

Divorce and the State

Stephen Baskerville

[PDF Format](#)

The destructive power of divorce is well known in many ways: the pain and trauma it causes children, the social costs to our society, the financial costs to families and all of us. It is by far the most direct threat to the integrity and survival of the family.

Less well known is how unilateral and involuntary divorce (“no-fault”) expands government power. In fact, it is the principal engine driving the expansion of the domestic state machinery. This is a strong statement, but it can easily be proven.

There are several major reasons for this. I will focus on the following three (depending on the time):

1. First, and most important, it constitutes a radical innovation in the legal system and principles of legal justice. It rationalizes and permits unprecedented state intrusion into the private sphere of life and the violation of basic constitutional rights. (This is the main one on which I will concentrate.)
2. It is the main incubator of social pathologies that rationalize increased government measures and power in response.
3. It is the main source and font of almost all other political and legal innovations in the Sexual Revolution.

A Radical Legal Innovation

Unilateral and involuntary divorce created many radical innovations in the legal system. In fact, it is the most radical legal innovation ever undertaken in the English-speaking democracies. It departs from the most basic principles of the Common Law, limited government, the Bill of

Rights, and more. Yet no public debate was ever held on these innovations, either before they were implemented or since.

First, it violates the ancient Common Law principle that a legally unimpeachable citizen has the right to be left in peace by the state. In no other area of the law (so far) can a citizen accused of no legal infraction – either criminal or civil – be summoned to court and issued with directives controlling his life, for which he may then be punished.

Further, these directives control the most private and intimate corners of his life: his right to be with his own children and his relationship with them; his right to reside in his own home; his right to his own property; his private conversations; his external movements. Failure to observe these directives can and does result in incarceration without trial.

Divorce proceedings are the only legal proceeding (again, so far) with a predetermined outcome: A divorce must be and always is granted. "Lawmakers eliminated a useful inquiry process and replaced it with an automatic outcome," writes Judy Parejko, author of *Stolen Vows*. "No other court process is so devoid of recourse for a defendant. When one spouse files for divorce, his/her spouse is automatically found 'guilty' of irreconcilable differences and is not allowed a defense."¹

Likewise, divorce law elevates the will of the plaintiff to the level and force of law itself. If all that is required for the court to act against the defendant is a finding that a marriage "has irrevocably broken down," then the plaintiff's complaint is true by virtue of being stated. The objective fact that the plaintiff is thereby breaking a legal contract is ignored and replaced by the subjective power of the plaintiff to turn a personal preference into a finding of legal fact. (As we will see, this principle has had important effects on the law.) [*Domestic Violence too: "in fear"*]

So in many ways divorce courts are not really courts at all; they are merely administrative agencies that automatically implement a predetermined administrative procedure. Principles of justice, violations of law, rules of evidence – none of these will or can have any impact on the basic outcome.

Thus unlike true courts, the principal concern of divorce courts is not to weigh or administer justice. The very concept of “no-fault justice” is a contradiction in terms. It is not possible to dispense justice without recognition of fault.¹ If the marriage contract has been breached (if only by the proceeding itself, when initiated without legal grounds), then someone has breached it. Thus the courts dispense not justice, but injustice.

If children are involved, the courts immediately assume control over them, and routinely they then deprive one or both parents of contact with and authority over them, even if one parent has not committed any infraction and is legally blameless. No burden of proof requires the state to justify why. The burden of proof (and the financial burden) falls on the parent to demonstrate why they should be returned. This is all contrary to centuries of Common Law precedent stipulating the parents have an inviolable and even “sacred” and “inherent, natural right”² to the care and custody of their children and to speak for their welfare, unless they have committed some legal transgression that warrants losing this right. “For centuries it has been a canon of law that parents speak for their minor children,” wrote Justice Potter Stewart. “So deeply embedded in our traditions is this principle of the law the Constitution itself may compel a state to respect

¹ “No secular society can be operated on the theory that all faults are equal,” said Fred Hanson at the time the laws were enacted. Hanson was the dissenting member of the National Conference of Commissioners of Uniform State Laws (NCCUSL), which presented “no-fault” laws to the states. “To do justice between parties without regard to fault is an impossibility,” he warned. “I wonder what’s to become of the maxim that no man shall profit by his own wrong – or woman either, for that matter.”¹ Today we have the answer to that question. Quoted in Judy Parejko, *Stolen Vows: The Illusion of No-Fault Divorce and the Rise of the American Divorce Industry* (Collierville, Tennessee: InstantPublisher, 2002), 52.

it.”³ This is all overturned by the “best interest of the child”, the principle governing child custody (and increasingly other matters as well). This formula transfers control over children – all children (even those not involved in divorce proceedings) – from parents to state functionaries.

Thus a legally unimpeachable parent can suddenly be arrested for seeing his own children without government authorization. He can then be arrested for failure or inability to obey additional judicial directives that apply to no one but him. Once arrested, the parent is jailed without formal charge, jury, or trial.

The child support system routinely forces legally innocent parents not only to part with their own children but to pay others to raise them, directly violating the Common Law principle that a financial obligation must be based on some positive act by which the citizen incurs it. Otherwise, it is a license to plunder innocent people.

The very involvement of the judiciary, with its handmaid, the penal apparatus – machinery ordinarily reserved for punishing criminal or civil wrongdoing – indicates how involuntary marriage dissolution blurs the distinction between innocence and guilt – along with other distinctions our justice system was previously at pains to delineate carefully: judicial v. political, private versus public, civil versus criminal, therapy versus justice, sin versus crime. When government stopped enforcing the marriage contract it began enforcing the divorce decree. The result was not the removal of the state from family life but an explosion of extensive and intrusive governmental machinery whose sole purpose is intervention in families.

No-fault divorce permits the state, in the person of a single judge, and at the sole request of one spouse, to assume jurisdiction over the private lives of citizens who are minding their own business and turn otherwise lawful private behavior into punishable acts. Previously, a citizen

could only be incarcerated following conviction by a jury of his peers for violating a statutory law passed with public input by elected legislators that applied equally to all. Suddenly, a citizen could be arrested and jailed without trial for failing to conform his private life to an order issued in a matter of minutes from limited information by an unelected judge that applied to no one but himself and whose provisions might well be beyond his ability to obey. In effect, a personalized criminal code is legislated *ad hoc* around the individual parent by a judge, subjecting him to arrest for doing what anyone else may lawfully do. The involuntarily divorced spouse becomes the personal vassal of a judge, who may simply order him to do what he or she pleases.

The implications of all this extend far beyond family law. A very fundamental shift has taken place here in the power of government over private life, without the slightest opposition or even notice, and certainly without any debate. These methods are spreading and becoming available for use against other Americans, poisoning our larger justice system and government. Defenders of the family and all of us have seriously underestimated the destructive power of divorce for both families and freedom.

Breeding Social Pathologies

Before proceeding further, I want to make a brief digression from the legal to the social. For the power of unilateral and involuntary divorce to increase government power does not come simply from its role as a legal innovation. It breeds the social pathologies that rationalize government measures.

