



Family Violence in America

The Truth about Domestic Violence and Child Abuse

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Executive Summary

Over the last four decades, Americans have been told about serious problems of “family violence” and “domestic abuse.” Yet they have not been told the full truth. Serious misinformation characterizes not only the public understanding of these phenomena but also public policy, resulting in policies that are ineffective, counterproductive, and destructive.

Enormous media attention has been devoted to family violence. Governments have responded with new programs and huge expenditures. Yet these massive outlays seem to have resulted in little reduction of the problem.

Moreover, increasing numbers of Americans find themselves under investigation and asking why they are being bothered by enforcement officials, when so many “real” abusers are allowed to perpetrate such horrible crimes.

The public and policymakers have been seriously misled. Gaping inconsistencies separate what the scientific data demonstrate about family violence from current public policy. When the scientific knowledge of these problems is understood, it becomes clear that current policy is not likely to alleviate these problems. More disturbingly, by destabilizing families *it is likely to be contributing to them.*

Other critics are beginning to call attention to the misinformation surrounding family violence policies. Our conclusions build upon their work but also go further in two crucial respects:

First, we have found that family violence – both true incidents and false accusations – is so closely connected with family dissolution and with disputes over child custody that these constitute the principal agent driving this phenomenon. Current family violence policies, by destabilizing families and rationalizing the government seizure of minor children, are therefore exacerbating the problem.

Second, the causes of child abuse must also be considered in any comprehensive understanding of family violence and these causes also lie in fam-

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ily dissolution. We conclude that existing family policies are not only failing to prevent child abuse; they are actively contributing to it.

These problems can be solved but not through existing policies, which may be creating the very problem they claim to be addressing. To break this circle, we call for a radical departure from existing programs and offer the following recommendations:

- *Government must adhere to the Bill of Rights and other constitutional protections.*
- *Reform constitutionally questionable programs, such as the Violence Against Women Act, that politicize and distort law-enforcement and target individuals because of their membership in groups or their political beliefs rather than their deeds.*
- *Statutory protection for parental rights to ensure that law enforcement programs are not commandeered to create unaccountable police actions against innocent parents, depriving them of their children without due process of law.*
- *A legal presumption of equal and shared legal and physical custody of children in cases of divorce, separation, and unmarried parents.*

By strengthening families and the bonds between parents and their children, we will be addressing the roots of family violence, including child abuse.

Our aim is more than to refute questionable information disseminated by advocates of current family violence policy (which others have done already). What we are seeing here is by far the most severe and alarming violation of constitutional freedoms in the United States today.

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Statutory protection for parental rights will ensure that law enforcement programs are not commandeered to create unaccountable police actions against innocent parents.

1. Introduction: An Epidemic of Family Violence?

Americans have been inundated in recent years with alarms about “family violence” and “domestic abuse.” Massive media attention has been devoted to both domestic violence and child abuse. Americans have seen vivid horror stories brought into their homes via television, milk cartons, postcards, and candy wrappers. Sensational accounts in major news outlets such as the *Washington Post*, *New York Times*, and PBS suggest that violence in American homes is epidemic, despite relatively few Americans having actually witnessed such violence themselves.

Despite this attention, it is not clear that Americans, including policy-makers, are well informed about these issues. Much of the media attention and academic literature that claims to tell Americans what is taking place in their own families is inaccurate and misleading.

Governments at all levels have devoted enormous expenditures on programs. Federal spending in particular has been huge (though some question whether any constitutional mandate even provides for federal jurisdiction over these issues). In January 2006, President Bush signed the second renewal of the Violence Against Women Act, authorizing approximately \$1 billion annually to combat family violence. The Child Abuse Prevention and Treatment Act and successor legislation such as the Adoption and Safe Families Act have been devised to combat child abuse. These measures have funded and encouraged similar legislation by state governments.

Yet these massive outlays of taxpayers’ money seem to have resulted in little reduction of the problem. Indeed, by the accounts of media and advocacy groups, the violence seems only to increase. The solution, we are told, is yet more programs and outlays with no end in sight.

Moreover, while relatively few Americans report witnessing family violence personally, increasing numbers fall afoul of the government agencies created to combat it. Americans who consider themselves law-abiding

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We see significant inconsistencies between what the data reveal about family violence and policies devised to combat it. More disturbingly, evidence indicates that current policy is very likely contributing to these problems. It is also having a seriously destructive effect on both American families and Americans' constitutional liberties.

citizens find themselves under investigation by government officials. Some have had their children removed without having been proved guilty, or even formally accused, of any legal infraction. Others are arrested and incarcerated on allegations that are highly questionable. Virtually every American now knows someone who has been at least suspected of either domestic violence or child abuse. Yet because these citizens seldom question the information they receive from media and government sources, they ask why they are being bothered by authorities when so many “real” abusers are perpetrating such horrible crimes.

We see significant inconsistencies between what the scientific data reveal about family violence and policies devised to combat it. We will demonstrate that when the scientific knowledge of these problems is understood, it becomes clear that current policy is not likely to alleviate them. More disturbingly, we will examine evidence indicating that *current policy is very likely contributing to these problems*. It is also having a seriously destructive effect on both American families and Americans’ constitutional liberties.

These are emotive issues. Political leaders and others want to be seen as “doing something” and tend to support high-profile but sometimes hasty government action, however ineffective or counterproductive. Before we continue further on a path with no apparent end, it may be time to stand back and appraise not only the phenomena themselves but also the policies and programs used to address them. While we cannot offer an exhaustive critique in this short document, our aim is to raise questions that have not been answered by proponents of these programs and to suggest lines of inquiry that might contribute to more effective policies.

Broadly, we have three concrete concerns about today’s domestic violence and child abuse programs:

- 1) They result in no significant amelioration of the alleged problems and may actually be exacerbating the problems they are devised to address.*

- 2) *They are having a severely destructive impact on the family, the most fundamental social unit of our civilization.*
- 3) *They are corroding Americans' constitutional rights and civil liberties and politicizing our system of law enforcement and criminal justice.*

We are not the first to question the accepted wisdom. Current policy and the inaccurate assumptions used to rationalize it have recently been subject to harsh and strongly-worded critiques that deserve more attention than they have received. One study's summary of the "myths and facts" about domestic violence might serve as our own point of departure:¹

MYTH: The abuse of women is extremely common in American culture. One of out three women will be battered in their lifetime.

FACT: As many as one in four couples experience at least one incident of minor and usually mutual violence such as pushing or grabbing. While such low-level violence should not be condoned, it is distinct from the problem of battered women. Studies show that battering (hitting, punching, or more severe assaults) occurs repeatedly in about 3 percent of couples, and once in another 7 or 8 percent.

MYTH: Our society has long condoned violence against women and viewed it as an acceptable method of male control over women.

FACT: Wife-beating was widely condemned in American culture going back to colonial times. While the justice system often paid too little attention to spousal abuse (and other kinds of interpersonal violence), the social stigma against wife-beating was quite strong long before the rise of the modern women's movement.

MYTH: The primary reason for domestic abuse is patriarchy, sexism, and the oppression of women.

FACT: Research has found little correlation between sexist attitudes and domestic violence. Many studies show that domestic violence is no less common in gay and lesbian couples than in heterosexual ones. Most wifebeaters do not regard abuse as acceptable but instead try to deny or minimize it.

MYTH: Domestic violence is perpetrated almost exclusively by men against women.

FACT: While women are at far greater risk of serious injury due to domestic violence due to their lesser size and strength, female aggression against both male and female partners is well-documented.

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Similarly serious critiques have been issued on child abuse policy, and they have not been refuted. Yet neither does it appear that they are now being seriously considered in the formulation of policy.

More of the story remains to be told. Rather than duplicate the work of previous critics, we start where they leave off and pursue their questions further. We have evidence that more may be at work here than errors of fact. We see a political dynamic and larger ideological agenda driving misconceptions surrounding family violence. Until it is brought into the open and examined, this political dynamic carries serious consequences for the American family and for the constitutional rights of American citizens.

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2. Problems of Definition:

What Precisely is “Family Violence”?

The concepts of “domestic violence” and “child abuse” have never been clearly defined. Most people seem to assume, naturally enough, that they are considered forms of violent assault and adjudicated like other crimes. This is not the case.

Domestic violence is a category of conflict designated not by the nature of the deed but by the relationship between the parties. Though definitions vary, it frequently includes virtually any conflict that takes place between “intimate partners” and blurs the distinction between what is truly violent and criminal and what is not. The potential to criminalize peaceful private behavior, personal imperfections, and routine family disagreements is conveyed in the ambiguous term “abuse.” Domestic “violence” therefore need not be violent. “You don’t have to be beaten to be abused,” is now a standard slogan of advocates and even ostensibly objective journalists and officials. The “public safety correspondent” (a term with odd, Jacobin overtones) of the *St. Louis Post-Dispatch* writes, “Abuse also means name-calling, put-downs, control and isolation. Abuse means an intimate partner constantly refusing to let you have money, intimidating you by shouting, giving you negative looks or gestures, forcing you into sex acts, or ignoring your opinions.”² This reporter’s definition helps explain why accusations of such “abuse” against citizens guilty of no legal wrongdoing are often reported uncritically by news media as if “negative looks” and “name-calling” constituted crimes. In *The Battered Woman*, influential psychologist Lenore Walker excuses a women who violently attacked her husband because he “had been battering her by ignoring her and by working late.”³

Governments now accept these definitions in official documents. A poster issued by the Alexandria, Virginia, Domestic Violence Program, de-

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defines “VIOLENCE” in these terms: “Does your partner . . .”

- Verbally insult, demean or threaten you?
- Isolate you from friends, family or other people or become excessively jealous, possessive and/or angry in attempts to control you?
- Organize schedules to follow or harrass [*sic*] you?
- Limit your mobility or access to money and/or other resources?
- Explode into a rage and abusive behaviors after using drugs and/or alcohol?
- Negate your words, abilities, ideas and actions?
- Choke, punch, slap, kick, pull hair, bite, throw things, abuse or damage your personal belongings or force you to have sex?
- Excuse each attack and promise to stop?

By these criteria, “violence” becomes whatever the alleged “victim” says it is.

Likewise, the National Victim Assistance Academy, a document funded by the U.S. Department of Justice, includes the following in its definition of “violence”:⁴

- Physical and social isolation.
- Extreme jealousy and possessiveness.
- Deprivation of resources to meet basic needs.
- Degradation and humiliation.
- Name-calling and constant criticizing, insulting, and belittling the victim.
- False accusations, blaming the victim for everything.
- Ignoring, dismissing, or ridiculing the victim's needs.
- Lying, breaking promises, and destroying the victim's trust.
- Criticizing the victim and calling her sexually degrading names.

By these criteria, “violence” becomes whatever the alleged “victim” says it is. One might expect those concerned about true violence to resist this debasement of the language whereby the stuff of lovers’ quarrels and ordinary family friction are intermingled with serious crimes. Instead those employed in the domestic violence field are often most willing to use vague terms to imply lawbreaking and violence where none has taken place.

These fluid definitions carry serious implications. Most fundamentally, they make it difficult to discuss the phenomenon in any detached or concrete terms, since it is not clear precisely what is being discussed.

Subjective definitions and consequent uncertainties also cast doubt on whether true domestic *violence* is the serious problem claimed by “battered” women’s groups. It is important to understand at the start that none of the statistics purporting to quantify family violence – even those described as “substantiated” or “confirmed” – are based on convictions through jury trials; they are based on “reports” and are therefore questionable on a number of counts. “There is not an epidemic of domestic violence,” Massachusetts District Court Judge Milton Raphaelson has stated. “There is an epidemic of *hysteria* about domestic violence.”⁵ Domestic violence groups often issue claims such as the following:

- 20% to 35% of women who visit medical emergency rooms are there for injuries related to domestic violence;
- battering is “the leading cause of injury to American women,” or to women 15 to 44;
- domestic abuse causes more injuries to women than rape, auto accidents, and muggings combined.

These statements are untrue, and others have already refuted them definitively with scientific data.⁶ Yet even were they true, they would not in themselves prove the existence of a serious problem. Claims about the frequency of domestic violence relative to other causes of injury may indicate simply that women constitute a safe and protected sector of American society with comparatively few threats to their physical safety. The fact that zealous and well-funded advocates cannot adduce more unambiguous quantitative proof that domestic violence is a widespread problem suggests that what we are seeing here is hysteria.

