

OF DIVORCE, CHILDREN AND NATIONAL POLICY

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"It takes a whole village to raise a child."
- African Proverb

The family has often been described as the "cornerstone" of society. The family remains the unit best suited to providing the love, emotional support, caring and instruction children need to survive and to become healthy, happy citizens. Although the composition of families continues to change, families are the source of our roots. Just as trees need roots to make them sturdy and tall, children need roots to develop into caring, productive adults. Today, however, the roots are being pulled out in all sorts of ways. As the roots die, our society crumbles.

American families today are in trouble. Signs of the problems are everywhere. The United States has some of the worst statistics on family problems of all of the industrialized societies, including the highest divorce rates, highest incidence of drug and alcohol abuse, highest rate of adolescent pregnancy, school drop outs, juvenile crime, intrafamily violence and adolescent suicide.

The National Center for Health Statistics in 1989 found that emotional and behavioral problems have become the new morbidity affecting 10 million children. The major factors contributing to these problems were dysfunctional families resulting from either divorce; children born out of wedlock; intrafamily conflict; single parent households with low income and low education levels; or mental defects incurred at birth.

The federal government lacks a comprehensive, coordinated and integrated family policy. Work and family issues are intertwined with a nation's perspective on the importance of children in society. We have no such policy. Congress traditionally has talked much and done little to focus on the needs of the American family. Some say we provide less support for families than any other industrialized nation in the world except South Africa.

In the past twenty-five years, there has been an increasing federalization of the law which has had an enormous impact on the family. Federalization has come about through decisions of the United States Supreme Court and through federal legislation that preempts state action in some areas.

As part of the New Deal programs in the 1930s, Congress established the "Aid to Families with Dependent Children" program, mainly to support children whose fathers had died. The numbers of those needing assistance grew rapidly. Within twelve years of the program's inception, the majority of those seeking welfare were single mothers with children whose fathers were alive but absent from the home. So the first child support initiatives began. Because of state reliance on federal monies to operate the welfare system, the federal government has been able to dictate activities once run by the states, especially in the establishment and enforcement of child support.

Here is just a sampling of the type of federal legislation that has changed the face of family law: Social Security Act and amendments (established IV-D agencies in every state); Child Support Enforcement Amendments of 1984 (expedited process for establishing and enforcing support orders, wage withholding and advisory child support guidelines); Family Support Act of 1988 (presumptive child support guidelines, mandatory withholding after 1994 and periodic modifications of both guidelines and support); Bankruptcy Code of 1979 and amendments; Medicaid; Tax Reform Act of 1984; COBRA, the Consolidated Omnibus Rehabilitation Act of 1986 (extended dependent health care benefits); Employment Retirement Income Security Act (ERISA); REA, the Retirement Equity Act (spouses can reach retirement benefits in qualified plans); and the PKPA, the Parental Kidnapping Prevention Act of 1980 (full faith and credit to other state custody decrees).

Within the same time period, the United States Supreme Court has recognized the right to individual and marital privacy; upgraded the status of children born out of wedlock; afforded children in delinquency proceedings some of the same rights as adults; stricken regulations that discriminated on the basis of gender; and protected family autonomy.

Most federal legislation has been like a patchwork quilt to cover perceived holes in the existing system. Supreme Court decisions have reflected societal attitudinal changes. But are the fragmented laws and decisions helping or hurting the institution of the family? The continuing high divorce rate, the rise in out-of-wedlock births and the mobility of today's society continue unabated. The instability of the family, increasing societal ills and the impoverishment of children call out for a new comprehensive approach.

The legal and social changes that have taken place pose chal-

lenges for us as individuals and collectively as educators and as a society. To begin the development of new policies, we need to examine some of the current conflicts presented by our society.

Most Families Do Not Fit the Traditional Model

Robert Frost said, "Home is the place where, when you have to go there, they have to take you in."

We continue to carry this image of home as the refuge from the worries of the world where mom will be in the kitchen waiting with freshly baked cookies and milk when you return from a hard day. Home where you go for peace, quiet and reassurance.

To quote Roseanne Barr, "Get real." Many homes more closely resemble the Bermuda triangle.