Since the 1960s, we have been warned about a growing crisis of single-parent homes and fatherless children.⁴ Initially, this concerned mostly low-income communities in the inner cities. Four decades later, it has expanded to the affluent and now threatens the larger society. Some 24

million American children or about 33% live in households without their fathers. For African-American children the figure is about 67%. Nearly 2.5 million children join the ranks of the fatherless each year.⁵

No successful human society has ever been based on the mother-child dyad or on any other structure than the married, two-parent family.⁶ So much has been written in recent years about the destructive effects on both children and society of fatherlessness that it hardly needs to be labored. Virtually every social pathology in the industrialized countries: violent crime, drug and alcohol abuse, truancy and scholastic failure, unwed pregnancy, suicide and other psychological disorders – all these correlate more strongly to single-parent homes and fatherlessness than to any other single factor.⁷ According to the National Fatherhood Initiative, “Children who live absent their biological fathers are, on average, at least two to three times more likely to be poor, to use drugs, to experience educational, health, emotional, and behavioral problems, to be victims of child abuse, and to engage in criminal behavior than those who live with their married, biological (or adoptive) parents.”⁸ The overwhelming majority of prisoners, juvenile detention inmates, high school dropouts, pregnant teenagers, adolescent murderers, and rapists all come from fatherless homes. Fatherlessness far eclipses poverty and race as the leading predictor of criminality and other anti-social behavior.⁹ Children from affluent but separated families are much more likely to get into trouble than children from poor but intact ones, and white children from separated families are at higher risk than black children in intact families. The connection between single-parent households and crime erases the relationship between race and crime and between low income and crime.¹⁰ It is hardly an exaggeration to say that fatherless children are tearing down our civilization.

All these pathologies make a claim on our governments and our finances. To deal with them, governments expand their scope, power, and expenditures – and our taxes. Broken homes are main cause of skyrocketing government budgets for crime and incarceration, truancy, education, health care, and ever-expanding “social services.”

I will not dwell on this, because it is widely known. What is *not* widely known is the reason. These broken homes are not created through paternal abandonment or divorce by mutual agreement. Some 80% of divorces are unilateral and without established legal grounds, and that figure is higher when children are involved.² These problems are created by unilateral and involuntary divorce – “no fault” divorce, which allows one parent to surrender *both* parents custody of the children. This invites collusion between the divorcing spouse and the government. Divorce today is less likely to be a reasoned, mutual decision than a power grab by one parent, assisted by lawyers, judges, and other officials. By extending the reach of the state over the children and the forcibly divorced parent, unilateral divorce has turned children into weapons of not only parental but governmental power.

With fatherlessness stubbornly but falsely attributed to paternal abandonment, the only government response becomes ever-more draconian but pointless “crackdowns” on allegedly dissolute fathers. Because fathers were never the main cause of the problem in the first place, these measures do not ameliorate the problem. In fact, they make it much worse.

If instead we see single motherhood realistically, as the intentional and avowed choice of the Sexual Revolution, then the explosion of crime, addiction, and truancy, and with them the massive increase in the size and power of the penal system and state apparatus generally, takes

² Frank Furstenberg and Andrew Cherlin in *Divided Families*.

on increased significance. It is then far from fanciful to suggest that sexual liberation lies behind the larger trends in violent crime and incarceration, as well as other major social ills.

Eliminating the Private Sphere of Life

Few stopped to consider the implications of laws that shifted the breakup of private households from a voluntary to an involuntary process. Involuntary divorce by its nature requires constant supervision over private life by state officials. It inherently denies not only the inviolability of marriage but the very concept of a private sphere of life.

Most Americans are shocked when they discover what goes on today under the name of divorce. Divorce now licenses unprecedented government intrusion into family life, including the power to evict innocent citizens from their homes, seize their children, confiscate their property, and jail them without trial. Comprised of family courts and vast, federally funded social services bureaucracies that wield police powers, the divorce machinery has become the most repressive sector of government ever created in the United States.

The astonishing but undeniable fact is that with the exception of convicted criminals, no group in our society today has fewer rights than parents. Even accused criminals have the right to due process of law, to know the charges against them, to face their accusers, to a lawyer, to a trial, and to expect knowingly false accusations to be punished. A parent can be deprived of his children, his home, his savings, his future earnings, his privacy, and his freedom without any of these constitutional protections. Once a man has a child, he forfeits almost all his constitutional rights. And women are not immune.

Though divorce courts reside at the bottom of the judicial hierarchy (and are held in contempt by other legal practitioners), their powers are the most sweeping. Moreover, the rulings of those courts consistently give themselves yet more power.

The courts having successfully asserted their power to remove children from legally innocent parents, other violations of basic constitutional rights and civil liberties flow logically – and almost inexorably, much as one lie necessitates another. The entire divorce regime is nothing less than a massive assault on every major principle of the US Constitution. One can run point-by-point down the Bill of Rights and other articles, and there is hardly one that is not routinely violated by family courts.

(And in the following when I say “parents”, I mean legally unimpeachable parents, parents who have given neither grounds nor consent to a divorce.)

First Amendment: Family court judges routinely control what parents may say and do with their children, including what religious worship they may or must attend and what subjects they may discuss in private. In other words, a law-abiding citizen minding his own business loses his First Amendment protections the moment his spouse files for divorce, without legal grounds, and turns the children over to government control. Courts routinely issue gag orders criminalizing parents for what they say in public, and against newspapers, prohibiting publication. In many jurisdictions it is a crime to criticize family court judges or otherwise discuss family law cases publicly. Judges have prohibited the distribution of books and other literature, impounded documents, and shut down internet sites. Parents who engage in public protests have been taken into custody for “psychological evaluation.”

At the same time, family courts publish political documents of their own attacking private citizens, who are given no right to reply in their own defense.

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” Yet without warrants, parents are routinely ordered to surrender not only their children but diaries, notebooks, correspondence, financial records, and other personal documents. Those unwilling or unable to comply can be fined, ordered to pay arbitrary attorneys’ fees, and summarily incarcerated. Parents are regularly interrogated by state officials behind closed doors about intimate family matters.¹¹ Some are ordered into solitary confinement by officials other than judges. In shades of Soviet psychiatry, citizens who refuse to submit to this inquisition – and even those who do not – can be ordered to undergo a “mental evaluation.” Fathers must submit to “plethysmographs,” where an electronic sheath is placed over the penis while the father is forced to watch pornographic films involving children.¹² Parents’ homes are routinely entered by government agents to determine fitness, even when it has never been questioned. Privileged consultations with therapists, family counselors, or physicians can be demanded, examined, and used in court to rationalize removing children. Family courts routinely use children as informers against their parents, to monitor compliance with court orders, and to report on how they otherwise conduct their private lives.¹³

The Fifth Amendment guarantee that “No person shall...be deprived of life, liberty, or property, without due process of law” does not prevent family courts from jailing parents on civil contempt for weeks, months, or even years without trial. Courts also jail children who fail to cooperate with the criminalization of their parents.

Accusations of spousal abuse and child abuse made during divorce without any evidence are presumed true, and parents are punished without any trial. Parents are summarily evicted from their homes and separated from their children, sometimes permanently. Accusations shown

to be knowingly false (often made anonymously) are almost never punished.¹⁴ According to a legal journal, “the mere allegation of domestic abuse...may shift the burden of proof to the defendant.”¹⁵

Despite the constitutional prohibition on double jeopardy, the US Justice Department reports that “some states...treat a domestic violence protective order violation either as a misdemeanor or as criminal contempt and a separate domestic violence offense,” thus turning one alleged offence into two. Courts have held that finding a defendant guilty of criminal contempt does not preclude, on grounds of double jeopardy, a subsequent prosecution.¹⁶ Parents are routinely forced to sign pre-printed forms with scripted confessions, in cases of alleged domestic violence, obviously contravening the prohibition on self-incrimination.