But most seriously, loose definitions based on reports rather than convictions convey a presumption of guilt that, while it may begin as social science shorthand, readily spills over into criminal justice procedure. Plaintiffs are referred to as “victims” and “battered women,” and defendants are “batterers” and “abusers” – not only in advocacy literature but in legal statutes and court documents.

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3. A “New Star Chamber”: Due Process of Law

A presumption of guilt pervades domestic violence laws and procedures.

Civil liberties protections that are guaranteed by the Constitution to all Americans accused of crimes are simply deemed, without further explanation, not to apply.

“Women lie every day,” states one judge. “Every day women in [domestic] court say, ‘I made it up. I’m lying. It didn’t happen’ - and everyday they’re not charged.”

The most serious consequence proceeding from subjective definitions of “violence” is that accusations are not adjudicated as a form of violent assault. Rhetorically, advocacy groups do emphasize that domestic violence is a “crime.” Yet in legal proceedings, domestic violence is often adjudicated not as a criminal but as a civil matter. Because of this distinction of words, the civil liberties protections that are guaranteed by the Constitution to all Americans accused of crimes are simply deemed, without further explanation, not to apply.

Perhaps most fundamental is the principle that a citizen is presumed “innocent until proven guilty.” A presumption of guilt pervades domestic violence laws and procedures. Not only do federal and state statutes refer to plaintiffs as “victims” and defendants as “batterers,” without the qualification “alleged,” but “the mere allegation of domestic abuse...may shift the burden of proof to the defendant.”⁷

Self-described advocates for alleged victims acknowledge that accusations are assumed to be true by authorities such as police, prosecutors, and courts. “With child abuse and spouse abuse you don’t have to prove anything,” the leader of a legal seminar tells divorcing mothers. “You just have to accuse.”⁸ Domestic violence complaints are also not covered by provisions of perjury law. “Women lie every day,” states one judge. “Every day women in [domestic] court say, ‘I made it up. I’m lying. It didn’t happen’ – and they’re not charged.”⁹ Significantly, the standard procedure was indicated by a headline in the *Edmonton Sun* – “False Abuse Accusers Will Be Charged” – an admission that currently they were not charged.¹⁰ “Whenever a woman claims to be a victim, she is automatically believed,” says Washington State attorney Lisa Scott. “No proof of abuse is required.”¹¹ We appear to have institutionalized the archetypal question for railroading the innocent: “When did you stop beating your wife?”

Proceeding from this is the elimination of constitutional protections as basic as a jury trial, the right to counsel, and protection against hearsay evidence. Defendants can also be convicted by a very low standard of evidence: a “preponderance of evidence” rather than the usual criminal standard of “beyond a reasonable doubt.”¹² These protections, encompassed under the term “due process of law,” are scrupulously guaranteed to criminal defendants accused of the most heinous violent crimes. In domestic abuse cases, Massachusetts attorney Gregory Hession points out, “a defendant may lose all those [rights], with no due process at all.” Hession describes the process as a “political lynching”:

In a criminal trial, defendants...are presumed innocent. They have a right to a trial by jury. They have the right to face their accusers and have evidence presented and cross-examine any witnesses. They may not be deprived of property or liberty without due process of law. The Commonwealth must prove guilt beyond a reasonable doubt. The law has to be clearly defined. They have a right to a lawyer, and to be provided one if they cannot afford one. The abuse law throws out all of those protections.¹³

David Heleniak has documented these procedures for New Jersey’s domestic violence law, which is typical of statutes throughout the United States, and calls this “an area of law mired in intellectual dishonesty and injustice.” Heleniak identifies six major denials of due process in the New Jersey statute, which he terms “a due process fiasco”: lack of notice, denial of poor defendants to free counsel, denial of right to take depositions, lack of fully evidentiary hearings, improper standard of proof and denial of trial by jury.¹⁴ Heleniak quotes Dean Roscoe Pound that “the powers of the Star Chamber were a trifle in comparison with those of our juvenile court and courts of domestic relations.” Bypassing due process procedures is so routine that New Jersey municipal court judge Richard Russell openly instructed his colleagues during a training seminar to violate the constitutional protections due New Jersey citizens: “Your job is not to become concerned about the constitutional rights of the man that you’re violating as you grant a re-

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Orders do not and cannot prevent violent crime. What they do is stop peaceful, law abiding citizens from conducting their normal and lawful daily lives.

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straining order,” he said. “Throw him out on the street.... We don’t have to worry about the rights.”¹⁵

Restraining orders or “orders of protection” are a radical legal innovation: They do not punish duly convicted criminals for illegal acts but prohibit law-abiding citizens from otherwise legal ones. As such, they constitute the logical culmination of what some decry as “judicial activism” or “judicial legislation,” since judges simply legislate new crimes *ad hoc* from the bench. But they are crimes only for the recipient of the order, who can then be arrested and jailed without trial for doing what no statute prohibits and what anyone else may lawfully do. “Once the restraining order is in place, a vast range of ordinarily legal behavior,” most often contact with one’s own children, is “criminalized.”¹⁶ Because violent assault is already a punishable crime, the orders do not and cannot prevent violent crime. What they do is stop peaceful, law-abiding citizens from conducting their normal and lawful daily lives. The recipient must immediately vacate his home and make no further contact with his family. “A defendant can be prosecuted even if the complainant agreed to meet with him, or even initiated contact.”¹⁷

Restraining orders are issued virtually for the asking. Boston attorney Elaine Epstein, former president of the Massachusetts Bar Association and past president of the Massachusetts Women’s Bar Association, has accused her peers of succumbing into the “media frenzy surrounding domestic violence” and of doling out restraining orders “like candy.” “Restraining orders and orders to vacate are granted to virtually all who apply,” and “the facts have become irrelevant,” she writes. “In virtually all cases, no notice, meaningful hearing, or impartial weighing of evidence is to be had.”¹⁸ Attorney Paul Patten of Fall River, Massachusetts, also says they are “issued like candy,” adding, “It’s a rare case that they won’t be issued as long as somebody says the magic word, ‘I’ve been hit’ or ‘I’ve been threatened.’”¹⁹ Connecticut attorney Arnold Rutkin charged that many judges view restraining orders as a “rubber-stamping exercise” and that subsequent hearings “are usu-

ally a sham.”²⁰ In Missouri, a survey of judges and attorneys unearthed complaints of disregard for due process and noted that allegations of domestic violence were widely used as a “litigation strategy.”²¹ Massachusetts attorney Sheara Friend, says, “I don't think there's a lawyer in domestic relations in this state who doesn't feel there has been abuse of restraining orders. It's not politically correct—lawyers don't want to be pegged as being anti-abused women – but privately they agree.”²²

Restraining orders are routinely issued “*ex parte*”: a hearing at which the defendant is not present to defend himself and about which he may not be notified. Or they can be issued over the telephone or by fax with no hearing at all, and no evidence is required of any wrongdoing.

Criminalizing otherwise lawful private behavior obviously constitutes a serious violation of the most basic due process protections. “The restraining order law is one of the most unconstitutional acts ever passed by the Massachusetts legislature,” says Hession. “Under it, a court can issue an order that boots you out of your house, never lets you see your children again, confiscates your guns, and takes your money, all without you even knowing that a hearing took place.”²³ Perhaps the most serious is incarceration without a jury trial, one of the bedrock protections of Anglo-American criminal law.²⁴

Judges too express shock, though only when promised anonymity. One called the restraining order law “probably the most abused piece of legislation that comes to my mind.” Another anonymous judge readily acknowledges the irony of judges openly violating the constitution: “The constitution is being ignored in order to satisfy a particular legislative objective,” he says. “And if the judiciary should feel that it is obliged to close its eyes to constitutional considerations in order to assist the legislature in attaining a currently popular objective, it will have prostituted itself and abrogated its responsibility to maintain its independence and its primary responsibility of upholding the Constitution.”

Judges who try to defend the Bill of Rights are apparently whipped into line by their colleagues. “Those with no background express disbelief, until we explain

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Proponents openly acknowledge that [the courts] exist for the express purpose not to administer impartial justice to citizens presumed to be innocent but to expedite convictions and facilitate punishment of those presumed to be guilty.

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the intent of the legislation,” Judge Russell acknowledges. The *Law Journal* reports that “Judges who have seen the training presentation say that if anyone objects, they keep it to themselves.”²⁵ Judges and prosecutors themselves acknowledge that, “For years, Essex County men arrested for violating such orders have been denied due process by languishing in jail... without a Superior Court hearing, a bail review, or counsel.”²⁶

The logical next step is special courts to secure convictions. This is precisely what is now happening with “integrated domestic violence courts.” Some 300 now operate in at least 23 states. Proponents openly acknowledge that they exist for the express purpose not to administer impartial justice to citizens presumed to be innocent but to expedite convictions and facilitate punishment of those presumed to be guilty: “to make batterers and abusers take responsibility for their actions,” in the words of New York Chief Judge Judith Kaye.²⁷ In these courts the presumption of innocence is set aside, hearsay is admissible, and defendants have no right to confront their accusers. One study of such courts found there was no possibility that a defendant can be found innocent, since all persons arrested for non-felony domestic violence receive some punishment: fine, jail, and/or treatment.²⁸ The “fast-track” program of El Paso County, Colorado, “is designed to mete out swift justice to perpetrators who abuse their partners, based on the theory that holding offenders immediately accountable will help prevent future offenses.” Critics say “it coerces defendants into pleading guilty by depriving them of essential constitutional rights, including the right to post bond and the right to be represented by an attorney.” “It’s just butchering the Bill of Rights,” according to attorney Kevin Donovan.²⁹ Previously, domestic violence defendants were treated like any other, but district attorney Doug Miles concluded that “domestic-violence perpetrators are very slick” and therefore merited special procedures to deal with their slickness. *Mother Jones* magazine applauds the higher conviction rates and guilty pleas that prosecutors can leverage by suspending due process protections.³⁰ The *Daily Herald* of

Provo, Utah, is another journal that laments the "burden of proving that abuse had occurred" and advocates dispensing with evidence in favor of summary punishment. "It's not easy to accumulate medical records detailing injuries, eyewitnesses, and a police record of domestic violence calls to the house."³¹ In other words, to prove accusations with evidence. With domestic violence, evidence is apparently irrelevant in the quest to convict on accusations of ill-defined "abuse" that cannot be proven because, in many cases, it did not take place. Never before in the law have we regarded more convictions as a virtue for its own sake.

In Canada, special domestic violence courts are empowered to seize the property, including the homes, of men accused (though not necessarily convicted or even formally charged) of domestic violence and to do so *ex parte*, without the accused being present to defend themselves.³² "This bill is classic police-state legislation and violates just about every constitutional principle that anyone with even a minimal familiarity with our Constitution might think of," according to Robert Martin who teaches constitutional law at the University of Western Ontario.³³ Toronto lawyer Walter Fox, pointing out there is no presumption of innocence or burden of proof, describes these courts as "scary and pre-fascist."³⁴

In Britain, similar "special domestic violence courts" allow third parties such as civil servants and pressure groups to use "relaxed rules of evidence and the lower burden of proof" to bring civil actions against those they identify as batterers, even if no alleged "victim" comes forward. "Victim support groups," who say women "should be spared having to take legal action," can now act in the name of an anonymous or purported alleged victim to seize the children, homes, and other property of men who have not been convicted of any infraction.³⁵

Special and secretive courts to try newly created crimes that can only be committed by certain people are a familiar device totalitarian regimes adopted to replace impartial standards of justice with ideological justice

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Special and secret courts to try newly created crimes that can only be committed by certain people are a familiar device totalitarian regimes adopted to replace impartial standards of justice with ideological justice aimed at particular groups.

