidized out of general revenues for severely disabled children and by continuing Medicaid coverage for low-income children who need care and services not covered by the basic benefit package.

The other measures include no supplemental long-term care program. The Cooper/Breaux bill would entirely repeal the Medicaid program. States would be responsible for long-term care and for services for persons with chronic illnesses and disabilities. The other measures would place flat spending limits on certain items and services used by low-income children such as mental health and rehabilitation services received on an outpatient basis.

**Access to Health Care for Medically Underserved and Vulnerable Populations**

All of the measures acknowledge the importance of allocating funds to develop health services in communities that, because of poverty or geographic, racial, or cultural isolation, cannot attract or retain sufficient numbers of primary care providers. Only the McDermott/Wellstone bill specifically allocates a portion of the national health budget for service development and support activities. The McDermott/Wellstone bill also specifies certain payment methodologies for providers located in underserved communities in recognition of the higher costs they may incur in caring for medically underserved populations.

**Treatment of Providers**

The measures vary widely in their treatment of providers. The McDermott/Wellstone bill continues nonrestricted use of individual office-based, clinic-based, and institutional providers who would be paid on a fee-for-service basis. The bill also permits formation of comprehensive health service organizations to provide care through participating providers.

The other measures all depend importantly on private managed care plans such as HMO-type provider networks. Children and families would have to pay out of pocket for services received from nonplan providers unless services were emergency in nature or out-of-plan care is authorized by the family’s plan.

In addition, the President’s bill takes specific steps to ensure families continued access to certain types of services despite their enrollment in network plans. First, all plans must offer a point-of-service option for a higher premium. This option enables families to see any provider with higher cost sharing. Second, the plan allows children with serious illnesses and conditions access to very specialized services at academic health centers and other “centers of excellence.” Third, the President’s plan requires that, for a five-year period following implementation of health reform, all health plans contract with certain “essential community providers” (such as community and migrant health centers) who are located in medically underserved communities and are particularly accessible to low-income and medically underserved families.
Treatment of Public Health

The President’s bill, the McDermott/Wellstone bill and the Cooper/Breaux bill include population-based public health activities. However, only McDermott/Wellstone allocates a specific portion of the national health budget to these activities.

Treatment of Medicaid

The bills vary greatly in their treatment of Medicaid, the nation’s largest source of public health funding for children. The Cooper/Breaux and McDermott/Wellstone bills eliminate Medicaid entirely. The Cooper/Breaux bill makes states solely responsible for those items and services currently provided by Medicaid but not included in the guaranteed benefit package.

The President’s bill eliminates Medicaid for services that would be covered by beneficiaries’ health insurance plans. It leaves in place those current Medicaid benefits that would not be covered by the comprehensive benefit package. Thus, all treatment services would continue to be covered for low-income children through both the basic Medicaid plan and through a special new “children’s wrap-around” program that would be federally administered and subject to uniform national rules.

The Thomas/Chafee, Michel/Lott, and Stearns/Nickles proposals all maintain separate Medicaid programs for eligible low-income persons through which both basic and long-term benefits would be provided. At their option, states could replace Medicaid with private coverage. Under these bills, children receiving public assistance potentially would remain covered by Medicaid while other low-income children would receive coverage through private plans.

State Administration and Cost Controls

All of the measures depend heavily on state administration. Only in the President’s bill and the McDermott/Wellstone bill does the cost control system not differentiate between children whose coverage is publicly subsidized and children whose coverage is not. The McDermott/Wellstone bill achieves this goal by covering all children with government insurance. The President’s bill achieves this goal by paying identical health plan enrollment rates for children regardless of family income. Funds from employers, individuals, and the state and federal governments are commingled in a common pool and are subject to uniform premium controls.

The other measures contain direct cost controls only for persons whose insurance is publicly subsidized. While the Cooper/Breaux, Thomas/Chafee, Michel/Lott, and Stearns/Nickles bills limit tax deductibility, plans can raise premiums above this level for privately insured persons. Because public subsidies are limited, as a practical matter children in lower-income families face more stringent health care budget limitations.

Quality of Care

All of the measures address the development of quality-of-care measures and place emphasis on health outcomes measures and on empowering consumers through better disclosure of quality-of-care information.