Less than 15 percent of today's American families meet the model of one wage earner, stay-at-home wife and two children. Single parent families and two-working-parent families constitute the majority. Working wives and mothers have increased from 5 percent in 1890 to 35 percent in 1965, and to 64 percent in 1990. Seventy-five percent of all divorced women work. The Census Bureau tells us that half of mothers with children under three work outside the home.

Inflation has made two-income families a necessity. The basic American middle class package of home, car, food, health insurance and education has skyrocketed in the past twenty years. House prices have quadrupled since 1975. Car prices have at least doubled. Monthly health insurance payments today are larger than the size of the house payment for a house purchased in the 1970s. A college education at any of the nation's top schools can cost a family \$14,000 + per year. Federal taxes are higher for three out of four people today than they were in 1977 because of tax "reform." Families have less money to spend because taxes and inflation have more than made up for gains in income.

Teenage pregnancy and divorce have created a large increase in the number of single parent households. Ninety-one percent of children lived with two natural parents in 1955; only 75 percent did in 1985. Twenty-four percent of children live with one parent, usually the mother. Forty percent of children living in female headed households fall below poverty level. Children are the new poor. Studies show that behavioral problems in school are two to three times higher for children in single parent homes or families with a stepparent. (*Scholastic Update*).

Seventy percent of divorced persons remarry. An assortment of stepparents, step-siblings, live-ins or other persons may come and go. These blended families create a different set of problems with jealousy, discipline, the potential for abuse and fear of attachments.

Much post-divorce litigation today occurs because a custodial parent remarries and wants to move the children to another state because of a new spouse's job.

In single-parent and two-working-parent households, who is watching the children? Far too often no one. Day care costs average over \$2,000 a year. One report indicates that most teenage girls get pregnant at 4:00 o'clock in the afternoon. Many children go home to an empty house and are alone from one to three hours. The term "latch key" kids has come into common usage. Some single parents work nights. Television, Nintendo or gangs have taken over the free time of many children who have no family structure and too much time to kill.

The intact family has become isolated from extended family and old friends. We have become, as was predicted, a "nation of strangers." Families no longer live where their parents did. The average family moves every three or four years. Family and friends are strewn geographically across the nation. People may not even learn their neighbors' names. Children have little time to form lasting attachments. A child may change neighborhoods and schools several times during childhood. AT&T wants you to "reach out" and MCI has a special plan to call friends and family. Telephone contact cannot substitute for grandma or grandpa being able to help out in an emergency or for a friendly neighbor.

The frantic pace of life places incredible stress on families. Lack of money is a constant problem. In two-parent families, both parents are tired when they get home from a day at work. Repeated studies show that women still do the majority of the housework and child care. In single-parent households, the stress is magnified. The average family has a child care crisis every three months. Inadequate child care leads to absenteeism and loss of productivity. Everyone wants an old fashioned "wife" to bake bread, wash and iron the clothes and keep the house in order.

Colorado Representative Patricia Schroeder said, "I think the average American family feels like a little hamster in a wheel. You run and you run and at the end of the year you are still in the box on the wheel and your tongue is hanging out." In July President Bush announced that the recession was over. Tell that to the average American family whose tongue is still hanging out.

Society Assesses Worth by Job and Productivity

Ten years ago a law professor noted that employment relationships were replacing family relationships in importance (Glendon). One recent report indicates that many people are spending an average of twelve hours a day on the job. What does this say about the importance of the job versus the importance of family? Look at what we value in society in terms of dollar rewards. Who earns

more, a professional athlete or a teacher? A pediatrician or a surgeon? A child care worker or an engineer? A family lawyer or a corporate lawyer? Those who deal with families are at the bottom of the financial rewards list.

Law professor Harry Krause says, "Easy come, easy go marriage and casual cohabitation and procreation are on a collision course with the economic and social needs of children."

Getting married and having children do not have the same priority for many people today as twenty years ago. With the instability of marriage, more women choose careers because the potential economic risks of choosing home and family are too great. A recent newspaper article reported that the marriage rate has hit a twenty year low. Over 2.3 million people cohabit instead of marry. Twenty percent of children are born out of wedlock.

Family size has declined to one to two children from the seven or eight children of the 1890s. Effective birth control and the mutual risk of divorce prevent many couples from having children. The yuppie generation has seen an increase in wealth and its standard of living that would be reduced by children. DINKs—dual income, no-kids couples are becoming common. With so many people choosing not to have children, children are not a high priority. They are viewed as other peoples' problems. Look at the number of school bond issues that fail!