The Sixth Amendment stipulates, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed...and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him...and to have the assistance of counsel for his defense.” Yet a custody trial will most likely be held behind closed doors and with no record of what is said, free of scrutiny by press and public. Delays of months and years are common, as the parent with “temporary” custody may try to stall while establishing a *status quo* that the courts are reluctant to change. Since the advent of no-fault divorce, parents can no longer demand a jury trial, with the result, in the words of one attorney, that “the courts can now find the facts in a particular case to be whatever they wish them to be.”

Divorce and custody cases are not classified as "criminal prosecutions," but in practice that is precisely what they are, often being the first stage in the criminalization and incarceration of parents. Indeed, they are far more serious, since the absence of a formal “prosecution” leaves

the “defendant” (the term used for a parent who receives a divorce petition, even if that parent is legally innocent) even less protected.

In child support cases – which may indeed be criminal prosecutions – parents are regularly jailed for extended periods without trial, without charge, and without a lawyer. A father jailed for “civil contempt” in a child support case may legally be presumed guilty until proven innocent. “The burden of proof may be shifted to the defendant,” according to a handbook for officials published by the National Conference of State Legislatures (NCSL). NCSL approves these methods and urges its members to use them.¹⁷ A parent can also be charged with criminal contempt for which, according to the Sixth Amendment, he must be duly tried, but not always. “The lines between civil and criminal contempt are often blurred in failure to pay child support cases, particularly *if the court does not explicitly clarify the charge* facing the [allegedly?] delinquent parent,” continues NCSL, whose choice of words reflects a presumption of guilt. So like Kafka’s character, Joseph K., the parent may not even know the charge against which he must defend himself. Further, according to NCSL “not all child support contempt proceedings classified as criminal are entitled to a jury trial,”¹⁸ and “even indigent obligors are not necessarily entitled to a lawyer.”¹⁹ So in short, a parent who has lost his children through literally “no fault” of his own must prove his innocence against an accusation that may not even be clearly defined, without an attorney, and without a jury of his peers.

Family courts usually operate behind closed doors and do not record their proceedings. Ostensibly this secrecy is to protect litigants’ privacy, though it has precisely the opposite effect: It provides a cloak to invade family privacy with impunity. “Confidentiality laws are supposed to protect kids; instead they shield bureaucrats,” notes one commentator. “They were supposed

to protect families; instead, they provide a basis for assaulting them.”³ Intimate personal information coerced from involuntary litigants is then made available to anyone, including the media, where it can be used to defame or blackmail litigants who criticize the courts.

Courts have been caught altering official hearing transcripts and recordings and otherwise falsifying and fabricating evidence. Some litigants hire their own court reporters from neighboring jurisdictions.

Also contrary to the Sixth Amendment and centuries of Common Law tradition, courts allow parents to be prosecuted and jailed in jurisdictions not only other than where their alleged crime took place but where they have never set foot.

In many cases the parent is not even brought before a judge for a formal charge but instead is accused in an “expedited judicial process” before a black-robed lawyer known as a “judge surrogate” (or a variety of other names). These officials wield judiciary powers as if they are judges.²⁰ Yet their appointments are not confirmed by the legislature, so they are not accountable to citizens or their representatives. Unlike true judges, they are also free to lobby for or against the same legislation they adjudicate, an obvious conflict-of-interest and breach of the separation of powers. In effect, they are political activists in robes, and what is supposed to be impartial, apolitical justice becomes the hijacking of the judiciary to implement a political agenda disguised as justice. One litigant, forced to appear before a “marital master” (who had been denied a real judgeship), writes that during the master’s tenure she simultaneously worked “as a radical feminist lobbying on proposed legislation” dealing with child custody and child support.²¹

³ Krason, “Mondale Act,” 34, partly quoting Trevor Armbrister, “When Parents Become Victims,” *Reader’s Digest* (April 1993), 106.

The Eighth Amendment's prohibition of "cruel and unusual punishment" does not stop family courts from summarily depriving parents of professional licenses, drivers' licenses, and passports that bear no connection with their alleged offence. Parents who are alleged (but again, neither formally charged nor proven) to be delinquent in child support payments also have their cars booted²² and their names published in the newspapers.²³ One state campaigned "to embarrass deadbeat parents" by displaying their names on billboards and pizza boxes, but later reported that it had collected nothing. Apparently unconcerned about the McCarthyite overtones, the enforcement director boasted that he created a "list" of names that in itself constituted proof of guilt. "Everybody might say he's a good guy," the director suggests, "but I can say he's not. He's on the list."²⁴

The Ninth Amendment's recognition of "certain rights" not explicitly enumerated has served as the basis for a constitutionally-protected right of privacy, including the right of parenthood which is also held by an extensive body of federal and state case law to be protected by the Fourteenth Amendment. The case law proceeding from this amendment is simply ignored by divorce courts.

The Tenth Amendment, which reserves matters such as family law to the state governments, is also routinely ignored. Child support enforcement has been federalized in the Office of Child Support Enforcement (OCSE) and legislation such as the Deadbeat Parents Punishment Act and Child Support Recovery Act. Domestic violence law has also been federalized through the Violence Against Women Acts (VAWA), which dispenses federal funds to states and localities. Yet no constitutional authority has ever been demonstrated for federalizing these functions, and no corresponding federal protections are enforced for the rights of those prosecuted. Congress generally assumes jurisdiction over local affairs through the

Interstate Commerce Clause, yet precisely how divorce, child support collection, or domestic violence can be classified as interstate commerce has never been demonstrated.²⁵ Congress originally claimed jurisdiction over child support collection as a way of recovering federal welfare costs when it created OCSE in 1975, but the extension of federal jurisdiction over non-welfare cases (now some 83% of all child support cases and growing) was never explained or justified. “The federal government has no constitutional authority to be involved in the collection of child support,” Congressman Ron Paul points out, “much less invade the privacy of every citizen in order to ferret out a few wrongdoers.”²⁶

Parents are also routinely ordered into employment, the wages from which are then confiscated. According to a California ruling overturning a century of precedent, this is no longer contrary to the Thirteenth Amendment prohibition on slavery and involuntary servitude.²⁷ Before the Divorce Revolution, courts consistently recognized that “Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service. This congressional policy means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor.”²⁸

The presumption of innocence has been inverted, as we have seen. The “defendant” in a custody “trial” must at his own expense amass evidence to prove, not that he has committed no infraction, but that he has been a positively “good” parent – even if he has not been accused of being a bad one. (In other words, attorneys and judges demand and debate evidence that has no relevance to any point at issue, in order to drive up fees.) If he wants to see his children, he must also amass evidence *against* his spouse, whether he wishes to or not, much in the spirit of a cockfight.

Unilateral and forced divorce laws which permit one partner to abrogate the marriage agreement without incurring any legal consequences clearly contravene the Contract Clause of the Constitution, which states that no state shall pass any law “impairing the obligation of contracts.” Because these laws were applied to marriages that had been contracted under different laws and terms, they also constituted *ex post facto* laws, likewise prohibited by the Constitution. Also clearly *ex post facto*, the Child Support Recovery Act of 1992 imposed criminal penalties on child support arrearages accrued before the passage of the act, when they were not criminal.²⁹

The constitutional guarantee of a writ of *habeas corpus* is another clause that is ignored, since parents incarcerated by family courts are seldom charged with any crime. Parents have languished in jail for years without charge or trial. Courts can and do summon parents so frequently that they lose their jobs and then incarcerate them for failure to pay child support; the incarceration itself naturally has a similar effect.