Forced confessions are extracted on pain of losing ones' children or incarceration. Fathers are threatened with summary incarceration unless they sign pre-printed confessions.

aimed at particular groups whose members are identified as collectively guilty. New courts created during the French Revolution led to the Reign of Terror and were consciously imitated in the Soviet Union. In Hitler's notorious *Volksgerichte* or "people's courts," write Carl Friedrich and Zbigniew Brzezinski, "only expediency in terms of National Socialist standards served as a basis for judgment."³⁶ In her study of revolutionary reigns of terror, Rosemary O'Kane emphasizes that the essence of the Terror "lies in summary justice," typically executed by "newly appointed law courts" or "extraordinary courts and revolutionary tribunals."³⁷

Perhaps most extreme, forced confessions are a common feature of these courts and of "batterers" programs, extracted on pain of losing ones' children or incarceration. In Warren County, Pennsylvania, fathers are threatened with summary incarceration unless they sign pre-printed confessions stating, "I have physically and emotionally battered my partner." The alleged perpetrator must then describe the violence, even if he insists he committed none. The documents require him to state, "I am responsible for the violence I used. My behavior was not provoked."³⁸ Again the words of Friedrich and Brzezinski seem apposite. "Confessions are the key to this psychic coercion," they write. "The inmate is subjected to a constant barrage of propaganda and ever repeated demands that he 'confess his sins,' that he 'admit his shame.'"³⁹

4. Feminist Ideology

Some attribute these practices to excessive zeal by enforcement officials, to “unintended consequences,” and to the vicissitudes of a metaphorical pendulum. We see more specific interests at work.

Government-funded pressure groups lobby assiduously for precisely such policies, articulating an ideology that places blame for domestic violence (and, indeed, many other claimed social ills) specifically upon men as a group. Domestic violence programs often involve feminist consciousness-raising sessions in which, in the words of one participant, “everyone was supposed to hate the men and want to leave them.”⁴⁰ Indications even exist that some groups, rather than attempting to address an actual social problem, consciously adopted family violence as the rhetorical mantra to garner public sympathy for a political agenda for which little support otherwise existed. “We knew that foundations were not going to fund a house for a bunch of homeless bar dykes,” says the creator of a major advocacy group. “We realized the language that would be understood was the language of battered women.”⁴¹

The ideological premise which sustains such campaigns is that domestic violence is not like other crimes, which are committed by one individual against another. Rather, it is a political crime collectively perpetrated by one gender to oppress the other and proceeding from what are deemed ideologically incorrect values: “Battering is the natural outgrowth of patriarchal values.”⁴² On this premise, innocence is not recognized as a possibility because guilt is defined not by the deeds of the individual but by membership in a guilty group or by political opinions. One creator of a model domestic violence program reveals the ideological fixation driving such programs:

By determining that the need or desire for power was the motivating force behind battering, we created a conceptual framework that, in fact, did not fit the lived experience of many of the men and women we were working with....I found that many of the men I interviewed did not seem to articulate a desire for power over their partner. Although I relentlessly took every opportunity to point out to men in the groups that they were so motivated and merely in denial, the fact that few men ever articulated such a desire

Innocence is not recognized as a possibility because guilt is defined not by the deeds of the individual but by membership in a guilty group or by political opinions.

went unnoticed by me and many of my coworkers. Eventually, we realized that we were finding what we had already predetermined to find.⁴³

Ancillary to this ideological *idée fixe* is the feminist insistence that domestic violence is, by definition, a crime perpetrated exclusively by men against women. Yet this misconception has now been subjected to so much scrutiny since the classic studies by Murray Straus and Richard Gelles that its falsity is finally beginning to reach general awareness. That women perpetrate domestic violence as much as men has been established by such an overwhelming body of research as to require no further treatment here.⁴⁴ Martin S. Fiebert has compiled a bibliography of 123 scholarly investigations, 99 empirical studies, and 24 reviews and/or analyses, “which demonstrate that women are as physically aggressive or more aggressive than men in their relationship with their spouses or male partners.”⁴⁵ The only difference was that women report a higher rate of “injuries” for which they requested medical treatment.⁴⁶

While the data from detached social scientists is clear, inaccurate statements and policy pronouncements continue to flow from both advocacy groups and government officials. The U.S. Department of Justice states that “Strategies for preventing intimate partner violence should focus on risks posed by men.”⁴⁷ “In 95% of domestic assaults,” officials claim, “the man is the perpetrator of the violence.”⁴⁸

Again, such statements are false, but they are also revealing of the mentality that propagates them. Even were they true, we question what precisely are the implications for public policy we are expected to draw. Are proponents suggesting that membership in a group establishes guilt? That individuals within this group who have not committed domestic violence should be punished as if they did? (Were it shown statistically that a preponderance of liquor store robberies are perpetrated by young black males, would this justify preemptive law enforcement measures against individuals who are young, black, and/or male?) As we have seen, domestic violence programs

do in fact presume guilt against those who have not been convicted of a crime and so, according to our legal traditions, are presumed innocent.

In a larger sense, of course, it does not matter what percentage of a particular group commits a particular crime, since the legal issue is due process of law for every individual. Even if one gender were shown statistically to commit the preponderance of domestic violence, this obviously does not justify punishing innocent members of that gender. Yet even government documents routinely use phrases like “violence against women” and “male violence,” as if crimes are defined by group membership. The very fact that such presumptions of criminality are propagated by politicians, journalists, and scholars indicates how unhealthy and politicized the debate has become, how many interests have developed a stake in obfuscating rather than illuminating the truth, and how far we have gone toward accepting doctrines of collective guilt that were once associated with totalitarian movements.

This politicization of the criminal justice system is clearly seen in official justifications for abrogating due process protections. The New Jersey family court adopts ideological jargon in stating that to allow accused abusers the protections afforded other criminal defendants “perpetuates the cycle of power and control whereby the [alleged?] perpetrator remains the one with the power and the [alleged?] victim remains powerless.”⁴⁹ Psychotherapy programs which alleged (but not convicted) batterers are ordered to attend (usually on pain of incarceration) explicitly and specifically require compliance with feminist ideology whereby “patriarchy is often cited causing and/or maintaining men's violence against women.” “Often, the guidelines also require that the programs be monitored and evaluated by battered women’s advocates,” writes Young. “Methods that are considered ideologically suspect by the advocates, such as joint counseling for couples in violent relationships, are rejected outright.” One program was decertified specifically because it did not sufficiently inculcate “acknowledgment of gender role conditioning nor of

Inaccurate statements and policy pronouncements continue to flow from both advocacy groups and government officials.

male dominance” and was “gender-neutral” rather than insisting that “men [hold] constant power over their partners.”⁵⁰

In recent years, domestic violence law and procedure throughout the United States have been rapidly modified in specific response to feminist pressure that can only be interpreted as a concerted effort to ensure the arrest of men.

Police generally do not arrest suspects without a warrant unless they personally witness a crime. Yet domestic violence policy has brought the innovation of mandatory arrest, even when it is not clear who has committed a crime or even that any crime has been committed at all. The Violence Against Women Act authorizes grants to law enforcement agencies to “develop and strengthen programs and policies that mandate and encourage police officers to arrest [alleged?] abusers.”⁵¹ Such policies are now the law in over half of all states.⁵² Consequently, courts have been flooded with cases involving minor incidents such as shoving or yelling. One former prosecutor in Hamilton County, Ohio, notes that this is “turning law-abiding citizens into criminals.” Judith Mueller of the Women's Center in Vienna, Virginia, who had lobbied for the mandatory arrest law, says, “I am stunned, quite frankly, because that was not the intention of the law. It was to protect people from predictable violent assaults, where a history occurred, and the victim was unable for whatever reason to press charges.... It's disheartening to think that it could be used punitively and frivolously.”⁵³

In many such trivial circumstances, the claimed victim was understandably reluctant to press charges. Provisions were therefore enacted allowing alleged perpetrators to be prosecuted against the wishes of the imputed “victim.” Because mandatory arrest laws resulted in an unexpected rise of arrests of female offenders, feminists began demanding policies effectively requiring, as clearly as possible without stating it categorically, that only men be arrested. Though about half of all incidents are mutual, with no clear instigator or victim, feminists began demanding that police arrest the “primary

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aggressor.” “Police manuals often instruct officers to determine who is the primary aggressor based on ‘who appears to be in control,’” though with no guidance on how to determine which person appears to be in “control.” In many police departments, “the unofficial policy is to simply arrest the larger person. So in practice the primary aggressor standard becomes the flimsy rationale to arrest the man.”⁵⁴ In Massachusetts, a training manual tells officers to ignore men’s “excuses” such as, “She hit me first.” The manual encourages officers to downplay the significance of a man’s injuries, warning that “injury alone doesn’t determine who is the abuser.”⁵⁵ The Iowa Attorney General’s Crime Victim Assistance Division has specifically stated, “The prosecutors we fund are prohibited from prosecuting female cases.”⁵⁶

Thus far we have ignored what for some is the first complaint against the domestic violence industry: the very real terrors and injuries endured by men who are violently attacked by women. A substantial and growing body of scholarly and popular literature has documented shootings in the back, hired killers, midnight castrations, and much more.⁵⁷

Yet not only does violence against men seldom elicit much sympathy among the public (and even less among policymakers); it is not foremost among the terrors of men themselves, most of whom seem willing to endure fear of the most gruesome physical assault in preference to losing their children. “The most common theme among abused men is their tales not of physical anguish but of dispossession,” writes Patricia Pearson, “– losing custody of children due to accusations of physical and sexual abuse.”⁵⁸ Philip Cook, author of *Abused Men*, says this is the main reason men remain in violent relationships. “If they have children, there is grave concern, and unfortunately rightly so, that they may never see their children again. They don’t feel that they will get a fair shake in the courts regarding custody no matter what happens or what she does,” he relates. “And it’s actually true. There are many cases that I know of in which a woman was actually arrested for domestic violence still receive custody of the children [sic].”⁵⁹ In fact the greatest

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“The most common theme among abused men is their tales not of physical anguish but of...losing custody of children due to accusations of physical and sexual abuse.

“There is grave concern, and unfortunately rightly so, that they may never see their children again.”

A battered man knows that if his wife has been abusing him, she has often been abusing the children. Leaving her means leaving his children unprotected from her abuse.

danger lies not only in the loss but in the very real possibility of the physical destruction of their children as well. “A battered man knows that if his wife has been abusing him, she has often been abusing the children,” writes Warren Farrell; “leaving her means leaving his children unprotected from her abuse.”⁶⁰

5. What is Going on Here? Child Custody

This leads us to implications of domestic abuse programs that, though largely unexplored, may be the most serious of all. We believe that what has been unappreciated, even by critics, is how the growth in domestic violence hysteria has coincided directly with the divorce revolution and how far it is driven by conflicts over custody of children. So overwhelming is this connection that we believe it is the main thrust behind the growth of the domestic abuse industry. Others have pointed out that, when children are involved, domestic violence accusations and restraining orders “usually have the effect of separating them from one of their parents.”⁶¹ We believe this is more than incidental. While any generalizations about domestic violence are virtually impossible to quantify – again, because of definitions so broad as to be effectively meaningless – evidence suggests that family dissolution and disputes over child custody constitute the main engine driving the sharp rise in domestic violence allegations.

Domestic violence and child abuse accusations directly abrogate one of the oldest and most fundamental rights recognized by the legal systems of Western societies: the right to parent one’s children. The Supreme Court and other federal courts, as well as centuries of Common Law precedent, have long held that parenthood is an “essential” right, “far more precious than property rights,” that “undeniably warrants deference, and, absent a powerful countervailing interest, protection.”⁶² “The liberty interest and the integrity of the family encompass an interest in retaining custody of one’s children,” according to one decision.⁶³ Parental rights have been characterized by the courts as “sacred” and “inherent, natural right[s], for the protection of which, just as much as for the protection of the rights of the individual to life, liberty, and the pursuit of happiness, our government is formed.”⁶⁴ Yet these rights are immediately dissolved at the mere accusation of domestic violence and child abuse.

