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# Is There Really a Fatherhood Crisis?

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**D**uring the past decade, family issues such as marriage and fatherhood have rocketed to the top of the domestic-policy agenda. The past two presidential administrations, along with numerous local governments, have responded to the continuing crisis of the family by devising measures to involve governmental machinery directly in the management of what had previously been considered private family life. The Bush administration has proposed \$300 million annually to “promote responsible fatherhood” and for federal promotion of “healthy marriages.” Earlier, President Bill Clinton created a “Presidential Fatherhood Initiative,” and Vice President Al Gore chaired a federal staff conference on “nurturing fatherhood.” Congress has established bipartisan task forces on fatherhood promotion and issued a resolution affirming the importance of fathers. Almost 80 percent of the respondents to a 1996 Gallup poll saw fatherhood as the most serious social problem today (NCF 1996).

A generation of fatherhood advocates has emerged who insist that fatherlessness is the most critical social issue of our time. In *Fatherless America*, David Blankenhorn calls the crisis of fatherless children “the most destructive trend of our generation” (1995, 1). Their case is powerful. Virtually every major social pathology has been linked to fatherless children: violent crime, drug and alcohol abuse, truancy, unwed pregnancy, suicide, and psychological disorders—all correlating more strongly with fatherlessness than with any other single factor, surpassing even race and poverty. The majority of prisoners, juvenile detention inmates, high school dropouts, pregnant teenagers, adolescent murderers, and rapists come from fatherless homes (Daniels 1998, *passim*). Children from affluent but broken families are much more likely to get into trouble

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than children from poor but intact ones, and white children from separated families are at higher risk than black children in intact families (McLanahan 1998, 88). The connection between single-parent households and crime is so strong that controlling for this factor erases the relationship between race and crime as well as between low income and crime (Kamarck and Galston 1990, 14).

Given these seemingly irrefutable findings, a case might be made that both liberals and conservatives should rethink their priorities. Rather than spending more on antipoverty programs, as the left advocates, or on ever harsher law enforcement, beloved of the right, both sides should get together and help restore fatherhood as a solution to social ills. On its surface, the government's fatherhood campaign seems to make good sense. As currently conceived, however, it may be having precisely the opposite effect of that advertised.

The policymakers' discovery of fatherhood has a disturbing side. In August 2002, Health and Human Services (HHS) secretary Tommy Thompson announced mass arrests of parents he says have disobeyed government orders, calling them the "most wanted deadbeat parents." The roundups were carried out under a program started by the Clinton administration called Project Save Our Children. The Clinton years saw repeated and increasingly harsh measures against "deadbeat dads." The 1998 Deadbeat Parents Punishment Act was accompanied by a "child support crackdown . . . to identify, analyze, and investigate [parents] for criminal prosecution." HHS secretary Donna Shalala announced the Federal Case Registry to monitor almost 20 million parents, whether or not they had child-support arrearages, and the Directory of New Hires database, which records the name of every newly hired individual in the country (HHS 1998b).

Amid all this attention, little informed discussion has occurred about the appropriate role of public policy with respect to fatherhood and families. Marshalling federal agencies to "promote" something as private and personal as a parent's relationship with his own children raises questions. The assumption that the government has a legitimate role in ameliorating the problem of fatherlessness also glides quickly over the more fundamental question of whether the government has had a role in creating the problem. What we see in the "fatherhood crisis" may be an optical illusion. What many are led to believe is a social problem may in reality be an exercise of power by the state.

The conventional wisdom—enunciated by political leaders, media commentators, and scholars—assumes that the problem stems from paternal abandonment. Clinton claimed that the fathers pursued by his administration "have chosen to abandon their children" (1992). Blankenhorn writes, "Today, the principal cause of fatherlessness is paternal choice . . . the rising rate of paternal abandonment" (1995, 22–23). David Popenoe, author of the essay "Life Without Father," writes that fathers "choose to relinquish" the responsibilities of fatherhood (1998, 34). Yet none of these policymakers or writers cites any evidence for this claim; in fact, no government or academic study has ever shown that large numbers of fathers are abandoning their children. Moreover, studies that answer the question directly have arrived at a different conclusion.

In the largest federally funded study ever undertaken on the subject, Arizona State University psychologist Sanford Braver demonstrated that few married fathers voluntarily leave their children. Braver found that overwhelmingly it is mothers, not fathers, who are walking away from marriages. Moreover, most of these women do so not with legal grounds such as abuse or adultery but for reasons such as “not feeling loved or appreciated.” The forcibly divorced fathers were also found to pay virtually all child support when they are employed and when they are permitted to see the children they have allegedly abandoned (1998, chap. 7).

Other studies have reached similar conclusions. Margaret Brinig and Douglas Allen found that women file for divorce in some 70 percent of cases. “Not only do they *file* more often, but . . . they are more likely to *instigate* separation.” Most significantly, the principal incentive is not grounds such as desertion, adultery, or violence, but control of the children. “We have found that who gets the children is by far the most important component in deciding who files for divorce” (2000, 126–27, 129, 158, emphasis in original). One might interpret this statistic to mean that what we call divorce has become in effect a kind of legalized parental kidnapping.