Divorce is at the vanguard of a trend toward enacting Bills of Attainder or legislative declarations of guilt, which are explicitly prohibited by the Constitution. The titles of divorce-related laws indicate how the targets of legislation have become not deeds but persons: the Deadbeat Parents Punishment Act, the Violence Against Women Act, the Elizabeth Morgan Act, and in one state, the Sexually Dangerous Persons Act. These measures eliminate the presumption of innocence because they punish not crimes but persons who are presumed (without trial or conviction) to have committed crimes. The ominously-titled Deadbeat Parents Punishment Act imposed punitive measures on millions of citizens who had been neither tried for nor convicted of any crime. The Violence Against Women Act imputes criminal culpability to groups rather than to duly convicted individuals. The bill reads like a declaration of guilt

against anyone accused of domestic violence, with such terms like “abuser” and “victim” thrown about as if they refer to specific, proven convictions. In 2003, a federal appeals court struck down the infamous Elizabeth Morgan Act, whereby Congress legislatively separated father and child and "branded," in the words of the court, as "a criminal child abuser" a father against whom no evidence was ever presented in a court or elsewhere. "Congress violated the constitutional prohibition against bills of attainder by singling out plaintiff for legislative punishment," the court said. Though a textbook bill of attainder, it took six years for the court to act, during which time the damage was done, and the daughter grew up permanently estranged from her father. The very fact that a bill of attainder was used at all indicates a truly extreme politicization of criminal justice. Bills of attainder are rare, draconian measures used for one purpose: to convict political enemies who cannot be convicted with evidence.³⁰

The child support system also overturns the centuries-old Common Law principle that a parent could not be forced to pay for the stealing of his own children. “The duty of a father (now spouse) to support his children is based largely upon his right to their custody and control,” runs one ruling typical of the age-old legal consensus. “A father has the right at Common Law to maintain his children in his own home, and he cannot be compelled against his will to do so elsewhere, unless he has refused or failed to provide for them where he lives, and the statutes providing for the punishment of a father (now spouse) for the failure to support his children, were not intended to change the Common Law.”³¹ As recently as 1965, courts held that “a husband whose wife left him without cause was not required to support his children living with her, absent a court or proof that denying them support during the period the mother refused to return to the father would harm the children.”³²

Family courts in the United States and other democracies also routinely ignore and violate international human rights conventions to which their governments are signatories. Under the US Constitution, such treaties are considered the “supreme law of the land.” Like Article 16 of the Universal Declaration of Human Rights, Article 23 of the International Covenant on Civil and Political Rights (1976), states, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” and requires that “States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution.”



Two areas of the divorce machinery merit special attention for what they have contributed to government power and to eroding Americans’ constitutional rights. These are the domestic violence industry and the child support enforcement apparatus. Both are dishonest and highly corrupt.

Attorney and scholar David Heleniak describes domestic violence as “an area of law mired in intellectual dishonesty and injustice.”³³ Domestic violence as become “a backwater of tautological pseudo-theory and failed intervention programs,” write Donald Dutton and Kenneth Corvo. “No other area of established social welfare, criminal justice, public health, or behavioral intervention has such weak evidence in support of mandated practice.”³⁴

Unlike physical assault and other conventional crimes, domestic violence has no definition. It can include “undermining an individual’s sense of self-worth and/or self-esteem” according to the federal government. “Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person,” says the Department of Justice. Among the “crimes” in DOJ’s definition of “violence” are “constant criticism, diminishing one’s abilities, [and] name-calling” or “attempting to make an individual

financially dependent by maintaining total control over financial resources.”³⁵ The British Home Office explicitly states that domestic “violence” need not be violent. “Domestic violence is not restricted to physical violence,” it states; “it may include psychological, emotional, sexual, and economic abuse.”³⁶ In other words, it can mean anything that a government official chooses to punish. Domestic “violence” is often defined not as physical assault but subjective “fear,” so that guilt is determined not by the objective act of the accused but by the subjective state-of-mind of the accuser.

But the essential thing to remember about domestic violence hysteria is that it is almost entirely connected to divorce and child custody. Law journals have repeatedly documented how patently false accusations are treated as true and used to separate parents from their children without any corroborating evidence.⁴ Legal scholar Jeannie Suk writes that domestic violence law, “deliberately and coercively *reorders* and *controls* private rights and relationships...not as an incident...but as its goal.” Though ostensibly criminalizing violence (which is already criminal), it results “not only in the criminalization of violence proper, but also in the criminalization of [a private citizen’s]...presence in the home.” Indeed, it amounts to the “criminal prohibition of intimate relationships in the home.”⁵

All this is clear from the literature on domestic violence itself, which is obsessed with child custody. If physical violence were indeed the problem, one would expect the principal concern to be that men are beating their wives and not being prosecuted, with custody as secondary. If duly convicted criminals are incarcerated as expected, after all, questions of child custody should not arise. Instead, the literature on domestic violence is dominated by complaints not that allegedly violent assailants are avoiding prison and walking the streets but that they are

⁴ Kiernan, Zorn

⁵

retaining custody of their children after involuntary divorce. So pointed is this complaint that custody, rather than safety, is the principal grievance concerning parents who are portrayed, without evidence or trial, as violent criminals – confirming that the alleged “batterers” have not been convicted of battering or any other crime.

This fundamental dishonesty, in turn, has provided the model for other quasi-criminal sexual accusations. Accusations of rape on university campuses follow a similar *modus operandi*. Like domestic violence, the campus rape epidemic has already been exposed as a hoax by reputable journalists and scholars.⁶ Yet all this in turn, has served as the model for more widespread accusations of “sexual harassment” and “sexual assault” – almost all of which, upon scrutiny, are largely fabricated. We have now all seen how this ploy has moved beyond the divorce courts to exert a major impact on our society and politics – including nominations to the Supreme Court. In short, the methods of @MeToo were pioneered in the divorce courts.

Restraining orders are another radical legal innovation: They do not punish criminals for illegal acts they are proven to have committed but prohibit law-abiding citizens from otherwise legal acts. “Once the restraining order is in place, a vast range of ordinarily legal behavior,” most often contact with one’s own children, is “criminalized.”³⁷ Judges can simply legislate new crimes with the stroke of a pen. “It criminalizes conduct that is not generally criminal – namely, presence at home,” writes Suk. “The protection order thus enables the creation of a crime out of the ordinarily innocent behavior of being at home.”³⁸ But it is only a crime for the recipient of the order, who can then be arrested for doing what no statute prohibits and what the rest of us may do without penalty. A parent under a restraining order becomes “the only man in the world who is specifically prevented *by law* from spontaneously seeing his children.”³⁹ Because violent

6

assault and other statutory crimes are already punishable, the protection order provides no protection, and the only people restrained from anything are peaceful, law-abiding parents who are prohibited from seeing their children. Restraining orders thus codify the presumption of guilt begun with the divorce decree and the custody order. “The order identifies the subject of the order as an abuser even if he has not been convicted,” writes Suk. Even when no evidence exists to convict him, “the protection order can provide the basis for new criminal liability on the more easily proven crime of violating the order.” The purpose of the order then is to create a criminal, and it is the order itself, rather than any violent act, that creates the crime. “Indeed, part of the reason the order exists is to be violated, so as to set in motion criminal prosecution,” Suk continues. “After all, violating the court order is a crime even if the conduct the order prohibits is ordinarily not a crime.”⁴⁰



But the most diabolical feature of the government’s divorce *apparatus* is the child support system – an engine for creating more divorce using the most repressive government machinery ever seen in America. “The advocates of ever-more-aggressive measures for collecting child support,” writes Bryce Christensen, “have moved us a dangerous step closer to a police state and have violated the rights of innocent and often impoverished fathers.”⁴¹ Author and attorney Jed Abraham describes the child support apparatus as “a veritable gulag, complete with sophisticated surveillance and compliance capabilities such as computer-based tracing, license revocation, asset confiscation, and incarceration. The face of this regime is decidedly Orwellian.”⁴²

Contrary to popular belief (and centuries of Common Law precedent), child support today has nothing to do with fathers abandoning their children, renegeing on their marital vows, or even agreeing to a divorce. It is automatically assessed on all non-custodial parents, even

those divorced over their objections who lose their children through no legal fault or agreement of their own. A legally unimpeachable parent minding his own business can lose not only his children but his property and earnings and can be incarcerated without trial. Like custody, in other words, child support has nothing to do with justice. Yet it is a punitive measure, enforced with police, courts, and incarceration, plus other, peculiar punishments.