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Among legal practitioners it is now common knowledge that patently trumped-up accusations are frequently used, and virtually never punished, in divorce proceedings. Thomas Kasper has described how such accusations readily "become part of the gamesmanship of divorce."⁶⁵ Elaine Epstein likewise writes that “allegations of abuse are now used for tactical advantage” in custody cases.⁶⁶ Bar associations and even courts themselves regularly sponsor divorce seminars counseling parents on how to fabricate abuse accusations. “The number of women attending the seminars who smugly – indeed boastfully – announced that they had already sworn out false or grossly exaggerated domestic violence complaints against their hapless husbands, and that the device worked!” astonished Thomas Kiernan, writing in the *New Jersey Law Journal*. “To add amazement to my astonishment, the lawyer-lecturers invariably congratulated the self-confessed miscreants.”⁶⁷ In New Hampshire, divorce attorneys commonly refer to restraining orders as “silver bullets” because of their efficiency and effectiveness in securing custody. One marital master testified, “Unfortunately, requests for ex-parte relief are based upon many circumstances, some of which are made only for the purpose of obtaining an advantage in litigation.”⁶⁸

This connection is evident from the words of domestic violence advocacy groups themselves, who constitute the most vociferous opponents of divorce and custody reform,⁶⁹ such as shared parenting legislation, and who use federal funds to support their lobbying, in violation of federal law.⁷⁰ So-called battered women’s shelters have been described as “one stop divorce shops” because they assist women in custody proceedings, even when the women have not been the victims of any violence.⁷¹ Federally funded domestic violence programs openly promote divorce with extensive resources and links to referral services for divorce lawyers.

This literature is also dominated by complaints not that allegedly violent assailants are avoiding prison and walking the streets but that they are retaining custody of their children. Indeed, so pointed is this complaint that

custody, rather than safety, appears to be the principal grievance concerning men who are portrayed, without evidence or trial, as guilty of violent crimes.

A special issue of *Mother Jones* magazine in the summer of 2005 ostensibly devoted to domestic violence focuses, almost from the first paragraph, largely on securing child custody.⁷² A film on domestic violence broadcast by PBS in October 2005 and its promotional literature contained the following assertions:⁷³

- “All over America, battered mothers are losing custody of their children.”
- “One third of mothers lose custody to abusive husbands.”
- “Batterers are twice as likely to contest as non-batterers. And they often win sole or joint custody.”
- “75% of cases in which fathers contest custody, fathers have a history of being batterers.”

These statements are untrue.⁷⁴ But the point here is that once again the assertions themselves are revealing. Were they true, one would expect the principal concern to be that men are beating their wives and not being prosecuted or jailed for it, with the custody issue as secondary. After all, if duly convicted criminals are incarcerated as expected, questions of child custody should not arise. Instead, custody is the primary complaint, confirming what we have already seen to be the case: that the alleged “batterers” have not been convicted of battering or any other crime.

Further evidence is provided from ostensibly scientific feminist scholarship, where custody proceedings (when fathers participate) are themselves described as “violence.” A huge feminist literature describes fathers trying to gain access to their children following domestic violence allegations as “further violence” and the “threat of kidnapping.” One influential feminist study claims to have examined 100,000 cases where women “reported” that “the batterer threatened to kidnap their children,” “batterers had threatened legal custody action,” “the battering man used court-ordered visitation as an occasion to continue verbal and emotional abuse of the woman.” These are

Blanket assertions of what “may” happen are a common technique in domestic violence literature for smearing citizens who have been neither convicted nor charged with any legal infraction and may be guilty of nothing more than wanting their children back.

How the APA is privy to what takes place within the private homes of “many” parents is neither explained nor justified. But what is evident, again, is that the issue here is not violence but custody.

not acts of violence; they are fathers trying to recover their children through the same legal processes by which their children were removed and which, in most cases, they themselves did not initiate.⁷⁵

These distortions have exerted a direct impact on public policy. The late Senator Paul Wellstone justified federal spending using figures from this article. “Some perpetrators of violence use the children as pawns to control the abused party and to commit more violence during separation or divorce.” But the Senator’s evidence for this “violence” may indicate something very different. “In one study, 34% of women in shelters and callers to hotlines reported threats of kidnapping, 11% reported that the batterer had kidnapped the child for some period, and 21% reported that threats of kidnapping forced the victim to return to the batterer.”⁷⁶ In other words, more “violence” consists in the fathers predictably wanting their children back, which the Senator terms “kidnapping.” Wellstone continues with statistics supplied by feminist groups: “Up to 75% of all domestic assaults reported to law enforcement agencies were inflicted after the separation of the couple.” This is simply another way of saying that an intact family is a safe place for women and children, that divorce and separation create the circumstances most conducive to domestic violence (especially when children are involved), that false charges are more likely to be leveled during custody disputes, and that fathers who do become violent do so, not surprisingly, when someone takes away their children. And all this is evident from hearing only Senator Wellstone’s spin.

The American Psychological Association, whose members play a prominent role in family courts, argues a similar line.⁷⁷ “A large proportion of reported domestic violence happens after the partners are separated,” the APA reports. “Since threats and violence are control strategies used by the batterer, the woman’s leaving may threaten his sense of power and increase his need to control the woman and children.” What it obviously does threaten is the safety and well-being of a man’s children and his natural de-

sire to see them protected and cared for. “Child custody and visitation arrangements also may become an ongoing scenario for intimidation, threats, and violent behavior,” the APA report continues. “Threats may be made to hurt the children and other family members.” These blanket assertions of what “may” happen are a common technique in domestic violence literature for smearing citizens who have been neither convicted nor charged with any legal infraction and may be guilty of nothing more than wanting their children back, since of course anything “may be” true. They also constitute another clear admission that the principal issue here is child custody. “Fathers who batter their children's mothers can be expected to use abusive power and control techniques to control the children, too.” This is not violence, if one reads carefully, just unspecified “power and control techniques.” Can parents labeled as batterers “be expected” to control their children because controlling one’s children is part of being a parent? Do “techniques to control the children” now constitute crimes? Or do these terms perhaps indicate simply that these parents expect to have their children within their care and protection and to exercise ordinary parental discipline? Might these terms even refer to protecting children from the neglect and abuse that (as we will see shortly) is most likely in precisely the kind of single-parent home that is being created by the separation? “In many of these families, prior to separation, the men were not actively involved in the raising of their children,” the APA asserts. “To gain control after the marital separation, the fathers fight for the right to be involved.” How the APA is privy (and by what right it should be) to what takes place within the private homes of “many” parents is neither explained nor justified. But what is evident, again, is that the issue here is not violence but custody. “Most people, including the battered woman herself, believe that when a woman leaves a violent man, she will remain the primary caretaker of their children,” would seem to be a fairly clear admission of the true agenda. “Recent studies suggest that an abusive man is more likely than a nonviolent father to seek sole physical custody of his children and may be just as likely

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(or even more likely) to be awarded custody as the mother.” No evidence or documentation is provided for this assertion, and no such “studies” are cited by an organization that ostensibly exists to advance scientific knowledge. It is also not clear precisely what such statements mean. Apparently a “nonviolent” parent is defined as one who simply allows his children to be taken away.

Despite solicitations for information by the National Organization for Women (NOW) and other groups, they have never produced a documented case of a convicted male abuser gaining custody of children. On October 26, 1999, an e-mail circular signed by Eileen King said, “NOW in Washington needs summaries of cases in which a known batterer and/or child abuser has been granted custody (full or joint) or unsupervised access to a child or children. If you know that "Fathers' Rights" individuals/groups were involved, please include that information.” More than six years later, we are still awaiting the results of NOW’s requests.

The politicization of the criminal justice system, feminist ideology, and the manipulation of children in custody determinations all converge in an attack on citizens who criticize government policy funded by the U.S. Justice Department and authored by the National Council of Juvenile and Family Court Judges. Judges who are required to be impartial and who adjudicate actual cases in which citizens must appear now use federal funding to openly attack what they call “fathers’ rights groups.” These judges seem to see their mandate not as dispensing impartial justice but as disseminating ideological polemic against political opponents. The group describes its purpose as “to identify and discuss...the overlap between domestic violence and child custody and visitation.” They advocate that government officials assist divorcing women to complete paternal termination forms, that fathers' contact with their children be terminated with no evidence of violence, that officials who question the truthfulness of abuse allegations should be ignored, that visitation orders should be ignored, that mediation should not be permitted, that public officials should be re-“educated,” and non-violent citizens' groups should be regarded as

A federal government project, proclaiming concern for victims of “violence,” appears to be more of a blueprint for creating fatherless homes.

"dangerous."⁷⁸

The judges openly acknowledge that knowingly false allegations are used to secure custody. But what is perhaps most disturbing in a government-sponsored program organized by ostensibly impartial and apolitical judges is the open attack on citizens who criticize the government. “Fathers’ rights groups often focus on the rights of fathers instead of their responsibilities,” the federally funded judges assert. “Fathers’ rights are often at odds with the safety needs of the rest of the family.” The document also advocates a polemical campaign against citizens’ groups: “How can we learn to counter the sound bites of fathers’ rights groups?”

One successful strategy of fathers’ rights groups has been to couch their message against a backdrop of real fear that social structures will disintegrate if fathers are not present in their children’s homes, or at least an active presence in their lives. They also argue that maintaining the patriarchal status quo will alleviate the taxpayer burden of supporting single women and their children when men choose not to pay child support because they have been “deprived” of child custody.

Can parents who must appear, often involuntarily, in the courts of these judges expect “equal justice under law” or can they expect to be punished for their “patriarchal” desire to see their children? Do citizens’ groups who are attacked with funding from the Justice Department receive funds to provide their side of the issue? The document continues its invective against private citizens by employing ideological rhetoric, paid for by taxpayers:

“In recent years there has been a shift away from the safety concerns of battered women and their children to a focus on re-establishing patriarchal values. With this shift has come an assumption that whatever is good for fathers is good for children, *with a corollary message that divorce is always harmful to children.*” [Emphasis added.]

The emphasized words seem to indicate the true agenda. A federal government project, proclaiming concern for victims of “violence,” appears to be more of a blueprint for creating fatherless homes.

We believe such polemic by any public officials – especially judges who preside over actual cases and are obligated to be impartial – is highly

It is not clear precisely what purpose restraining orders serve - or can possibly serve- other than to keep parents separated from their children.

improper. The Justice Department is prohibited by law from endorsing or institutionalizing political ideologies as government policy. “If there is any fixed star in our constitutional constellation,” wrote Supreme Court Justice Robert Jackson, “it is that no official, high or petty, can prescribe what shall be orthodox politics, nationalism, religion, or other matters of opinion.”⁷⁹

To our knowledge, the Department of Labor does not engage in polemical diatribes against labor unions or publicly devise strategies on how to thwart their aims, nor does the Environmental Protection Agency attack environmental groups or solicit suggestions on how to discredit them. Yet the Justice Department – ostensibly the principal guardians of our constitutional liberties within the executive branch – takes sides in a political controversy and openly muses on how it can sabotage the positions of its critics.

Restraining orders further indicate that the dynamic driving domestic violence accusations is child custody rather than violence. While even some critics of restraining orders defend their use in some circumstances, it is not clear precisely what purpose they serve – or can possibly serve – other than to keep parents separated from their children.

Some suggest that judges must “balance” the rights of the accused with the genuine need of women for protection and that protective orders are issued on the principle of “better safe than sorry.”⁸⁰ Yet this begs several questions. Such logic is not employed elsewhere in the law. We do not restrain law-abiding citizens from their basic constitutional freedoms, including free movement and free association (especially with their own children), merely because someone asks us to. Our criminal justice system is predicated on the assumption that punishments should be imposed on criminals for deeds they have been convicted of having committed, not upon law-abiding citizens for what someone says they might do. We assume all citizens are innocent until proven guilty, that they should enjoy their basic freedom until evidence of legal wrongdoing is presented against them, and that knowingly false accusations against them should be punished. Restraining orders operate on

precisely opposite principles. Also unclear is how precisely protective orders can prevent violence at all. Violent assault is already a crime punishable by incarceration. A truly violent assailant is unlikely to be deterred by a protective order, since violating a protective order need not entail any punishment beyond violating the criminal statutes.