Moreover, the vast machinery devoted to divorce and custody litigation now has the power not only to seize children whose parents have done nothing legally wrong, but also to turn forcibly divorced parents into outlaws without any wrong action on their part and in ways they are powerless to avoid. What we are seeing today is nothing less than the criminalization of parents, most often the fathers. A father who is legally unimpeachable can be turned into a criminal by the regime of involuntary divorce.

Partly responsible is “no-fault” divorce, or what marriage advocate Maggie Gallagher terms “unilateral” divorce, which allows one spouse to abrogate the marriage contract without incurring any liability for the consequences (1996, 143–52). “In all other areas of contract law those who break a contract are expected to compensate their partner or partners,” writes researcher Robert Whelan, “but under a system of ‘no fault’ divorce, this essential element of contract law is abrogated” (1995, 3). When children are involved, their separation from one parent is then enforced by the state, with criminal penalties against that parent for literally “no fault” of his own.

We do not know precisely how many are affected. Approximately 1.5 million divorces are granted annually in the United States. Some studies predict 65 percent of marriages will end in divorce. Some 80 percent of divorces are unilateral, and the figure may be higher when children are involved in approximately three-fifths of divorces. All told, more than a million children become victims of divorce each year (Furstenberg and Cherlin 1991, 22; Gallagher 1996, 5, 9, 22, 84–86; Martin and Bumpass 1989). These figures imply that at least 700,000 parents are involuntarily divorced each year, and control of their children is taken over by the government. For all we can be certain, all 12–20 million parents now being pursued as quasi-criminals by the federal government have been separated involuntarily from their children through no legal fault of their own (HHS 1998b; OCSEA 2001).

It is difficult to overestimate the importance of this point, which contradicts the assumptions of policymakers who call for repeated crackdowns on allegedly dissolute fathers. “Children should not have to suffer twice for the decisions of their parents to divorce,” Senator Mike DeWine declared in June 1998, “once when they decide to divorce, and again when one of the parents evades the financial responsibility to care for them” (*Congressional Record*, June 5, 1998, S5734). Yet most fathers and non-custodial mothers make no such decision.

Punitive measures imposed on noncustodial parents might be justifiable if, as is popularly believed (and as government statements strongly imply), those parents were deserting their families, giving legitimate grounds for divorce or even agreeing to it. Parents who dissolve marriages arguably give the state an interest in ensuring the well-being of their children. It is not clear, however, what compelling public interest justifies removing children from parents who do not act to dissolve their marriages.

Some reply that even fathers whose children are taken from them through no fault or agreement of their own are still obliged to support them financially and to obey other court orders. That all parents have a legal and moral responsibility to care and provide for their children is not at issue. The question not being asked, however, is why parents charged with no civil or criminal wrongdoing must surrender to the government the right to rear their own children. Requiring an unimpeachable parent “to finance the filching of his own children,” as attorney Jed Abraham puts it (1999, 151), encourages government officials to seize control of the children, property, and persons of as many citizens as they can, thereby increasing their jurisdiction and the demand for their services.

### Government’s Family Machinery

For all the recent concern about both family breakdown and judicial power, it is surprising that so little attention is focused on family courts. They are certainly the arm of government that routinely reaches deepest into individuals and families’ private lives. “The family court is the most powerful branch of the judiciary,” according to Judge Robert Page of the New Jersey Family Court. “The power of family court judges,” by their own assessment, “is almost unlimited” (1993, 9, 11). Supreme Court justice Abe Fortas once characterized them as “kangaroo court[s]” (*In Re Gault*, 387 U.S. 1, 27–28 [1967]).

Very little information is available on these courts. They usually operate behind closed doors and leave no records. Statistics are virtually nonexistent because judges and bar associations lobby to prevent the compilation of figures (Levy, Gang, and Thompson 1997).

Most strikingly, they claim exemption from due process of law and even from the Constitution itself. As one father reports being told by the chief judicial investigator in New Jersey, “The provisions of the U.S. Constitution do not apply in domestic

relations cases since they are determined in a Court of Equity rather than [in a] Court of Law.”<sup>1</sup> A connected rule known as the “domestic relations exception” is said to justify the federal courts’ refusal to scrutinize family-law cases for constitutional rights violations (60 U.S.L.W. 4532 [June 15, 1992]). A substantial body of federal case law recognizes parenting as an “essential” constitutional right “far more precious than property rights” that “undeniably warrants deference, and, absent a powerful countervailing interest, protection.” This “fundamental liberty interest,” federal courts have held, “cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions” (Hubin 1999, 124). Yet divorce courts virtually never apply such apparently unequivocal constitutional principles, and the federal courts resist becoming involved.