In short, child support is no longer a method for requiring men to take responsibility for the offspring they have sired and then abandoned, as most people are led to believe. It is a regime whereby “a father is forced to finance the filching of his own children.”⁴³ And it turns children into cash prizes.

Like no-fault divorce itself, the initiative for this police mobilization came entirely from government officials. No public outcry ever preceded these measures, nor did any public perception of such a problem even exist until government officials began saying it did. The public never demanded that government take action; nor has any public discussion of this alleged problem ever been held in the national or local media. No government or academic study ever documented a nonpayment problem. Journalists did undertake a media blitz of stories on alleged nonpayment during the 1990s, but this began *after*, not before, the government campaign, which journalists never questioned. The initiative has been taken throughout by government officials and quasi-governmental interest groups, whose power has greatly expanded as a result.

Yet it is now very clear that this entire matter is largely a hoax and that what is being portrayed as irresponsible parents is in reality a massive abuse of government power. Child support is the only financial “obligation” or “debt” that most of the debtors have done nothing to incur. Economist William Comanor writes that “Child support obligations...are now treated far more harshly than any other form of debt.” Attorney Ron Henry characterizes the system as “an

obvious sham,” a “disaster,” and “the most onerous form of debt collection practiced in the United States.”⁴⁴ “The overwhelming majority of so-called ‘deadbeat dads’ are just judicially created,” says another attorney. “Because there is a lot of money to be made through that myth.”⁴⁵

Research by Comanor, Sanford Braver, and others has undermined every justification for the multi-billion dollar criminal enforcement machinery, as well as government programs to “promote responsible fatherhood.” If these scholars are to be believed – and no one has ever refuted this research – the government is engaged in a massive witch hunt against innocent citizens, and no justification exists for the huge army of enforcement agents and panoply of criminal punishments. Yet neither has any enforcement agency, public or private, ever acknowledged the accusation that they are whipping up public hysteria against a non-existent problem, let alone have they adjusted their policies.

A look at the government machinery reveals that it was created not *following* claims of widespread nonpayment but *before* them and that it was less a response to “deadbeat dads” than a mechanism to create them. Like the new divorce laws (and shortly after their enactment), the child support regulations and criminal enforcement machinery were created while few were paying attention.

Under pressure from bar associations and feminist groups, President Gerald Ford signed a law creating the Office of Child Support Enforcement in 1975, warning at the time that it constituted an unwarranted federal intrusion into families and the role of states.

In fact, the massive expansion of the child support machinery was justified not by providing for children but by recovering welfare costs. In other words, it was supposed to save taxpayers money. Yet only a tiny number of cases involve welfare; the vast majority involve

middle class divorce. For these cases taxpayers do not save money at all; in fact they lose it in massive amounts. In other words, every American taxpayer is subsidizing divorce.

Like welfare, child support provides a massive incentive for divorce. Economist Robert Willis calculates that child support levels vastly exceeding the cost of raising children creates “an incentive for divorce by the custodial mother.” His analysis indicates that only between one-fifth and one-third of child support payments are actually used for the children; the rest is profit for the custodial parent. “We believe that this recent entitlement,” write two other scholars, “...has led to the destruction of families by creating financial incentives to divorce [and] the prevention of families by creating financial incentives not to marry upon conceiving of a child.”⁴⁶ Another economic study also concluded that child support serves as “an unintended economic incentive for middle-class women to seek divorce.” “As long as the middle-income father works at a level comparable to that before [during?] the marriage,” write Kimberly Folse and Hugo Varela-Alvarez, “divorce can be attractive, or at least economically rewarding for her.” This simply extends well-established findings that increased welfare payments result in increased divorce.⁴⁷ In this case, however, a dimension of law enforcement is added, which becomes effectively a system of federal divorce enforcement. “Enforcement...is the critical variable in the choice dilemma because it represents a greater surety in the assessment of the probability of attaining rewards,” write Folse and Varela-Alvarez. “Strong enforcement, while it is an agreed upon societal goal to protect children, may, in fact, lead to class-based micro-level decisions that lead to the unintended consequence of increasing the likelihood of divorce.”⁴⁸ In other words, a mother can simply escape the uncertainties, vicissitudes, and compromises inherent to life shared with a working husband by divorcing, whereupon she acquires the police as a private collection agency who will force him, at gunpoint if necessary, to pay her the family income that she then

controls alone. At a time when governments are ostensibly trying to strengthen marriage, Christensen describes “the linkage between aggressive child-support policies and the erosion of wedlock.” “Because the politicians who have framed such [child support] policies have done nothing to reinforce the social ideal of keeping children in intact families," he explains, "they have – however unintentionally – actually reduced the likelihood that a growing number of children will enjoy the tremendous economic, social, and psychological benefits which the realization of that ideal can bring.”⁴⁹

While these writers diplomatically suggest that these effects are unintentional, this is not likely. No-fault divorce released women legally from their marital vows but gave them no means to finance their new liberation; alimony was too obvious an inconsistency for women who were ostensibly free and financially independent. Children provided the leverage. The effect of unilateral divorce combined with the new child support laws has been to underwrite forced divorce, rendering it a very lucrative enterprise not only for mothers but for other interests such as state governments, whose fiscal solvency depends on the creation of fatherless children. “By allowing a faithless wife to keep her children *and* a sizable portion of her former spouse’s income,” writes Christensen, “current child-support laws have combined with no-fault jurisprudence to convert wedlock into snare for many guiltless men.”⁵⁰

Smooth:

Child support set at onerous and even impossible levels brings several benefits for government officials:

-
1. The higher the child support payments the more mothers are incentivized to divorce, increasing business for judges, lawyers, and others.
 2. High payments bring more federal tax dollars to state government coffers, which are used to pay courts’ expenses and augment salaries.
 3. Onerous payments criminalize more fathers, justifying higher budgets and salaries for the enforcement officials.
-

Not surprisingly, the child support machinery is riddled with conflicts-of-interest and corruption. Guidelines are set not by elected legislators but by enforcement officials who have a professional interest in making them as burdensome as possible. This obvious conflict-of-interest also violates the most basic principles of American constitutional government: the separation of powers.

Judges can order almost any amount in child support, and they have a self-interest in setting it high...

Child support can be collected from not only fathers but almost anyone: men who are not fathers, second wives, grandparents, even the children for whom the support is being paid can find their bank accounts emptied.

Men are forced to pay child support for children who are not theirs and even for children that never existed. Multiple adults pay child support for the same children. Parents in intact marriages must pay child support to children in the 40s and 50s. Children even pay child support to adults.