“Where there is genuine abuse, an order doesn't do any good, anyway,” says Hession. “Can you stop a fist or a bullet with a piece of paper?”⁸¹ The only people likely to be affected are law-abiding citizens. One father was “enjoined and restrained from committing any domestic violence” upon his wife.⁸² But of course he is thus enjoined and restrained to begin with, along with the rest of us. Here it appears obvious that the orders are designed not to punish crimes but to separate parents from their children. Fathers on restraining orders who attempt to contact their children can be arrested for “stalking,” an offense the Justice Department defines as any “nonconsensual communication.”⁸³ “In one case, a father was arrested for violating an order when he put a note in his son’s suitcase telling the mother the boy had been sick over a weekend visit,” the *Boston Globe* found. “In another, a father was arrested for sending his son a birthday card.”⁸⁴ Arresting fathers for attending public events such as their children’s musical recitals or sporting competitions – events any stranger may attend – is a practice many find difficult to believe, but it is very common. National Public Radio broadcast a story in 1997 that centered on a father who was arrested in church for attending his daughter’s first communion. During the segment, an eight-year-old girl wails and begs to know when her father will be able to see her or call her on the phone. The answer, because of a “lifetime” restraining order, is never.⁸⁵ Fathers on restraining orders based on trivial or uncorroborated allegations have been jailed for sending their children Christmas cards, asking a telephone operator to convey the message that a gravely ill grandmother would like to see her grandchildren, or returning a child's phone call.⁸⁶

“In one case, a father was arrested for sending his son a birthday card.”

Some attribute this to an excess of zeal; more likely, it is the political logic of innovations in divorce and custody law working themselves out. To understand the logic, one need only consider a typical father who is involuntarily divorced and permitted what is termed “standard visitation” with his children of perhaps 4-6 days a month. Suppose that father runs into his children at the zoo or at church or goes to a school performance or some friend’s house or a daycare facility where he knows the children will be at a specific time. Anyone can go to the zoo or to church, because this is, as children used to say, a “free country,” right? Not exactly. Anyone can legally go to the zoo or the church and see this man’s children, except their father. If this father runs into his children at the zoo, they may be delighted, but the regime of unilateral divorce will be threatened by this man exercising his right of free movement to be with his own children. So if this father runs into his children at the zoo he will be arrested. In such circumstances, it is highly unlikely any “abuse” will occur without witnesses and intervention. Yet media reports will not likely mention that he was trying to see his children but report that he was charged with “stalking” his former wife, and his name will be placed on a register of “sex offenders.” If no restraining order has been issued against him already there soon will be. Then if he runs into his children on the street, even accidentally, he can be imprisoned for years. This is how today’s divorce and custody law threatens (and is threatened by) personal freedom and ordinary family associations.

The logical result would seem to be that fathers and their children are isolated entirely from mothers and the rest of the world and allowed to see one another only under the gaze of government officials in an institutional setting. This is precisely what is now taking place in the growing system of “supervised visitation centers.” Parents must pay to see their children, through centers also receiving government funding.

The system is promoted by the rapidly growing Supervised Visitation Network (SVN). The “Standards and Guidelines” on SVN’s internet site

makes it clear that supervised visitation is not limited to cases of actual or potential violence by the non-custodial parent against the children, which it clearly regards as exceptional, but is appropriate in any circumstances of “conflict” between the parents. SVN’s definition of “violence” is characteristically vague: “Family violence is any form of physical, sexual, *or other abuse* inflicted on any person in a household by a family or household member.”⁸⁷

“People yell at you in front of the children. They try to degrade the father in the child's eyes,” says father Jim O’Brien. “No matter what you do, you're doing it wrong. ... They belittle you.” When O’Brien asked his daughter if she'd made her first communion in the six years since he had seen her, the social worker intervened: “You're not allowed to ask that!” Rick Brita is another father who was never convicted of any abuse, and what was supposed to be a three-week arrangement turned into a three-year ordeal:

It's like being in jail. Everything the father does on the visitation has to be permissioned. Even hugging your own children could end your visit. In Rick's case three years has given him permission to pass this hoop and he can hug his kids now. But he can't take the children out to a park or anything else outside the center.... He can't even take pictures of his own children.⁸⁸

Also unclear is how taking away people’s children can prevent violence. Common sense suggests that interfering with someone’s children will provoke precisely the kind of violent response it ostensibly intends to prevent. “We hear that some brute attacked his estranged wife despite a court order prohibiting him from coming near her,” writes Paul Carpenter. “Such stories never suggest that perhaps the guy flipped his wig because of a [protective order].... It's amazing there aren't more rampages.”⁸⁹ In the approach to Fathers Day, 2001 the *Washington Post* published a sensational front-page spread on fathers that allegedly became violent. By ranging through twelve states over several years the *Post* managed to find twelve violent fathers, most of whom were said to have violated protective orders.⁹⁰

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In addition to false accusations, most actual violence also takes place within the context of custody disputes.

This self-fulfilling tendency of protective orders gives the impression of vindicating their use when the orders may in fact be having precisely the opposite effect.

While again it is virtually impossible – owing to subjective definitions described above – to separate and quantify true domestic “violence” from exaggerated and fabricated accusations, it appears likely that, in addition to false accusations, most actual violence also takes place within the context of custody disputes. “A significant percentage of domestic violence occurs during litigated divorces in families who never had a history of it,” according to Douglas Schoenberg, a New Jersey divorce attorney and mediator.⁹¹ A feminist-leaning study by the U.S. Justice Department found that, “For both men and women, divorced or separated persons were subjected to the highest rates of intimate partner victimization, followed by never married persons.” This means “never married persons” who have had sex – and almost certainly children – together.⁹²

This question has not been systematically investigated, though one study that began with the express purpose to “provide definitive explanations for the violent behaviors of certain *males*,” concluded that “regardless of the male’s propensity toward violence” the circumstances most conducive to it arose “during the process of marital separation and divorce, particularly in relation to disputes over child custody, support, and access.” “These men,” McMurray found, “from a range of socioeconomic backgrounds and age groups, freely discussed episodes in which they had either planned, executed, or fantasized about violence against their spouses in retaliation for real or perceived injustices related to child custody, support, and/or access.” McMurray’s subjects recounted that abuse “had not been a feature of the marriage but had been triggered by the separation.” Despite the title and the scope of her study, with its explicit anti-male starting point, McMurray mentions that mothers who lost custody also “discussed murdering their husbands over coffee one day.”⁹³ While the subjective definition of domestic

“violence” employed throughout the literature, and the fact that it is seldom proved in a jury trial, renders much of the statistical evidence unusable to quantify custody related violence, indications exist that existing policies may be creating precisely the violence they claim to be preventing.

One judge felt he could speak candidly about restraining orders only upon his retirement, when, as he told a college audience, there was nothing “they” could do to him. “Few lives, if any, have been saved, but much harm, and possibly loss of lives, has come from the issuance of restraining orders and the arrests and conflicts ensuing therefrom,” First Justice of Dudley District Court Milton Raphaelson writes. “This is not only my opinion; it is the opinion of many who remain quiet due to the political climate. Innocent men and their children are deprived of each other.”⁹⁴

Media reports seem to go out of their way to avoid reporting this connection. In an al Qaeda-style suicide reported by the Associated Press, “A pilot whose small plane crashed into a house was the home's owner,” and “it appeared that the crash was deliberate.” Investigators seemed to think they could explain the suicide by rummaging through the rubble. “For days, investigators have picked through the ashes and wreckage of Mr. Joy's home, his plane, and his life searching for what might have driven Mr. Joy, a successful business consultant and motivational speaker to suicide.” But the AP conveys the motivation fairly clearly when they tell us that Mr. Joy's wife, Jo, “had obtained a restraining order against him the day before the crash” keeping him away from his daughter. Neither the judge nor the AP is willing to tell us the grounds on which the order was issued, since Judge William Drescher, “sealed the court documents in which Ms. Joy explained why she wanted the order.” Though an American citizen is now dead because our government forcibly removed him from his own home and took away his child, neither the government nor the Associated Press feels we are entitled to an explanation, on the grounds of “privacy.”⁹⁵

“Few lives, if any, have been saved, but much harm, and possibly loss of lives, has come from the issuance of restraining orders and the arrests and conflicts ensuing therefrom.”

“There is a direct correlation between family court and these acts of violence....If I put myself in my clients’ shoes and I was denied seeing my child, I would go crazy....The courts need to stop what they are doing to fathers. The courts are perpetuating violence.”

Likewise, the *Wichita Eagle* expresses bafflement at a murder-suicide even as it manages to convey the obvious reason. A man suspected of killing his wife and himself “was upset over a pending divorce,” writes the *Eagle* in language that trivializes the confiscation of people’s children, and “worried about how much time he'd get to spend with his daughters.” Neighbors described the father as “very mild-mannered.” “He appeared to enjoy spending most of his time with the kids, said next-door neighbor Mary Herrin. ‘I thought he was just the greatest dad,’ she said. ‘I just don't know what happened.’”⁹⁶ Parents who can imagine how they would respond to someone taking away their children should have little difficulty understanding “what happened.”

Suicide is a major problem among divorced fathers. One study found that the suicide rate for divorced men was five times higher than for married men and significantly higher than for divorced women.⁹⁷ “For some men,” the directors of a support group for divorced fathers write, with understatement, “it is the loss of their children (more than the loss of their marriage) that may literally make a difference...between life and death.”⁹⁸ One female family law attorney states what to some may appear obvious:

I have noticed that not only are suicides on the rise, but there is an ever increasing flow of fathers committing very violent acts of domestic violence, including killing the wife and sometimes even the children. I really feel that there is a direct correlation between family court and these acts of violence.... Although I don't condone domestic violence, I can understand why men feel so trapped with nowhere to turn but to violence against the wife, children or themselves.... I myself can't imagine how some of my clients hold it together. If I put myself in my clients’ shoes and I was denied seeing my child, I would go crazy.... The courts need to stop what they are doing to fathers. The courts are perpetuating violence.... I really would like the court to open their eyes, look at the damage their unfairness to fathers has done to this society. It's now resulting in murder-suicides at an enormous rate.⁹⁹

The link between child confiscations and violence becomes even more evident as the consequences spread beyond the home. Dana Mack reports that in interviews and focus groups with parents, when she posed the question

of “how to improve the lives of children,” she consistently received one recurring reply: “Shoot the judges and lawyers!” “This refrain was uttered almost word for word in several cities I visited, as if parents had gotten together and rehearsed it before talking to me.”¹⁰⁰ Mack believes these parents are “joking,” but some facts indicate otherwise. “Statistics are scarce, but judges and lawyers nationwide agree from all the stories they hear about fatal shootings, bombings, knifings, and beatings that family law is the most dangerous area in which to practice,” reports the *California Law Week*.¹⁰¹ The year 1992 was “one of the bloodiest in divorce court history – a time when angry and bitter divorce litigants declared an open season on judges, lawyers, and the spouses who brought them to court.”¹⁰² The *Washington Post* reported the same year that “Two attorneys were killed, and two judges were among three people wounded... when a gunman stood in a courtroom spectators’ gallery and opened fire with a handgun.” Later the man turned himself in at a television station. “It’s a horrible, horrible thing I did today,” he is quoted as saying. “I have sinned and am certainly wrong, but someone needs to look into what happened to me.” The press portrayed the incident as simply a crazed gunman, but most crazed gunmen do not say, “I have sinned and am certainly wrong.” In fact, he was a respectable attorney who was trying to call attention to the loss of his child and “blamed a legal conspiracy for allegations he had molested his boy. Despite his professional status and absence of any previous criminal record, he was executed within months by a legal system in which death row inmates with no resources or education are able to drag out their sentences for years. Some allege the execution was expedited because he threatened to expose corruption in the family courts.

Following this incident and others like it, security measures were increased in courthouses throughout the country. Most people mistakenly assume metal detectors were installed in courthouses because of criminals and terrorists. In fact what they fear is fathers.

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The *Boston Globe* reports that judges now carry guns under their robes to protect themselves specifically from fathers. “The potential for violence,” the *Globe* reports, comes “not in criminal sessions, but in probate and family court, where shocked husbands angered over unfavorable divorce and child custody settlements take their wrath out on those who decided their fates.” The *Globe* quotes the director of a judges’ lobbying group: “The decisions they make in probate court strike much more toward ego – taking away children, taking homes away.”¹⁰⁴ A parent’s predictable reaction to having his children taken away is dismissed as an affront to his puerile “ego.” Dakota County Minnesota District Attorney James Backstrom agrees that family court produces far more violence than criminal court. “We’re most concerned about the people in family court – the child support and divorce cases,” he said. “They pose a greater risk than the criminal defendants because they’re more emotional.”¹⁰⁵ The ABC television magazine *20/20* reported on the killing of judges by parents in 1998. No father is quoted, but fathers generally were portrayed as little better than dangerous animals. One of the numerous lawyers quoted remarks, “You really don’t know what monsters lurk behind regular people.” It can hardly surprise anyone that interfering with their children is one way to find out.¹⁰⁶

Among the most sensational media stories of recent years – including violent killings – have grown directly out of family law proceedings: The school shootings in Jonesboro, Arkansas, the O.J. Simpson case, the Washington Beltway sniper, the Laci Peterson killing, plus cases like Elian Gonzalez, were all occasioned by the workings of American family law. And in every case, while questions of race or gun control or poverty or political intrigue were extensively debated, the media ignored the family law dimension.