As this journal goes to press, the issues concerning health care reform are being analyzed and discussed. Predicting the outcomes of this political process is impossible, but it appears likely that none of the bills reviewed in this article will emerge as the consensus health care reform measure without substantial modification. Many of the compromises necessary to achieve health care reform will probably not directly reflect children’s issues. Yet, if children are to benefit from health care reform, it will be important to examine the implications for children of specific components of any serious reform proposal and to take appropriate corrective actions to protect their interests.

For the complete text of Sara Rosenbaum’s detailed review of provisions for children in the major national health care reform proposals and for a detailed general summary of the legislation prepared for the Kaiser Commission on Medicaid, contact the Circulation Department at the Center for the Future of Children.
In addition to selected members of the editorial advisory board, we sought reviews from a number of other scholars. We wish to thank the following reviewers for their valuable contribution to this journal issue.

—The Editors

Suzanne M. Bianchi
Grace Ganz Blumberg
Michael J. Brien
June R. Carbone
Andrew J. Cherlin
Robert E. Emery
Paul C. Glick
Margaret Campbell Haynes
Donald J. Hernandez
Sheila Kuehl
Diane J. Macunovich
Frank L. Mott
Ann Nichols-Casebolt
Ciaran S. Phibbs
Ross A. Thompson
Michael S. Wald
Judith S. Wallerstein
The primary purpose of *The Future of Children* is to disseminate timely information on major issues related to children’s well-being, with special emphasis on providing objective analysis and evaluation, translating existing knowledge into effective programs and policies, and promoting constructive institutional change. In attempting to achieve these objectives, we are targeting a multidisciplinary audience of national leaders, including policymakers, practitioners, legislators, executives, and professionals in the public and private sectors. This publication is intended to complement, not duplicate, the kind of technical analysis found in academic journals and the general coverage of children’s issues by the popular press and special interest groups.

The following back issues are available free of charge from the Center for the Future of Children:

**Home Visiting**
Volume 3, Number 3 (Winter 1993) 216 pp.
Edited by Deanna S. Gomby, Ph.D. and Carol S. Larson, J.D.
This issue examines the use of home visiting programs to serve pregnant women and families with young children. Articles focus on the diversity of home visiting programs and their goals, the use of home health visiting in Europe, the research literature evaluating the effectiveness of home visiting approaches, the economic evaluation of home visiting programs, staffing issues for home visiting programs, the importance of societal and cultural context, and the ways in which home visiting programs must be designed and delivered to best address the health and developmental needs of young children.

**Health Care Reform**
Volume 3, Number 2 (Summer/Fall 1993) 216 pp.
Edited by Eugene M. Lewit, Ph.D.
This issue focuses on making health care reform work for children. It brings together updated papers for congressional staff on health insurance for children with additional articles about selected issues of importance to the current debate on health care reform. Articles focus on an appropriate benefits package for women and children, innovative ways of paying for health care services, how to guarantee coverage with multiple insurers, state initiatives to cover uninsured children, the distribution of costs and benefits of universal coverage, public opinion and health care reform, and managed care for children and pregnant women.

**Adoption**
Volume 3, Number 1 (Spring 1993) 184 pp.
Edited by Irving Schulman, M.D.
This issue examines adoption as the primary means of providing a stable, nurturing, loving home to some children who, for a variety of reasons, have been deprived of such an environment. From the perspective of what is in the best interests of the child, the authors explore the major barriers to adoption and an overview of adoption today, including articles about adoption law, statistics on adoption in the United States, benefits and risks of open adoption, adoption of children with special needs, international adoption, agency versus independent adoption, outcomes of transracial adoption, and adoption of drug-exposed children.

**U.S. Health Care for Children**
Edited by Eugene M. Lewit, Ph.D.
This issue assesses the strengths and weaknesses of the U.S. health care system for children and pregnant women. Written by research and medical experts, articles examine the measurement of health status, the effectiveness of health care, health care services, and resources and expenditures. Also examined are public and private financing of health care, children without health insurance, and nonfinancial barriers to access. This issue highlights components of the system needing reform and proposes a number of policy changes to improve the health care system.

**School-Linked Services**
Volume 2, Number 1 (Spring 1992) 144 pp.
Edited by Carol S. Larson, J.D.
This issue focuses on the current trend toward having schools coordinate and/or provide health and other social services for children and their families. Contributing authors, including school and government officials, program administrators, and researchers, offer a variety of viewpoints about financing, planning, implementing, and evaluating school-linked services. The issue identifies emerging criteria for developing school-linked programs and highlights critical policy concerns. (Related Working Paper #1932 also available.)
A Selected Bibliography