Cut:

Finally, governments now assume a vast array of intrusive powers not only over involuntarily divorce parents but over all private citizens in the name of collective child support. Governments monitor and collect data on all private citizens in the name of collecting child support. In addition to automatic wage garnishing from all child support obligors even before they become “delinquent,” federal law now compels every employer in the nation to furnish personal information on all new employees to the federal government to enforce child support orders.⁵¹ “Never before have federal officials had the legal authority...to locate so many Americans found [*sic*] to be delinquent parents – or such potential to keep tabs on Americans accused of nothing,” observes the *Washington Post*.⁵² This Directory effectively annexes the personnel offices of private companies as administrative agents of the government, forcing employers “to moonlight as unpaid police,” in the words of *Forbes* magazine.

Even officials themselves invoke Orwellian imagery. “This is real Big Brother stuff,” comments an official in Utah.⁵³ One Kansas legislator called the federal directives “extortion,”⁵⁴ and colleagues in Nebraska described them as “a form of blackmail.”⁵⁵ Employers who fail to devote company resources to register their employees can themselves be fined and arrested.

Federal efforts are now underway to turn community organizations such as youth groups and churches into informers. Ostensibly promoting marriage, the Bush administration dispersed grants to faith-based groups for child support enforcement.⁵⁶ The United Way solicits on behalf of the Texas attorney's general office for children as young as fourteen to serve as enforcement agents.⁵⁷

In short, by shifting blame from the parent who violates a legal agreement to the deserted parent's imputed and often concocted financial "obligation," a parent whose spouse walks out without any legal grounds becomes liable for arrest if he cannot afford horseback riding lessons.⁵⁸

Once one fully understands how the child support system creates criminals, it becomes very clear that it is a textbook example of the worst horrors of bureaucratic government, creating the very problem it claims to solve. With each plundered parent comes the demand for more courts, more lawyers, more bureaucracy, more plainclothes police and private agents to "pursue" him – and to seize more children, plunder more parents, and turn them too into impecunious "deadbeats."



All this is reminiscent of the "Absurdistan" created in Communist Eastern Europe. Survivors of those totalitarian dictatorships readily perceive the similarity. Bogumila and Jerzy Koss compare New York's family courts to the bureaucratic tyrannies they knew in Poland. "As children we lived through Nazi horror, then through Communist occupation," they write, "and now, in the United States, the 'Land of the Free,' we are persecuted by judicial tyranny."⁵⁹ But in contrast to Nazi and Stalinist regimes, which used children as one weapon among many, today in the Western democracies children and families have become the central object of government policy, and parents rather than dissidents have become the targets. After experiencing American

family law, Romanian dissident Mihai Muset gained a new perspective on totalitarian justice under communist dictator Nicolae Ceausescu, by whose regime he had been arrested for a protest. "I was sentenced to two months in prison," he recalled, "but at least I got to appear in court and talk to the judge. That's more than I got in family court."⁶⁰

4. Spreading the Effect

Finally, many innovations of divorce law are spreading to other areas of the law and especially into international legal conventions, with the most far-reaching consequences. The formula requiring courts to decide the “best interest of the child” when implementing custody decisions, which shifts authority over children from parents (even innocent ones) to the state, has been used to rationalize removing children from single parents and even intact families (without trying them for any crime), and it has been codified in the UN Convention on the Rights of the Child (CRC). This international treaty not only removes from all parents – on a global scale – the authority over their children, but also effectively eliminates the sovereign authority of every government below the level of the United Nations: from parents themselves, through local, state, and national governments, to the United Nations itself. After stripping the authority and protections of parents from their children, it then strips the rest of us of the authority and protection of our governments, leaving all exposed to unmitigated power of the UN. “The Convention challenges the concept that family life is always in the best interests of children and that parents are always capable of deciding what is best for children” writes one scholar.⁷ As divorce law does domestically, Article 9 of the CRC permits government functionaries to remove children from their parents not on the basis of proven abuse or neglect but on their simple judgement that a different arrangement is in “the best interests of the child.” Michael Farris observes, “If this treaty becomes binding, all parents would have the same legal status as abusive parents, because the government would have the right to override every parental decision if it

⁷ Quoted in Farris, “Nannies,” 107.

deemed the parent's choice contrary to the child's best interest."⁸ This is precisely the status divorced parents now have, abusive or not (and voluntary or not). Non-abusive parents in intact marriages who think they and their children are safe from government intervention should think again.

Likewise, the subjective element in divorce law – the principle that the will of the litigant who files for divorce is sovereign law because a marriage has “irretrievably broken down” if he or she says that it has, and that no other consideration matters – is being incorporated into human rights law in the European Union. The proposed Equal Treatment Directive will allow anyone who is “offended” by others’ beliefs or who believes that they have been “harassed” or made victims of “discrimination” to sue without having to provide any objective proof that any such thing has happened. In other words, being “offended” makes the offender guilty by definition, feeling “harassed” makes the accused a “harasser,” and believing that one is a victim of “discrimination” makes another party guilty of discrimination.

Much as divorce law allows one spouse to sue another without having to show that the other is guilty of any objective grounds of legally recognized wrongdoing (and to profit financially from the suit), so human rights law will allow those who consider themselves “offended,” “harassed,” or “discriminated” against to sue other people without having to present any objective evidence to indicate that they have been. Further, much the way the divorcing spouse can then profit financially by collecting generous awards of spousal support and child support from an innocent spouse, so the offended or self-styled harassed can collect rich financially rewards from those accused, but not proven, to have done the offending. And just as it is impossible to defend oneself in divorce court from the accusation that one's marriage as

⁸ Michael Farris, “Parental Rights: Why Now is the Time to Act,” *The Home School Court Report*, vol. 22, no. 2 (March-April 2006).

“irretrievably broken down,” so now in human rights law, it is impossible to defend against an accusation of offending someone. One is guilty by virtue of being accused. “The Directive is...drafted in a way that everybody could be found guilty of ‘discrimination’ at any time,” writes one analyst. “The creation of general legal uncertainty that puts everybody under threat of legal persecution.”²⁸

The vagary turns the law into a weapon for whoever is able or willing to be the first to take advantage of it. According to Christian Concern, “The ambiguous language of the harassment provision fails to provide the public with adequate notice of the kind of conduct that is prohibited by the law.”²⁹ Everyone is guilty from the moment they are accused. As with the “no-fault” principle, the distinction between justice and injustice is erased from the law, leaving it simply a weapon in the competition for power, a bludgeon with no moral or ethical grounding available to whoever has better access to the legal machinery for use against whomever they choose.

Thus the presumption of innocence is inverted and the burden of proof placed on the accused to prove his innocence, not on the accuser to prove his guilt: “It shall be for the respondent [the accused] to prove that there has been no breach of the prohibition of discrimination,” reads the Directive. Christian Concern comments: “The burden of proof shifts to the accused, who must then prove a negative (...that the alleged expression did not create an offensive environment as perceived by his or her accuser).”³⁰ This is patently impossible and, again, amounts to guilt by accusation. The accuser determines the guilt of the accused simply by his or her state of mind. “Under the Directive . . . a violation nonetheless exists if the accuser perceives the requisite offense.”³¹ Kuby writes similarly:

⁹ Kuby

whoever is accused of ‘discrimination’ must prove his innocence, whereas any person claiming to have been a victim of discrimination is automatically presumed to be one. The reversal of proof puts the defendant into a trap from which there is no escape: it is impossible for him to disprove that something has had the effect of ‘intimidating’ or ‘offending’ the victim (because that solely depends on the victim’s subjective perception). At the same time, it is also hardly possible for the defendant to disprove the Directive’s legal assumption that he acted the way he did solely out of a prejudice against the plaintiff’s religion, belief, disability or sexual orientation.³²

The law becomes a shakedown, because the accuser may then demand to be paid virtually any sum from the accused. Being offended brings lucrative payoffs, and being offensive means ruin. Since failure or inability to pay can mean incarceration, criminalization is the next step in this ostensibly “civil” process. With striking resemblance to the divorce system on whose principles it is clearly (and perhaps consciously) modeled, the law becomes an extortion racket, in which hurt feelings can be avenged with plunder and prison. This obviously creates yet more financial incentives to bring as many accusations as possible, creating another windfall for lawyers, who can then pressure courts to reward accusers with generous payoffs. One amendment proposes paying the legal fees of accusers while leaving the accused to pay for their own defense.