6. Batterers or Protectors? The Child Abuse Explosion

Closely connected with questions of child custody is the other dimension of “family violence” that is usually excluded from the term: the massive epidemic of child abuse and child abuse reporting that has arisen over the same period. This too has become politicized, though in less obvious ways.

The political connection between domestic violence programs and child custody leads logically to an examination of child abuse as part of a comprehensive understanding of both family violence itself and government programs to address it. Yet we emphasize that the connection is largely political; we are not suggesting a simplistic equation between the two phenomena, and we question others’ attempts to draw one. “Adult domestic violence and child maltreatment often occur together,” asserts Meredith Hofford, Director of the Family Violence Department of the National Council of Juvenile and Family Court Judges (NCJFCJ), “with the same assailant responsible for both.”¹⁰⁷ Hofford provides no documentation for this claim, but to the extent it is true, the “assailant” is most likely to be not a father, as NCJFCJ implies, but a single mother.¹⁰⁸ Hofford acknowledges this in demanding more officials to “support” what she describes as “battered women who maltreat their children.”¹⁰⁹ The PBS documentary, *Breaking the Silence: Children’s Stories*, more explicitly asserts, also without evidence and contrary to known scientific data, that “Children are most often in danger from the father.”¹¹⁰

Problems of definition also pervade child abuse literature and policy. Vague and subjective determinations of what constitutes abuse create similar uncertainties about what precisely is the subject under discussion, making it difficult to state or evaluate generalizations, and, most serious, raising similar problems of due process of law. It is worth emphasizing, once again, that none of the government studies purporting to quantify child abuse bases its figures on convictions in jury trials, even when the cases are classified as “substantiated.” Moreover, this fact itself seems never to be stated explicitly

Vague and subjective determinations of what constitutes abuse create similar uncertainties about what precisely is the subject under discussion, making it difficult to state or evaluate generalizations, and, most serious, raising similar problems of due process of law.

in reporting the figures, and the legitimacy of this practice has never, to our knowledge, been questioned. This indicates a significant chasm separating the bureaucratic culture that reports and addresses child abuse from what lay readers are led to understand from reports of what after all are crimes. It also raises questions about how easily the data can be distorted or manipulated.

We acknowledge that some value may exist in adopting a looser standard of verification for purposes of data collection than for meting out punishments. Yet while this argument may be valid for independent researchers (ignoring for the moment the question of whether both scholars and officials have a built-in incentive to exaggerate a phenomenon that justifies their funding and research), it ignores serious conflicts of interest when applied to government bodies. To begin with, the standard of “substantiated” used for some data collection (though even that standard is apparently not necessary in some government studies) is the one employed to justify intervention against parents. Given that the government data is used to devise policies, establish budgets, and otherwise justify official intervention into the private lives of American families, it cannot be simply assumed that discarding the presumption of innocence in data collection will not spill over to compromise it in policy implementation, including interventions and punishments. As we will see, this is precisely what appears to be happening.

Likewise, we accept that it may not be possible to fashion a precise definition of child abuse with clear criteria allowing social workers in the field to separate abuse from non-abuse in every case. But this is precisely why, elsewhere in the law, we rely on juries to establish guilt and innocence, where citizens weigh the evidence and circumstances of each case, rather than turning over such determinations to civil servants.

Having noted all this, we certainly do agree that a serious problem of child abuse has arisen over recent decades. In the seven years between two federal studies that are widely regarded as authoritative, 1986-1993, physical abuse of children was found to have nearly doubled, sexual abuse more than doubled,

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“and emotional abuse, physical neglect, and emotional neglect were all more than two and one-half times” their previous level. The estimated number of “seriously injured” children “essentially quadrupled” in this short period.¹¹¹ Clearly something serious is taking place.

Yet the facts of child abuse are far from straightforward; as with domestic violence, they are often very different from what is suggested in literature by government agencies and government-funded advocacy groups, and we believe the public is not getting the full story. Though we are skeptical of the precision with which such studies purport to quantify child abuse, we do believe some sense can be made from the data.

Child abuse has similarly been plagued with a high rate of unsubstantiated and even patently false accusations, as well as others that appear to be exaggerated, trivial, or otherwise questionable. Of the roughly three million reports of child abuse annually, about two million are never substantiated,¹¹² and as the quantity of reporting has dramatically increased, “substantiation rates have plummeted.”¹¹³ Further, these cases often result from circumstances that involve conflicts of interest and motivations to fabricate allegations. These likewise include divorce and custody proceedings, where one parent (again usually, though not necessarily, the father) is accused by the other. “The percentage of false allegations is particularly high in... acrimonious custody and visitation disputes.”¹¹⁴ Yet questionable allegations resulting in summary loss of children have spread beyond fathers undergoing divorce to include mothers and intact married couples.

Perhaps even more than wife-beating, child abuse involves matters so emotionally repugnant that, in many cases, “innocence is no excuse.” (In one Texas trial, a juror admitted she voted guilty despite believing the accused was innocent, because she did not want to be seen as someone who “condones child abuse.”)¹¹⁵ Yet ill-informed policy measures adopted in response to emotional appeals may actually exacerbate the problem.

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A juror admitted she voted guilty despite believing the accused was innocent, because she did not want to be seen as someone who “condones child abuse.”

“The child-protection function of child welfare is essentially a police action.” Yet unlike police, social workers are not required to respect citizen’s constitutional rights.

Waves of child abuse hysteria swept several English-speaking countries, including the United States, during the 1980s and 1990s.¹¹⁶ Yet even today it is not clear that the hysteria has subsided so much as it has been institutionalized. Child abuse policies today are often based on misinformation and sometimes outright untruths similar to those pervading domestic violence: misunderstandings about its causes, power struggles over control of children by adults (not exclusively between parents), political ideology, and again, a bias so pronounced that it amounts to open hostility against fathers.

Once again, we are not the first to raise doubts. Since at least the 1980s, scholars have been warning that a “flood of unfounded reports” endangered truly abused children.¹¹⁷ Yet this phenomenon has not been examined in the larger political context of family violence measures.

Here too problems of definition merge into questions of due process. Like domestic violence, child abuse as a legal category blurs the distinction between crime and ordinary, non-violent and non-criminal family conflict, and government programs that claim to combat it likewise blur the distinction between psychotherapy and law enforcement. “Although spoken of in terms of social services,” writes Susan Orr, “the child-protection function of child welfare is essentially a police action.” Yet unlike police, social workers are not required to respect citizens’ constitutional rights. Orr calls child protection “the most intrusive arm of social services.”¹¹⁸ Indeed, social workers act not only as police but as prosecutor, judge, and jury as well, since in many cases, “the decision as to whether the abuse was factual was made by custody evaluators and child protection workers rather than by the justice system.”¹¹⁹

This lack of due process protections seems to have resulted in a presumption of guilt similar to that operating with domestic violence that pervades the “child abuse industry,” as one social worker calls it. “When I started working, we tried to prove a family was innocent,” she recounts. “Now we assume they are guilty until they prove they are not.”¹²⁰ In Massa-

chusetts, as elsewhere, allegations are “substantiated” not by a court proceeding, let alone a jury trial, but by administrative personnel in the Department of Social Services (DSS), which issues letters stating, “At least one person said you were responsible for the incident and there was no available information to *definitively indicate otherwise.*”¹²¹

In recent years, serious questions have been raised by critics from both the left and right about whether innocent parents are losing their children because of false or exaggerated or anonymous accusations of abuse. “There is an antifamily bias that pervades the policies and practices of the child welfare system,” according to Jane Knitzer of the Children's Defense Fund. “Children are inappropriately removed from their families.”¹²² Part of this debate has raged within the child welfare profession itself, where some have alleged that children are removed unnecessarily from parents in “staggering proportions.” A California commission concluded that “the state's foster care system runs contrary to the preservation of families by unnecessarily removing an increasing number of children from their homes each year.”¹²³

Here once again, the “better safe than sorry” argument is not wholly plausible, since such practices may create more abuse than they solve. The Children’s Project of the American Civil Liberties Union reports that children in foster care are ten times more likely to be maltreated while in the custody of the state than in their own homes.¹²⁴ Similar findings of widespread abuse in foster care are reported by others.¹²⁵

Officials naturally defend their decisions to remove children as being in their “best interest,” and some scholars, who do not deny the removals take place without judicial due process protections, insist they are justified for children’s safety.¹²⁶ Yet regardless of the wisdom of particular decisions, the procedures governing child removals throughout the United States unquestionably do, as a matter of legal fact, allow officials to separate children from their parents without the parents having been convicted or even for-

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mally charged with criminal abuse or neglect or indeed any legal misconduct. This raises questions about even cases classified as “confirmed,” since what constitutes abuse may be a highly subjective determination, and confirmation seldom involves a trial.

Yet even the critics may not be asking the most fundamental questions. Defenders of existing child welfare procedures point out undeniable cases of abuse. Moreover, critics implicitly concede that what is not “abuse” may still be “neglect,” though they insist that overzealous social workers are calling neglect what may be simply the effects of poverty. “The link between child protection and poverty is staggering” Martin Guggenheim writes. “Families earning incomes below \$15,000 per year are twenty-two times more likely to be involved in the child protective system than families with incomes above \$30,000.”¹²⁷

This is not disputed, though it too may not present a complete picture. A more fundamental question is whether even confirmed cases of abuse and neglect are avoidable. Both critics and supporters of child welfare do address this question, but somewhat superficially. Critics cite alternative programs which they claim not only permit children to remain with parents but leave them safer.¹²⁸ Child welfare advocates too have long urged early intervention by social workers as a preventative that could forestall the need for later removals.¹²⁹ Yet both suggestions rely on alternative government programs that, while possibly more benign and parent-friendly, reinforce state control over children and do not address the underlying problem.

Another, perhaps simpler option has been strangely ignored. The debate among welfare advocates about family preservation versus removing children might be seen as beginning the debate one step too late. The vast majority of these “families” are in fact single mothers, and even critics of the child welfare system are often doctrinaire advocates for the rights of such mothers to raise children without fathers.¹³⁰ This may be another instance where imprecise language, driven by political ideology, obfuscates the picture and limits

the terms of debate and range of options. If we step back, we will find that in most cases family dissolution and the progression toward an abusive environment for children have already begun a stage earlier with the separation from their father. This would also account for the correlation between low-income homes and involvement with the child protection system. This is largely ignored even by previous critics of child protective services.

Despite irresponsible statements in, for example, the PBS film about children being in danger from their fathers, the uncontested fact of central importance in understanding the causes of child abuse is that it is overwhelmingly a phenomenon of single-parent homes. Figures from the Department of Health and Human Services (HHS) and others confirm that children in single-parent households are at much higher risk for physical violence and sexual molestation than those living in intact two-parent homes.¹³¹ Others have suggested that the HHS study may seriously underreport this difference.¹³² An independent British study more strikingly found that children are up to 33 times more likely to suffer serious abuse and 73 times more likely to suffer fatal abuse in the home of a single mother than in an intact married family.¹³³

Here we return, as with domestic violence, to the central role of the father. For in practical terms what these figures effectively demonstrate, shorn of ideological euphemism, is that the presence of the second parent, usually the father, constitutes the principal impediment to abuse. “Although, as a literary theme, the ‘good father’ protecting his children from the ‘bad mother’ is almost unheard of (so idealized has mothering become),” writes feminist Adrienne Burgess, who heads Britain’s Fathers Direct program, “in real life fathers have often played the protector role inside families.”¹³⁴ This is confirmed by academic research, however diffident scholars have become about stating it clearly. “The presence of the father...placed the child at lesser risk for child sexual abuse,” concludes one of the few studies willing to state this undisputed fact explicitly. “The protective effect from the father's presence in most households was sufficiently strong to offset the risk incurred

Children in single-parent households are at much higher risk than those living in intact two-parent homes.