National, and now international, corporations continue to exacerbate the problems for families. To advance in corporate America may require several geographical moves which contribute to the rootlessness and isolation of many families. Extensive traveling is part of many jobs.

Add to other work related pressures the fact that the standard vacation time of two weeks pales in comparison with other Western countries. The time may not even coincide with children's school vacation schedules. Most Western European nations give everyone five weeks of vacation a year—at the same time!

Conflict Between the Dream and Reality of Marriage

Americans continue to romanticize the institution of marriage and perpetuate the myth of finding *the* perfect mate. A spring, 1991 magazine article tells us brides are back to "romantic" marriages. The Cinderella complex lives on. Romance novels sell millions of dollars a year. Most romance novels, however, stop after the courtship.

Anyone who has been married for any length of time knows that "happily ever after" does not come without work. A good marriage requires communication, compromise and compassion. Marriage brings to mind the description of life given by the grandmother in the movie, *Parenthood*,—a roller coaster ride. There may be some

lows, some fears but also some thrills and incredible highs if you just hang on.

The romanticization of marriage and the different functions families perform today have led to rising expectations of happiness in marriage. In earlier times, marriages were arranged for political and economic purposes. As recently as the 1950s marriage was one of the few career options open to women. Happiness in marriage then was not seen as a goal, but as a by-product. Today, spouses choose each other and to be married. A spouse is expected to make the other "happy."

If a person is not "happy," he or she often obtains a divorce and seeks a new partner or a new lifestyle. The parent's pursuit of happiness, however, may conflict with a child's need for security and cause the child much turmoil and unhappiness. Perhaps the real irony is that recent studies indicate that getting divorced does not make people that much "happier." Only about half of both men and women were happy with their lives ten years following divorce. Two-thirds were not any happier or were unhappier than they were before divorce (Wallerstein and Blakeslee).

While people seem to think they have a right to be happy all the time, that is not the natural state of affairs (Peck). People need to have more realistic views of what marriage and relationships entail before going into them.

Society's 'Disposable Mentality'

We still adhere to a religious tenet that says "'til death do us part," but our society is geared toward throwing away things that are not working rather than repairing them. In spite of the marriage vow language, there is no longer a cultural consensus of marriage until death.

The most dramatic change in family life that has occurred since 1960 is that one half of all marriages end in divorce. The statistics indicate that divorces have tripled since 1965 (475,000) to 1,200,000 in 1990. The social stigma attached to divorce has declined partly due to the sheer volume and partly because of the relaxation of the grounds for divorce by adoption of "no fault" statutes.

We have a legal system that allows virtually unilateral divorce when one party wants out of the relationship. What begins as a mutual contract can be ended unilaterally. Instead of trying to fix the old relationship, people seek a new one. This leads to serial monogamy as people keep searching for "newer and better" without finding out what went wrong in the past.

Half of these divorces, however, involve minor children so that family members are subject to court jurisdiction throughout a child's

minority. The disposable mentality too often has resulted in no continued economic responsibility for children or a former spouse.

The 'Win-at-any-Cost' Mentality

Knute Rockne said winning is everything. Many believe that might makes right. This approach may work for athletic contests, but it does not work well with divorce and child custody cases. Child custody cases are not like the traditionally adversarial tort actions in which one is trying to ascertain what happened at some time in the past. Instead, the custody battle involves an attempt to predict the future—with which parent will this child have the best chance to develop into a caring, productive adult?

No one really “wins” the battles in a divorce case. There are only degrees of losing. The spouses lose, their children lose and society loses.

As the lawyer in the movie, *War of the Roses*, said, “Civilized divorce is a contradiction in terms.” How true! We may no longer fight over the grounds for divorce, but we have escalated the battles over property, support and, most importantly, children. When divorce was rare, most child-centered issues were resolved in the family rather than the court. The federal mandate of child support guidelines and enforcement of support has increased battles over custody of children to avoid financial responsibilities.

Most contested custody cases focus on the rights of parents to see and be with their children rather than the “best interests of the child.” In 90 percent of contested cases, the parents are represented, but their child is not. Many parents are demanding joint custody. Is joint physical custody really good for the child or just an excuse for a parent to manipulate and “win?”

