

The Politics of Family Breakdown

How No-fault Divorce Turns Fathers into 'Deadbeat Dads'

Stephen Baskerville

Most attempts to address America's family crisis have emphasized the cultural dimension, though increasingly the importance of economic factors has also been recognized.

Less attention has been devoted to the politics of family breakdown. Yet the effectiveness of our other efforts is likely to be limited until we come to terms with the political realities underlying marriage dissolution.

First, the media image many people have of marriages simply and mutually "breaking down" is inaccurate. Under "no-fault" divorce laws, some 80% of divorces are unilateral and over the objection of one spouse.

Contrary to another persistent myth, when minor children are involved, the divorcing parent is overwhelmingly likely to be the mother. Arizona State University psychologist Sanford Braver has shown that at least two-thirds of divorces are initiated by women. Few of these divorces involve grounds, such as desertion, adultery, or violence. The reasons usually given are "growing apart" or "not feeling loved or appreciated." More disturbing, researchers Margaret Brinig and Douglas Allen found that "Who gets the children is by far the most important component in deciding who files for divorce."

No-fault divorce, often blamed for leaving wives vulnerable to abandonment, has left fathers with no protection against the confiscation of their children. No-fault laws were passed not as the result of any popular clamor or following any public debate but largely for the benefit of divorce practitioners. "The divorce laws . . . were reformed by unrepresentative groups with very particular agendas of their own and which were not in step with public opinion," writes Melanie Phillips in *The Sex-Change Society*. "Public attitudes were gradually dragged along behind laws that were generally understood at the time to mean something very different from what they subsequently came to represent."

It is usually assumed that these groups profit from divorce but do not actually create it. Yet any bureaucracy develops an interest in perpetuating and exacerbating the problem it ostensibly exists to solve. By offering incentives to divorce and rewarding the parent who initiates it, divorce courts encourage divorce, which is their bread and butter. In some cases it appears mothers are actually being forced to divorce with threats.

Family Court Equals Big Business

It is striking how little attention is focused on family courts. They are certainly the arm of the state that routinely reaches farthest into the private lives of individuals and families. "The family court is the most powerful branch of the judiciary," according to Robert Page, Presiding Judge of the Family Part of the Superior Court of New Jersey. "The power of family court judges is almost unlimited." Contrary to basic principles of open government, family courts generally operate behind closed doors and seldom record their proceedings.

Dickens' observation "the one great principle of the law is to make business for itself" could hardly be more starkly validated. Nothing requires judges to grant the divorcing parent's request to strip the other parent of his children. Yet they invariably do. One need not be cynical to recognize that judges who failed to reward the divorcing parent would be rendering themselves redundant and denying earnings to a large entourage of lawyers, psychologists and psychiatrists, mediators, counselors, child-support enforcement agents, social workers, and others - all of whom benefit from the ensuing custody battle and also have a strong influence on

the careers of judges.

Family court judges are generally appointed and promoted by commissions dominated by bar associations and other groups with an interest in maximizing the volume of litigation. The politics of court appointments operates according to patronage principles that Richard Watson and Rondal Downing, in *The Politics of the Bench and the Bar*, describe as "cronyistic." Political scientist Herbert Jacob has demonstrated how "lucrative patronage positions . . . are generally passed out to the judge's political cronies or to persons who can help his private practice."

Like all courts, family courts complain of being overburdened. Yet it is clearly in their interest to be overburdened, since judicial powers and salaries, like any other, are determined by demand. "Judges and staff . . . should be given every consideration for salary and the other 'perks' or other emoluments of their high office," suggests Judge Page, who urges divorce court judges to increase their business. "As the court does a better job more persons will be attracted to it." A court "does a better job" by attracting more divorcing parents with advantageous settlements.

Putting Dad Out on the Street

The existence and virtually every problem addressed by family court - divorce, custody, child abuse, child support enforcement, even juvenile crime - depend upon one overriding principle: removing the father from the family. "Your job is not to become concerned about the constitutional rights of the man that you're violating," New Jersey municipal court judge Richard Russell told his colleagues at a training seminar in 1994. "Throw him out on the street, give him the clothes on his back and tell him, see ya around. . . . We don't have to worry about the rights."

Once a parent loses custody he becomes a virtual outlaw. His contact with his own children outside authorized times and places becomes criminalized. He can be arrested for running into his children in public places such as the zoo or church, or for telephoning his children when he is not authorized, or sending them birthday cards.

Parents summoned to court are subject to questioning about their private lives and how they raise their children that attorney Jed Abraham has characterized as an "interrogation." Their personal papers, financial records, and homes must be opened and surrendered on demand. Their children may be used as informers.

Anything a parent has said to his spouse or children can be used against him in court. His personal habits, movements, conversations, purchases, and relationship with his children are all subject to inquiry and control by the court. A Virginia father had his visitation reduced when a judge decided soccer was a more important Sunday activity than church. Another in Tennessee faces jail for giving his son an unauthorized haircut. In *From Courtship to Courtroom*, Jed H. Abraham describes how fathers charged with no wrongdoing must submit to "plethysmographs," where an electronic sheath is placed over the penis while the father is forced to watch pornographic films involving children.

The criminalization of fathers is further consolidated through child support burdens, which constitute the financial fuel of the divorce machinery, underwriting divorce and giving everyone involved further incentives to remove children from their fathers.

In the current issue of the journal *Society*, Bryce Christensen of the Howard Center for Family, Religion, and Society describes "the linkage between aggressive child-support policies and the erosion of wedlock." Christensen argues that the advocates of ever-more-aggressive measures for collecting child support have trampled on the prerogatives of local government, have moved us a dangerous step closer to a police state, and have violated the rights of innocent and often impoverished fathers.

Research by Braver and others has undermined most justifications for the multi-billion dollar criminal enforcement machinery. Described by Front Page Magazine as "the most important work of conservative social science in a decade," Braver's study showed that no serious problem of nonpayment exists, since "estimated" arrearages have no basis in hard figures but are compiled entirely from surveys.

Child support obligations are determined less by the needs of children than by the politics of interest groups. Guidelines are set not by economists but by the agencies and courts (and even private firms) who enforce and adjudicate them, raising questions about the separation of powers and the constitutionality of the process. The more onerous the child support levels, and the more arrearages, the more demand for enforcement powers and personnel. These groups can create precisely the "deadbeats" on which their livelihood depends.

Federal incentive payments of 6-10% on each dollar collected impel states to channel all child support payments (including current ones) through the criminal enforcement machinery, further criminalizing parents and leading agencies to pursue every dollar they can. The federal government also pays two-thirds of states' collection costs and 90% of computer costs. Federal taxpayers are effectively subsidizing divorce, and laws created to deal with the relatively few men who truly abandon their offspring have been hijacked to build a self-financing divorce machine.

As the logic of involuntary divorce plays itself out, we now find divorce being forced on not only one parent but both. Mothers are not simply being enticed into divorcing with financial incentives; they are being forced into it with threats against their children. Last February, the Massachusetts News broke the story of Heidi Howard, who was ordered by the state's Department of Social Services to divorce her husband or lose her children, though the department acknowledged neither parent had been violent. When she refused, social workers seized her children and attempted to terminate the Howards' parental rights. Massachusetts News reporter Nev Moore reports hundreds of such cases.

G.K. Chesterton wrote that "the ideal for which the family stands is liberty." It is hardly accidental that a governmental regime founded upon betrayal and broken promises must ultimately depend for its survival on the betrayal of public trust by office-holders. When we not only condone broken promises but marshal the state apparatus to protect ourselves from their consequences we have poisoned the waters of justice and created something very dangerous indeed.

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