“The presence of the Father... placed the child at lesser risk for child sexual abuse.”

It is not fathers but mothers — especially single mothers— who are likely to injure or kill their children.

Fathers emerge as the least likely child abusers.

The NSPCC found that father-daughter incest is “rare” and that three-fourths of incest perpetrators are brothers or stepbrothers rather than fathers. “Father caretakers” were almost four times as likely as biological fathers to sexually abuse children, and a preschooler not living with both biological parents is forty times more likely to be sexually abused.

by the few paternal perpetrators.”¹³⁵

In fact, the risk of “paternal perpetrators” appears to be minimal. Contrary to the innuendo, if not the explicit claims, of both domestic violence and child abuse activists, it is not fathers but mothers – especially single mothers – who are the most likely to injure and kill their children. HHS data consistently show that women are much more likely than men to be perpetrators of child maltreatment: “almost two-thirds were females,” the 1996 report states, and subsequent studies contain similar findings.¹³⁶ Given that “male” perpetrators are not necessarily fathers but more likely to be boyfriends and stepfathers, fathers emerge as the least likely child abusers.¹³⁷ “Contrary to public perception,” write Patrick Fagan and Dorothy Hanks, “research shows that the most likely physical abuser of a young child will be that child’s mother, not a male in the household.”¹³⁸ Maggie Gallagher sums up the reality: “The person most likely to abuse a child physically is a single mother. The person most likely to abuse a child sexually is the mother's boyfriend or second husband.”¹³⁹ Women accounted for 78% of child murders according to HHS.¹⁴⁰

While fathers are thought more likely to commit sexual as opposed to physical child abuse, sexual abuse is much less common than severe physical abuse and much more likely to be perpetrated by boyfriends and stepfathers. “Children are seven times more likely to be badly beaten by their parents than they are to be sexually abused by them,” according to the National Society for the Prevention of Cruelty to Children. The NSPCC found that father-daughter incest is “rare, occurring in less than 4 in 1,000 children,” and that three-fourths of incest perpetrators are brothers and stepbrothers rather than fathers.¹⁴¹ Another study found that “father caretakers” were almost four times as likely as biological fathers to sexually abuse children, and another study found that a preschooler not living with both biological parents is forty times more likely to be sexually abused.¹⁴² One authority estimates that 2.5% of parents who are accused of sexual abuse are likely to be guilty.¹⁴³

Further, fathers are the objects of accusations that are not only unproven through due process procedures but, again, patently false. In addition to incentives provided by the federal subsidies, most unsubstantiated reports are made during divorce proceedings. Various studies have shown that the overwhelming majority of child abuse allegations made during divorce proceedings have been false.¹⁴⁴

Despite undisputed facts about the protective value of intact families with fathers, the habits of child protective officials seems to be to further marginalize them. One study of several hundred cases concludes that “An anti-male attitude is often found in documents, statements, and in the writings of those claiming to be experts in cases of child sexual abuse.” These scholars document techniques by social service agencies to systematically teach children to hate their fathers, including inculcating in the children a message that the father has sexually molested them. “The professionals use techniques that teach children a negative and critical view of men in general and fathers in particular,” they write. “The child is repeatedly reinforced for fantasizing throwing Daddy in jail and is trained to hate and fear him.”¹⁴⁵

The problem then is not just false accusations by mothers (and the genders are sometimes reversed), but to a political and legal machinery that readily accepts such accusations without evidence. “The system appears to reward a parent who initiates such a [false] complaint.... Some have gone on for years, and the alleged perpetrator has been denied any contact with his children,” writes a San Diego Grand Jury investigative report. “Some of these involve allegations which are so incredible that authorities should have been deeply concerned for the protection of the child from the contaminating parent.” While these accusations usually originate with the other parent, here too state officials play a contributing role – the same officials, incidentally, who report child abuse figures to the federal government. As with accusations against single mothers, some charge that officials, motivated by bureaucratic culture and federal financial incentives, are often eager to encourage

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false accusations for their own purposes. “The social workers and therapists played pivotal roles in condoning this contamination” through false accusations, charged the Grand Jury. “They were helped by judges and referees.”¹⁴⁶

Moreover, accusations and prejudices against fathers can also redound against mothers, even in intact families, where mothers are not only encouraged but pressured by social services agencies to separate from their husbands for fear of losing their children. One publicized example is Heidi Howard, ordered by the Massachusetts Department of Social Services (DSS) to take out a restraining order against her husband and divorce him, on pain of losing her children. When she refused, the DSS seized her children, placed them in foster care, and began adoption proceedings. Neither parent was ever charged with child abuse or any other legal wrongdoing, and no evidentiary hearing was ever held.¹⁴⁷

Given these practices, the more fundamental flaw in child welfare policy may not be exaggerated claims of abuse against single mothers so much as fabricated accusations and other mechanisms leading to the removal of fathers. In the larger picture, therefore, the debate over when and whether to remove children from allegedly abusive single mothers may be secondary. Even allowing for the sake of argument that many child removals may be justified, current policy is still creating the environment conducive to the abuse used to justify the removals from the mothers by first removing fathers.¹⁴⁸ By removing fathers, in other words, the welfare system may be generating more than just false cases of child abuse; it may also be generating true ones.

As with domestic violence, the point is due process of law and equal protection for all individuals. Membership in a group does not confer guilt, and we are not attempting to demonize mothers, who seldom abuse children within married families. Unlike those who falsely claim that all domestic violence is committed by men, we are not suggesting that mothers are collectively guilty of child abuse, that punishments or pre-emptive enforcement

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measures should be imposed on mothers who do not abuse children, or that children should be summarily separated from mothers on the mere allegation of abuse. On the contrary, we are pointing out that the safest environment for children is to have two parents, preferably married, and we believe that false or exaggerated claims of abuse against mothers threaten the authority and integrity of all parents, including fathers. As will be seen, we advocate due process of law for all parents, and we favor preserving intact families and preserving the rights and access of children to both parents as preventative measures against child abuse. Our aim is merely to demonstrate that the current demonization of fathers is not only an exaggeration but, in terms of the causes of child abuse, the precise opposite of the truth. Indeed, *it is an untruth that is directly exacerbating the problem of child abuse, if it is not the principal factor*. Seldom does public policy stand in such direct and stubborn defiance of undisputed truths, to the point where the cause of the problem – separating children from their fathers – is presented as the solution, and the solution – allowing children to grow up with their fathers – is depicted as the problem.

Here again feminist ideology plays a role, since feminists regularly excuse mothers who abuse their children. Reports of mothers (again, usually single mothers) murdering their children are now so common that there is no need to multiply examples; sensational media stories – Andrea Yates, Marie Noe, Latrina Pixley, Susan Smith – are only the tip of the iceberg. Mothers often receive notoriously light punishments for injuring or killing their children. “Even child killers can get sympathy if they can claim victimization by a male,” writes Cathy Young, who quotes one feminist activist as saying, “When a woman [is] so alone that she wants to kill herself and her children, it’s not her fault.”¹⁴⁹ With child abuse, a destructive double standard appears to be endangering children. According to Patricia Pearson “most women aren’t incarcerated for infanticide.”

Of those who are even convicted, about two thirds avoid

The demonization of fathers is not only an exaggeration but an untruth that is directly exacerbating the problem of child abuse.

Bar associations dominated by feminist groups influence the appointment and promotion of judges. One judge could speak candidly about the political pressure exerted on his courtroom only upon his retirement, when, he said, there was nothing “they” could do to him.

prison, and the rest receive an average sentence of seven years. ... More than half of the fathers convicted of manslaughter went to jail. Three times as many mothers as fathers are deemed to be mentally ill for killing their children.¹⁵⁰

Judges who issue such rulings are not ignorant, and it is questionable whether they are motivated simply by sympathy for women. We suspect a more plausible explanation is political pressure exercised by bar associations dominated by feminist groups, who exert influence on the appointment and promotion of judges. A Brooklyn judge, described as “gutsier than most” by the *New York Law Journal*, was denied reappointment when he challenged social service agencies’ efforts to remove children from their parents. A lawyer close to the Legal Aid Society said that “many of that group’s lawyers, who represent the children’s interests in abuse cases, and lawyers with agencies where abused children are placed, have been upset by Judge Segal’s attempts to spur family reunifications,” according to the *Law Journal*. Though no evidence indicated that his rulings resulted in any child being abused or neglected, “most of the opposition [to his reappointment] came from attorneys who represent children in neglect and abuse proceedings.”¹⁵¹ An Edmonton, Alberta, judge was forced to apologize for saying, “That parties who decide to have children together should split for any reason is abhorrent to me.” The case involved a divorcing mother whose two young sons were hospitalized for heat stroke after she left them in a hot parked car.¹⁵² Another judge felt he could speak candidly about the political pressure exerted on his courtroom only upon his retirement, when, as he told a college audience, there was nothing “they” could do to him.¹⁵³

This appears to be exacerbated by a strong element of bureaucratic aggrandizement and absence of accountability. Some suggest the rise of “a new class of professionals – social workers, therapists, foster care providers, family court lawyers – who have a vested interest in taking over parental func-

tion.”¹⁵⁴ The abuse of power is a theme that pervades the literature of those who have investigated the child abuse system. “These are people who...are given an enormous amount of power,” says Dr. Melvin Guyer, a psychiatry professor at the University of Michigan and a practicing attorney. “And they routinely abuse that power.”¹⁵⁵ The San Diego Grand Jury’s report also emphasizes that “Social workers are perceived to have nearly unlimited power,” and they quote one witness: “Power corrupts. Absolute power corrupts absolutely. Total immunity [enjoyed by social workers] is absolute power.”¹⁵⁶

What is striking about our current child abuse policy is its self-perpetuating and self-expanding quality. Officials seem willing to experiment with every conceivable remedy except the one that has been successfully employed for centuries: allowing fathers to remain in their families. Thus government bureaucracies present themselves as the solution to the very problems their programs create, since the more child abuse that is reported – whether by “parents” or within governmental institutions themselves – the more the professed solution is to further expand the child abuse machinery. Indignant about a series of child deaths at the hands of social workers in the District of Columbia, federal judges and the *Washington Post* endorse the D.C. government’s proposed solution of hiring *more* social workers (and lawyers too, for some unspecified reason). “Olivia Golden, the Child and Family Services’ latest director, said she is overhauling the agency and will use her increased budget to recruit more social workers and double the number of lawyers to back up her new team of managers.”¹⁵⁷ No mention is made of why the fathers of these children are not present or what precisely the increased contingent of lawyers will do. But apparently lawyers, not fathers, now protect children.

Indeed, as the lawyers present it, they protect children from fathers. This is the message of a particularly vicious advertisement circulated by the Indiana State Bar Association. Displaying a graphic photo of an apparently badly bruised child, the Indiana lawyers claim that they rescue children from brutal fathers:

“Social workers are perceived to have nearly unlimited power,” one psychiatrist said, “And they routinely abuse that power.”

Officials seem willing to experiment with every conceivable remedy except allowing fathers to remain in their families. Government bureaucracies present themselves as the solution to the very problems their programs create.

Her father takes his anger out on her.

A lawyer has him stopped.

The state charges her father in criminal court.

A lawyer protects her interests.

Welfare places her in a foster home.

A lawyer finds a permanent one.

Her father almost killed her.