Parents sometimes insist on “equal time” even in situations in which, from the child’s perspective, it is hard to justify the schedule. A nine-year-old child whose parents live in different states, such as Kansas and California, ends up changing schools in January of each year because her parents share joint physical custody. A Louisiana court reversed a custody arrangement to transfer a two-year-old weekly between the mother’s house in Louisiana and the father’s house in Texas! (*Bishop v. Bishop*).

Two recent studies conclude that frequent access and conflict lead to increased behavioral problems with children after divorce (Johnson, Kline and Tschann). Some psychiatrists stress the need for one decision maker (Goldstein, et al.). Courts and attorneys need to be aware of the social science data. The focus needs to shift from protecting parents’ rights (Schepard) to truly promoting the children’s interests.

The standard “best interests of the child” too often equates to eco-

conomic interests rather than emotional interests. Federal policies enforcing child support obligations and interstate collection mandates aim at lessening the welfare roles. Finances are but one aspect. The system gives too little consideration to the noneconomic, ethical components. People need to be taught to assume responsibility for their own actions and behavior and how to resolve conflicts in a humane, fair manner that allows everyone to preserve dignity and protects the children involved.

Easy Divorce, Failure to Provide Support Services

Legally, divorce is a single event with a judge decreeing that the marriage is at an end. But the decree does not resolve the emotional, economic, parent-child or social aspects that must be resolved. The goal of no-fault divorce was to civilize the process by keeping the dirty laundry out of the courtroom, but “no-fault” divorce does not mean that no one is to blame. Most people going through divorce do feel that their partner is to blame even if the judge and lawyers do not care to hear about it. Everyone has a story—sometimes they just want someone to listen.

While the judicial decree of divorce may take as little as sixty days to obtain, emotional healing following divorce may take years. One of the most devastating findings of a recent study following families after divorce was the fact that ten years later, over half of the divorced persons were as intensely angry with the former spouse as at the time of divorce (Wallerstein and Blakeslee). What a waste!!

People going through a divorce need help. One or both of the spouses need to regain self esteem. One or both needs to learn how to communicate with each other and with the children. One or both needs to learn how to deal with anger and rejection—how to accept losses and move on. Refusing to take “no” for an answer may work in business and sales—but not in human relationships.

Several years ago the Menninger Foundation indicated that it takes two to five years following divorce for the people involved to return to normalcy. More recent studies indicate a far longer period. Judith Wallerstein’s ten-year follow-up report of 100 children found that half entered adulthood as “worried, underachieving, lonely and sometimes angry young men and women” (Wallerstein and Blakeslee). How can we help these children and their parents? The system must provide greater financial, social, and psychological support.

National Policy Solutions to Conflicts

Recognizing the conflicts begins the process of trying to find ways to solve them and deciding what role the federal government should play. I would begin by reaffirming the premise that families are the

cornerstone of our society and therefore any policies should provide more support for families, however the family is constituted.

Other western nations consider child support, health care and higher education to be social responsibilities as evidenced by subsidized day care, subsidized housing, family allowances and free college education for children who pass the entrance exam. The family allowance supports children whether in single-parent or two-parent households and irrespective of need. Wouldn't a basic starting philosophy that there is a right to housing, work, food and health care in our society help families?

Families struggling to survive have no time left to become politically active. Toddlers cannot vote. Unless pressed, Congress will continue to deal with power issues funded by the large lobbying groups instead of people issues.

A National Family Policy

A comprehensive, coordinated family policy would involve all elements of society that deal with families—state and local government, schools, community service agencies, businesses and religious organizations. The policy needs to be visionary and creative while still using existing resources. Any new legislation or proposals could then be measured against the plan to see the impact on families. There would be several components of such a policy:

Family Leave

Congress should continue to pass the family leave legislation. This would enable parents and children to bond in those important first few months following birth. We may be the only country in which you can be fired for having a baby. Only 4 percent of workers in small companies allow leave. Even though the current proposal is far short of what is desirable (it excludes companies with less than fifty employees), it is an important start.

Family leave would also allow persons to take leaves to care for sick or elderly family members.

President Bush speaks of the importance of the family, but has threatened to veto this important bill again.