The Directive also creates new armies of civil servants who can justify and finance their own existence by generating complaints and lawsuits (“promotion of equal treatment”). Governments must create new functionaries to provide “independent assistance to [alleged?] victims of discrimination in pursuing their complaints.” As Kuby observes, these officials will mount legal cases in the names of the alleged victims and assume (and then recoup) the legal costs. No officials are created to assist or protect the accused. Private groups may even launch legal complaints in the name of alleged victims and share in the spoil. “Any NGO, who has the necessary financial power, could henceforth accuse alleged offenders and appear in court as

complainant although the presumed discriminatory behavior is not directly related to them,” says Kuby. Such groups may then figure their own “costs” into the inevitable award, creating a risk-free invitation to loot anyone whose views “offend.” “This possibility of litigating at no cost and no risk will, in conjunction with the reversal of the burden of proof, further encourage frivolous [but lucrative] litigation.”³³ This is not equality; it is thievery.

The Directive also penalizes discrimination based on “age,” without specifying what this means. Because it can include children, it can probably be used against parents. Though children are not bound by contracts, they could potentially sue their parents for “discrimination.”

It is difficult to imagine a more draconian prescription for suppressing freedom of expression and enriching those intent on doing so. In what amounts to a *coup d'état*, comparable to the Nazi Enabling Law, the proposed Article 13 provides that all existing law deemed contrary to the vague “principle of equal treatment” are summarily repealed: “any laws, regulations, and administrative provisions contrary to the principle of equal treatment are immediately abolished.” Any unguarded comment will become grounds for a crippling suit by anyone who chooses to take offense – or to make a quick profit. “When a law vaguely regulates free expression, as does the Directive, an ominous chill on the exercise of fundamental freedoms accompanies its implementation. The chill is especially bitter when an accused faces unlimited monetary sanctions, as one does under the Directive,” argues Christian Concern. “Compelled by the piercing chill of an unpredictable financial penalty, members of the public cease to exercise their basic liberties. They fear to assemble, pray, preach, worship, or even speak.”³⁷ The very method by which this measure is being enacted reflects a culture of censorship. It is being negotiated in secret at the EU, and requests for documents by citizen groups have been denied. Christian Concern’s apocalyptic scenario is not far-fetched: “Those with an anti-Christian

agenda will wield a weapon capable of extinguishing Christian expression in Europe.”³⁸ If not all dissenting expression.

Finally – and this cannot be emphasized enough, especially for Christians who now claim persecution – it is striking how much of this *modus operandi* originated in Anglo-American divorce law: the vagary and nebulosity of the transgression, the central role of the accuser’s subjective “feelings,” the presumption of guilt against the accused, the power of the accuser to loot the accused through civil procedures that require no concrete proof, the ease with which a “civil” matter turns into incarceration without trial – all this was put in place by feminists for use against parents, fathers, and men, while Christians (who once claimed authority over marriage and in whose churches the marriages often took place) steadfastly look the other way. As Pastor Martin Niemoeller famously warned, those who hold their tongues as others are led away in handcuffs will have no one to speak out when the persecutors come for them.

[Footnotes in *NPOS*, #24-#38.]

¹ Judy Parejko, "No Fair Process in Divorce Laws," *Middletown Journal*, 27 January 2004.

² Quoted in Bruce Hafen, “Children’s Liberation and the New Egalitarianism: Some Reservations about Abandoning Youth to Their ‘Rights.’” *Brigham Young University Law Review* (1976), pp. 615-616.

³ *Parham v. J.R. a Minor*, 422 US 584, 602 (1979).

⁴ Daniel Patrick Moynihan, *The Negro Family: The Case for National Action* (Washington: United States Department of Labor, March 1965).

⁵ Wade Horn and Tom Sylvester, *Fathers Facts* (Gaithersburg: National Fatherhood Initiative, 2002), pp. 15, 26.

⁶ Patricia Morgan, *Farewell to the Family* (London: Institute of Economic Affairs, 1999), pp. 189-190.

⁷ Attempts to attribute these behaviors to poverty or racial discrimination have been refuted by studies that control for these variables. See Urie Bronfenbrenner, “Discovering What Families Do,” in David Blankenhorn, *et al.* (eds.), *Rebuilding the Nest: A New Commitment to the American Family* (Milwaukee: Family Service America, 1990), p. 34; Ronald Angel and Jacqueline Angel, *Painful Inheritance: Health and the New Generation of Fatherless Children* (Madison: University of Wisconsin Press, 1993), p. 188. Even left-wing scholars concur: Norman Dennis and George Erdos, *Families Without Fatherhood* (London: Civitas, 2000).

⁸ Horn and Sylvester, *Father Facts*, p. 15.

⁹ *Father Facts 6* (Germantown, Maryland: National Fatherhood Initiative, 2011). Attempts to attribute these behaviors to poverty or racial discrimination have been refuted by studies that control for these variables. See Urie Bronfenbrenner, "Discovering What Families Do," in David Blankenhorn *et al.* (eds.), *Rebuilding the Nest* (Milwaukee: Family Service America, 1990), 34; Ronald Angel and Jacqueline Angel, *Painful Inheritance: Health and the New Generation of Fatherless Children* (Madison: University of Wisconsin Press, 1993), 188; Norman Dennis and George Erdos, *Families Without Fatherhood* (London: Civitas, 2000).

¹⁰ Elaine Ciulla Kamarck and William Galston, *Putting Children First* (Washington: Progressive Policy Institute, 1990), p. 14.

¹¹ See the chilling list of private matters into which family courts regularly delve in Jed H. Abraham, *From Courtship to Courtroom* (New York: Bloch, 1999), pp. 49-52.

¹² Abraham, *From Courtship to Courtroom*, p. 58.

¹³ John Caher, "New York State Law Review Commission Ponders Parent-Child Privilege," *New York Law Journal*, 9 November 2000.

¹⁴ See chapter 4.

¹⁵ Miriam Altman, "Litigating Domestic Abuse Cases under Ch. 209A," *Massachusetts Lawyers Weekly*, 23 October 1995, p. B6.

¹⁶ "Enforcement of Protective Orders," U.S. Department of Justice, Office for Victims of Crime, Legal Series, Bulletin #4, January 2002, p. 2.

¹⁷ Teresa Myers, "Case in Brief: Courts Uphold Criminal Penalties for the Failure to Pay Child Support," NCSL internet site (<http://www.ncsl.org/programs/cyf/Criminalnon.htm>, accessed 28 August 2001).

¹⁸ Citing *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994); *U.S. v. Ballek*, 1999 WL 125955, 9th Cir. (Alaska), 11 March 1999 (emphasis added).

¹⁹ Citing *Black v. Division of Child Support Enforcement*, 686 A.2d 164 (Del. 1996).