An Indiana lawyer saved her.¹⁵⁸

By falsely depicting fathers as killers and themselves as rescuers, judicial officials ignore the one proven efficacious solution of returning the father to the home and instead respond to the escalating child abuse crisis by expanding the machinery perpetrating it. To take one example of many that might be offered, the *Atlanta Journal-Constitution* investigated reforms undertaken to the Georgia child protective system in 1990 and found that the problem only worsened. “Nearly 10 years later, children are continuing to die. Then, it was at the rate of one a week. Today, it's nearly triple that number.” The article includes grisly stories of child abuse within “families,” with no mention in any of a father, either as perpetrator or as present to protect the children. Yet the failed reforms included ever-more invasive and authoritarian measures against “parents,” including electronic surveillance “to help police and child welfare workers keep tabs on potentially abusive parents.” No mention is made of allowing fathers to return to the homes where we know most of this abuse is taking place and guaranteeing the integrity of the two-parent family which we know to be the safest environment for both women and children. Instead the judges call for more police, more social workers, and more foster homes, with higher salaries for all concerned.¹⁵⁹

What is disturbing about these attitudes is their exclusive reliance on state institutions rather than families and family members. Whether it is evicting the father from the home and ensuring he stays away, establishing visitation centers where he may see his children under surveillance, protecting the children from the single mother and her paramour, creating a foster care

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system to raise children separated from their mothers, hiring more social workers to ease the caseload of children abused by other social workers, treating the emotionally devastated children with drugs or psychotherapy, or consigning them to juvenile detention facilities – the solution to the problems created by each institution is to create more institutions.

It is our belief that much of the abuse is taking place not despite government programs, but because of them. Legally speaking, it is the courts that create the single-mother homes where the bulk of child abuse takes place and that force away the fathers. Some maintain that judges who summarily remove fathers on the merest accusation, even when it is clear that the father has done nothing wrong, are aiming to “err on the side of caution.”¹⁶⁰ Yet this explanation is more charitable than tenable, since for children the judges are erring on the side of danger, and it strains credibility to suggest they can be completely unaware of this. The harsh but unavoidable fact is that child abuse is lucrative for the family law business and for the bureaucratic machinery connected with it. Appalling as it sounds, the conclusion seems inescapable that we have created a huge army of officials with a vested professional interest in child abuse and whose livelihoods would be threatened were the problem brought under control.¹⁶¹

We seem to have created a huge army of officials with a vested professional interest in child abuse and whose livelihoods would be threatened were the problem brought under control.

Americans' most fundamental constitutional protections and human rights are violated openly, intentionally, and systematically in a country that prides itself upon being the freest on earth. Our governments implement policies that unnecessarily encourage the abuse of children.

The practices described in this paper are worthy of the totalitarian regimes of the last century. Yet no investigation is forthcoming from our elected leaders, public officials, journalists, academics, or civil liberties and human rights organizations.

7. Conclusion

We ourselves are, to be frank, shocked by the findings of this *Report*. In the name of protecting women and children, and contrary to undisputed facts:

- *Americans' most fundamental constitutional protections and human rights are violated openly, intentionally, and systematically in a country that prides itself upon being the freest on earth.*
- *Our governments implement policies that unnecessarily encourage the abuse of children.*

It is little exaggeration to say that the practices described in this paper and by reputable scholars and journalists on whose work it draws are worthy of the totalitarian regimes of the last century. Yet far from addressing or even investigating these questions, official policy and media attention is geared to expanding and intensifying policies that violate Americans' rights, treat law-abiding citizens as criminals, separate children from fit parents, and encourage the abuse of children. Virtually no objection or even investigation is forthcoming from our elected leaders, public officials, journalists, academics, or civil liberties and human rights organizations. At least one "human rights" organization actively supports these campaigns.

Given the questions raised in this *Report* about whether domestic violence is a serious problem, the ideological orientation of those claiming it is, and the strong connection with divorce and child custody, we conclude that domestic violence should be seen foremost as a *political* rather than a social phenomenon. That is, little evidence indicates that it is a spontaneous social problem arising simply from impersonal social forces. Instead it is a political issue, raised by specific government policies implemented as a result of conscious, ideologically driven advocacy.

Given definitions of "violence" so broad and subjective as to be meaningless, a presumption of guilt that virtually guarantees conviction and punishment, the suspension of the most basic civil liberties and due process

protections such as jury trials, courts whose express purpose is to secure convictions and facilitate punishment, forced confessions, and more – all of which is thoroughly documented – we conclude that the hysteria generated by the domestic violence industry has no proven basis in fact and that it is little less than a massive hoax perpetrated on the American public.

Moreover, it is a hoax with highly destructive consequences. By rationalizing the removal of massive numbers of loving, responsible, and legally unimpeachable parents from their homes and their children – thereby creating the single-parent households where the overwhelming preponderance of child abuse takes place – domestic violence measures (along with other policies having similar effects) are directly responsible for the epidemic of child abuse that has arisen simultaneously.

What is taking place here is an alarming politicization of the family and private life. What we have described in this *Report* is by far the most extreme constitutional and human rights violation and the most serious abuse of public authority in America today.

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By rationalizing the removal of massive numbers of loving, responsible and legally unimpeachable parents from their children, domestic violence measures are directly responsible for the epidemic of child abuse.

The very categories of “domestic violence,” “domestic abuse,” and even “child abuse” separate from other forms of violent assault, are questionable and invite compromises with due process protections. Adherence to the Constitution therefore requires that both domestic violence and child abuse be prosecuted clearly under the provisions of criminal law, not civil.

8. Recommendations

For many of the abuses described in this *Report*, a remedy is immediately available. Americans have perhaps the most extensive system of constitutional government, civil liberties, and due process protections of any nation on earth: the presumption of innocence, trial by jury, *habeas corpus*, and more. Either we believe in these principles, and adhere to them, or we look for excuses to set them aside. The current hysteria over family violence is not the first such excuse, but it is the most serious today. New laws or government expenditures are not required to rein in the power of government and demand that it obey the Constitution.

Our first recommendation is directed toward citizens and citizen groups: We must demand that government adhere to the Bill of Rights and other constitutional protections.

Connected with this, many advocate that existing domestic abuse laws should be administered more even-handedly and without gender bias. We agree that all citizens are entitled to the “equal protection of the laws,” and we concur that there is no place in a free society for outlawing groups rather than prosecuting individuals. We also hope to de-politicize domestic violence programs and make them available on the basis of need rather than political ideology or group identity. At the same time, we question whether gender-neutrality alone is an adequate solution to the abuses described here. The very categories of “domestic violence,” “domestic abuse,” and even “child abuse,” separate from other forms of violent assault, are questionable and invite compromises with due process protections. Adherence to the Constitution therefore requires that both domestic violence and child abuse be prosecuted clearly under the provisions of *criminal law*, not civil. This recognizes the seriousness

of the crime (when that is what it is), protects the public’s right to know about government actions, and ensures that the accused receive due process protections to which they are entitled by the Constitution.¹⁶²

Recognizing that criminal statutes – which fall constitutionally under the jurisdiction of states – are adequate to punish violent assault, there is no demonstrated need for expensive federal programs that politicize law enforcement and erode due process protections in favor of convictions.

Our second recommendation is to reform constitutionally questionable federal programs, such as the Violence Against Women Act, that politicize and distort law-enforcement and target individuals because of their membership in groups or their political beliefs rather than their deeds.

Federal programs that provide financial incentives to remove children from parents who have not been convicted of abusing them could also be scrutinized in favor of the recommendations in this paper.

Yet the principal conclusion that stands out from this *Report*, the one that has not been appreciated even by other critics, is that, as a major public policy phenomenon, family violence in all its forms proceeds from the removal of one parent, most often the father, from the family. Family violence, both substantiated incidents and fabricated allegations, originates in family dissolution and conflict involving children. Without coming to terms with this underlying fact, the problem will never be brought under control.

The rights of parents to the care, custody, and companionship of their children is fundamental in the legal traditions of Anglo-American and Western society. Though once protected by an extensive system of case law, these rights are increasingly threatened (and not only by family violence pro-

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Media clichés about “ugly custody battles” trivialize the seriousness of what in reality is the government seizing and distributing children, an act that serves as the starting point for legal conflict, government coercion and repression, and physical violence.

A rebuttable presumption of shared parenting that protects the rights of both parents to their children, and of children to both parents, would mitigate the inflammatory “winner take all” practices of family law that incite both false accusations and actual family violence.

grams). Because such rights are not expressly provided for in the Constitution, they would benefit by explicit statutory or even constitutional protection similar to what others advocate to protect the authority of parents in the education of their children.

We recommend statutory protection for parental rights, in the form of a “Parents’ Rights and Responsibilities Act,” to ensure that law enforcement programs are not commandeered to create unaccountable police actions against innocent parents, without due process protections.

A further remedy lies in reforming the child custody system. Such a reform is long overdue for other reasons, too numerous to elaborate here, but the strong connection of family violence – both alleged and real – with child custody makes it imperative. Media clichés about “ugly custody battles” trivialize the seriousness of what in reality is the government seizing and distributing children, an act that serves as the starting point for legal conflict, government coercion and repression, and physical violence. Effective reform would eliminate the current arbitrary nature of custody proceedings and prevent the exploitation of children as weapons. A rebuttable presumption of shared parenting that protects the rights of both parents to their children, and of children to both parents, would mitigate the inflammatory “winner take all” practices of family law that incite both false accusations and actual family violence.

Our final recommendation is for a legal presumption of equal and shared parenting of children in cases of divorce and separation.

In fact, it is likely that the political encouragement and defense of false allegations arose in conscious anticipation of changes in custody practice.

In the District of Columbia, where a presumption of joint custody was enacted in 1996, it appears that domestic violence allegations have been used to effectively nullify that law.¹⁶³

If this is true, then protecting parents' fundamental liberty interest in the care, custody, and companionship of their children by reforming custody law and procedure could result in more, rather than fewer, fabricated accusations of family violence. Why then would we advocate that?

The obvious answer is that we cannot allow our governments to exercise harmful policies and violate citizens' constitutional rights because of threats by politically vocal groups to manipulate the legal system for private grievances and to inflict even greater injuries to private citizens' rights. Succumbing to the threat that innocent people will be falsely accused of crimes if they are permitted to exercise their fundamental rights and carry on their daily lives amounts to a submission to intimidation and extortion. Such a rise in unsubstantiated allegations would confirm that their role is to come between parents and their children. It would also reaffirm the need to protect both those rights and due process protections for those accused of crimes.

Reforming custody law toward shared parenting might therefore help stimulate a dialogue about the need to reform policies on domestic violence and child abuse. The fact that opponents of shared parenting provisions do not argue the issue on its merits but resort to fabricated accusations against the innocent further attests to the absence of – and need for – an open and honest debate. The political interconnections make it unlikely that any of these abuses can be reformed in isolation from the others. Public discussions and constructive proposals for reform of all these issues are of the highest urgency for the protection of our families, our children, and our freedom.

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¹⁶¹ This is simply following the well-known principle of political science that bureaucracies create business for themselves. “Bureaucracies everywhere have a remorseless drive to expand – to widen their client base,” write Sylvia Ann Hewlett and Cornel West in this connection. “If children are the clients, parents can quite easily become the adversaries – the people who threaten to take business away.” *War Against Parents*, p. 109.

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About the Author

Stephen Baskerville, President of ACFC since 2004, holds a PhD from the London School of Economics and has taught political science at Howard University and other universities. His writings on family and fatherhood issues have appeared in leading national and international publications, both popular and scholarly, including the *Washington Post*, *Washington Times*, *Independent Review*, *Salisbury Review*, *Society*, *The American Conservative*, *Human Events*, *Women's Quarterly*, *Catholic World Report*, *Crisis*, *Insight*, *World Net Daily*, *Whistleblower*, *The Family in America*, *Family Policy Review*, *American Spectator*, *The Spectator*, *The American Enterprise*, *National Review*, *Liberty*, the *Sunday Independent*, *Lew Rockwell.com*, and *New Presence*. He has appeared on national radio and television programs, including The O'Reilly Factor, Hardball with Chris Matthews, Court TV with Fred Graham and Katherine Crier, Think Tank with Ben Wattenberg, and others.

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ACFC is the nation's leading advocate for shared parenting, fatherhood and family law reform. ACFC is dedicated to a family law system, legislative system and public awareness which promotes equal rights for all parties affected by divorce, the breakup of a family or establishment of paternity.

ACFC has been featured in prominent publications and media outlets for nearly a decade including, NBC, ABC, The Washington Times, Philadelphia Inquirer, New York Times, Los Angeles Times, Men's Health Magazine, The O'Reilly Factor, Miami Herald, Hannity and Colmes, CNN, MSNBC, Insight Magazine, Time, Congressional Quarterly Researcher, Christian Science Monitor and The Today Show among many others.