Adequate Child Care

We need safe, affordable, preferably on-site, child care for working parents. Tax credits or benefits for corporations could encourage on-site child care. Parents could break or eat lunch with their children, allowing for more contact during the day. Time wasted in long commutes to babysitters could be used more productively.

One idea is to create incentives to effectively and efficiently use what we have. For example, could we use existing school buildings already paid for by the taxpayers to provide after- or before-school day care? Most stand empty from 4:00 p.m. until 7:00 a.m.

Why not create more flexible jobs—four-day work weeks; more part-time and half-time positions; day care on the job or job sharing?

Minimum Health Care Coverage

There should be at least minimum health insurance coverage for everyone. At the present time those who earn minimum wage cannot afford health care coverage. Large numbers of people, many of whom are children, have no health insurance coverage.

Tax Code Revisions

Tax code revisions during the past few years have hurt the majority of middle class Americans. Congress should revise the tax code to provide adequate dependency exemptions for both child care and elder care. Currently families can deduct \$2,050 dependency exemption per child. Welfare, Workfair and AFDC are need based. Having a child is an economic hardship. Most people would be better off financially not having children. Should our government continue to give more tax benefits to those who raise thoroughbred horses or dogs than those who raise children?

Family Courts

States should be encouraged to restructure the way it handles matters involving children, making the needs of the child the primary focus. Courts dealing with family law issues have the greatest burdens and the fewest resources. There may be many separate courts or divisions that deal with children in need of care, adoption, mental illness, guardianships, juvenile delinquents, divorce and abuse. The same family may appear in more than one court within a relatively short period of time. There is a need to integrate approaches to dealing with dysfunctional families.

States should be encouraged to provide an adequately-funded court system with well-compensated, well-trained personnel equipped to deal with a myriad of family issues. Judges should not be assigned to family matters on a rotation basis, but because they have training and a desire to work with family issues. Judges lack sufficient court support personnel to do an adequate job. Dockets are crowded. Children are seldom represented in contested custody cases. A trained attorney guardian *ad litem* should represent the child whenever the child's custody is contested, be it between the parents or between parents and the state.

Court services should include workshops to educate families in the process of divorce. Where appropriate, alternatives to the adversarial model can be proposed so that people practice cooperation rather than competition. Mediation, conciliation, pretrial conferences and other methods of reaching an amicable and fair settlement should be explored and encouraged. Federal funds could provide mediation training and model programs.

U.N. Convention on Rights of the Child

The U.N. Convention on the Rights of the Child was adopted in November of 1989 and has already been ratified by ninety nations. The United States has not yet ratified it.

National Educational Programs

A variety of programs could be developed that would help families. For example, early childhood education programs have proven successful. Head Start, the federally funded preschool program for children in poverty, was one of the most successful government programs. Due to budget cutbacks, less than one third of eligible children are enrolled.

National leadership should develop elementary and secondary curriculum to teach children responsibilities of adulthood—being a good citizen requires more than just voting. Let's start teaching mediation skills to first graders. The golden rule is not such a bad place to start. Robert Fulcrum received wide acclaim for his essay, "All I ever needed I learned in kindergarten."

Sex education courses can teach about anatomy, sexuality, perils of teenage pregnancy, the risks of venereal disease and AIDs. Students can learn responsibility for themselves and others. Drug prevention programs appear to be successful in deterring use of drugs by younger students. These can be expanded and continued.

A unit on marriage and the family could deal with interpersonal communication skills, learning to fight fair as well as the legal obligations of married persons and parents. A complaint often heard is that schools provide more training for learning to drive a car than for parenting.

Conclusion

We need to develop an ethic in this country that says that children are important. Just as a parent's responsibility to a child should be seen as irrevocable, so should the state and nation's responsibility. The greatest threat to our nation comes from within—from having a generation of children grow up in poverty, undereducated, underachieving (Edelman, p. 10).

“Children are as much an economic resource as clean air, abundant water, good roads and infrastructure. When they grow into productive adults, they are the leaders and workers of tomorrow. If they do not, society pays dearly for the consequences, with prisons, hospitals and treatment programs and unskilled workers” (Kansas Committee).

Those of us who have families and work with families must get involved—our nation’s future depends on it.

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