²⁰ *2004 Green Book*, House of Representatives, Ways and Means Committee Print WMCP:108-6, U.S. Government Printing Office Online via GPO Access, section 8 (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_green_book&docid=f:wm006_08.wais).

²¹ Kevin Landrigan, "Lacking Support, Judicial Nominee Abandons Bid," *Telegraph* (Hudson, New Hampshire), 26 July 2001. See also Helen M. Alvare, "Types and Styles of Family Proceedings," Report of the United States to the XII World Congress, International Association of Procedural Law, 2003, pp. 1, 10.

²² "Virginia Shames Deadbeat Parents with Car Boots," Associated Press, 24 January 2000.

²³ Associated Press, "A County Will Put Pressure on Debtors," *Detroit Free Press*, 21 January 2001.

²⁴ Angela Rozas, "Web Site Doesn't Shame Deadbeats," *Times-Picayune*, 3 July 2000.

²⁵ See *Brzonkala v. Morrison* 529 U.S. 598 (2000). *U.S. v. Faasse*, No. 98-2337 (6th Cir., 14 September 2001) has held that child support enforcement, a police function, is "interstate commerce." See also, *US v. King*, No. 01-1141 (2nd Cir., 3 January 2002).

²⁶ *Congressional Record*, 7 September 2000, p. H7315.

²⁷ *Moss v. Superior Court*, 17 Cal. 4th 396, 950 P.2d 59 (Cal. 1998).

²⁸ *Pollock v. Williams*, 1944. 322 U.S. 4, 18.

²⁹ Yet the courts have upheld the law: *U.S. v. Rose*, 153 F.3d 208 (5th Cir. 1998); *U.S. v. Black*, 125 F.3d 454 (7th Cir. 1997); *U.S. v. Crawford*, 115 F.3d 1397 (8th Cir. 1997); *U.S. v. Hampshire*, 95 F.3d 999 (10th Cir. 1996); *U.S. v. Muench*, 153 F.3d 1298 (11th Cir. 1998). *U.S. v. Mussari*, 152 F.3d 1156 (9th Cir. 1998) held otherwise.

³⁰ *Foretich v. District of Columbia*, Office of the Mayor, No. 02-5224 (D.C. Cir., 16 December 2003).

³¹ *Butler v. Commonwealth*, 132.Va.609, 110 S.E. 868 (1922).

³² Leslie Harris, *et al.*, "Making and Breaking Connections Between Parents' Duty to Support and Right to Control their Children," *Oregon Law Review* 69 (1990), p. 711. "Under the parental autonomy principle, parents generally may decide, free from government supervision, at what level and by what means they will support their children." *Ibid.*, p. 689.

³³ "The New Star Chamber," *Rutgers Law Review*, vol. 57, no. 3 (Spring 2005), p. 1009.

³⁴ "Transforming A Flawed Policy: A Call To Revive Psychology and Science in Domestic Violence Research and Practice," *Aggression and Violent Behavior* 11 (2006), p. 478. "In examining research on battery, one sees that respected medical periodicals uncritically indulge the feminists in their inflammatory tendencies. . . . Medical journals have dropped their usual standards when reporting findings of the battery studies." Christina Hoff Sommers, *Who Stole Feminism?* (New York: Simon and Schuster, 1995), pp. 202-203.

³⁵ Online: <http://www.usdoj.gov/ovw/domviolence.htm>, accessed 24 August 2006.

³⁶ Ann Tackett, *Tackling Domestic Violence: The Role of Health Professionals* (London: Home Office, 2004), p. 1.

³⁷ Cathy Young, *Domestic Violence: An In-Depth Analysis* (Washington: Independent Women's Forum, September 2005), p. 22.

³⁸ "Criminal Law Comes Home," pp. 17, 21.

³⁹ Warren Farrell, *Father and Child Reunion* (New York: Tarcher/Putnam, 2001), p. 198

⁴⁰ "Criminal Law Comes Home," pp. 21, 54.

⁴¹ Bryce Christensen, "The Strange Politics of Child Support," *Society*, vol. 39, no. 1 (November-December 2001), pp. 63-64.

⁴² Abraham, *From Courtship to Courtroom*, pp. 154-155.

⁴³ Jed H. Abraham, *From Courtship to Courtroom* (New York: Bloch, 1999), p. 151.

⁴⁴ William S. Comanor, "Child Support Payments: A Review of Current Policies," p. 3, and Ronald Henry, "Child Support Policy and the Unintended Consequences of Good Intentions," p. 135, both in Comanor (ed.), *The Law and Economics of Child Support Payments* (Cheltenham: Edward Elgar, 2004).

⁴⁵ C. Jesse Green, interview with Michael E. Tindall, *Michigan Lawyers Weekly* (<http://www.michiganlawyersweekly.com/loty2000/tindall.htm>, no date, accessed 1 May 2002).

⁴⁶ Robert J. Willis, "Child Support and the Problem of Economic Incentives," p. 42, and Robert A. McNeely and Cynthia A. McNeely, "Hopelessly Defective: An Examination of the Assumptions Underlying Current Child Support Guidelines," p. 170, both in William S. Comanor (ed.), *The Law and Economics of Child Support Payments* (Cheltenham: Edward Elgar, 2004).

⁴⁷ Saul Hoffman and Greg Duncan, "The Effects of Incomes, Wages, and AFDC Benefits on Marital Disruption," *Journal of Human Resources* 30 (1995), pp. 19–41; Lowell Gallaway and Richard Vedder, *Poverty, Income Distribution, the Family and Public Policy* (Washington: Government Printing Office, 1986), pp. 84-89.

⁴⁸ Folse and Varela-Alvarez, "Long-Run Economic Consequences," pp. 274, 283, 284.

⁴⁹ "Strange Politics of Child Support," pp. 67, 63.

⁵⁰ Christensen, "Strange Politics of Child Support," p. 65 (original emphasis).

⁵¹ Welfare Information Network (WIN), "Innovations in Child Support Enforcement," *Resources for Welfare Decisions* (<http://www.welfareinfo.org/sachsmarch.htm>; accessed 28 September 2001).

⁵² Robert O'Harrow, "Uncle Sam Has All Your Numbers," *Washington Post*, 27 June 1999, p. A1.

⁵³ Brigid McMenamin, "Payroll Paternalism," *Forbes*, 16 April 2001.

⁵⁴ Robert Boczkiewicz, "State Fighting Feds in Appeals Court," *Topeka Capital-Journal*, 22 January 2000. Confirmed in an interview with Assistant Attorney General M.J. Willoughby, 3 October 2001. The suit failed in both district and appeals court: 24 F. Supp. 2d 1192 and 214 F.3d 1196.

⁵⁵ Christensen, "Strange Politics of Child Support," p. 69.

⁵⁶ Stephen Baskerville, "The Federal Bureau of Marriage?" *Liberty*, July 2003.

⁵⁷ Online: <http://www.volunteersolutions.org/unitedwaysatx/org/opp/247311.html>, accessed 21 November 2004.

⁵⁸ *Wilson v. Wilson*, 18 Va. App. 193 acknowledged the "wife's fault in leaving husband" but ruled it irrelevant in a support award from the involuntarily divorced husband, who was also ordered to pay the fees of an attorney he had not hired. On the other hand, "horseback riding for the child" was ruled relevant.

⁵⁹ Private correspondence.

⁶⁰ Quoted in John Tierney, "An Imbalance in the Battle over Custody," *New York Times*, 29 April 2000.