A father brought before these courts is likely to have only a few hours’ notice of a hearing that may last thirty minutes or less, during which he will lose all decision-making authority over his children, be told when and where he is authorized to see them, and ordered to begin paying child support. His name will be entered on a federal registry, his wages will immediately be garnished, and the government will have access to all his financial information.

No allegations of wrongdoing, either civil or criminal, are required. And no agreement to a divorce or separation is necessary. Yet from this point, if he tries to see his children outside the authorized times or fails to pay the child support (or court-ordered attorneys’ fees), he will be subject to arrest.

A parent pulled into divorce court against his will also must submit to questioning about his private life, questioning that Abraham has characterized as an “interrogation.” He can be forced to surrender personal diaries, correspondence, financial records, and other documents normally protected by the Fourth Amendment. His personal habits, movements, conversations, writings, and purchases are subject to inquiry by the court. His home can be entered by government agents. His visits with his children can be monitored and restricted to a “supervised visitation center.” Anything he says to his spouse or children as well as to family counselors and personal therapists can be used against him in court, and his children can be used to inform on his compliance. Fathers are asked intimate questions about how they “feel” about their children, what they do with them, where they take them, how they kiss them, how they feed and bathe them, what they buy for them, and what they discuss with them. According to Abraham, fathers against whom no evidence of wrongdoing is presented are ordered to submit to “plethysmographs,” a physical-response test in which an electronic sheath is placed over the penis while the father is forced to watch pornographic films of children (1999, 148, 58). A parent who refuses to cooperate can be summarily incarcerated or ordered to undergo a psychiatric evaluation.

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1. Standard legal authorities insist this distinction no longer exists. “With the procedural merger of law and equity in the federal and most state courts, equity courts have been abolished” (*Black’s Law Dictionary*, 6th ed., s.v. “Equity, courts of”).

The parent from whom custody is removed no longer has any say in where the children reside, attend school, or worship. He has no necessary access to their school or medical records or any control over medications or drugs. He can be enjoined from taking his children to the doctor or dentist. He can be told what religious services he may (or must) attend with his children and what subjects he may discuss with them in private.

In family court, it is not unusual for a father earning \$35,000 a year to amass \$150,000 in attorney's fees, according to Washington attorney William Dawes. Unlike any other debt, these fees may be collected by incarceration. In fact, unlike the inmates in a medieval debtors' prison, he is punished even though he did not incur the debt voluntarily. One of the most astonishing practices of family courts is ordering fathers to pay the fees of attorneys, psychotherapists, and other officials they have not hired and summarily jailing them for not complying.

Family law is now criminalizing constitutionally protected activities as basic as free speech, freedom of the press, and even private conversations. In some jurisdictions, it is a crime to criticize family-court judges or otherwise to discuss family-law cases publicly, and fathers have been arrested for doing so. Fathers who speak out against family courts report that their children are used as weapons to silence their dissent, and attorneys regularly advise their clients not to join fathers' rights groups, speak to the press, or otherwise criticize judges. Following his congressional testimony critical of the family courts, Jim Wagner of the Georgia Children's Rights Council (CRC) was stripped of custody of his two children and ordered to pay \$6,000 in legal fees. When he could not pay within fifteen days, the court jailed him. "We believe . . . the court is attempting to punish Wagner for exposing the court's gender bias and misconduct to a congressional committee," said Sonny Burmeister, president of the council (CRC 1992, 9). Though precluded by law from endorsing political ideologies, the U.S. Department of Justice publishes a paper by the National Council of Juvenile and Family Court Judges, an association of ostensibly impartial judges who sit on actual cases, that attacks fathers' groups for their "patriarchal values" and for advocating "the rights of fathers instead of their responsibilities." The ostensibly apolitical judges ask, "How can we learn to counter the sound bites of fathers' rights groups?" (qtd. in McHardy and Hofford 1999).

Like other state court judges, family-court judges are either elected or appointed and are promoted by commissions dominated by lawyers and other professionals (Tarr 1999, 61, 67, 69–70). These judges, in other words, occupy political positions and are answerable to the bar associations that naturally have an interest in maximizing the volume of litigation (Corsi 1984, 107–14; Watson and Downing 1969, 98, 336). They also wield extensive powers of patronage that enable them to force litigants to pay attorneys and expert witnesses. These powers are not limited to family courts; judges' patronage powers have long been recognized (Jacob 1984, 112). Yet in no other courts has patronage so thoroughly eclipsed justice. Although family courts, like most courts, claim to be overburdened, it is clearly in their interest to be overburdened because judicial powers and earnings are determined by demand. As Judge Page explains, "Judges and staff work on matters that are emotionally and

physically draining due to the quantity and quality of the disputes presented; they should be given every consideration for salary and the other ‘perks’ or other emoluments of their high office. . . . With the improved status of judges and family-court systems comes their proper position in judicial budgets as worthy of appropriate funding” (1993, 19). Though caseloads are large, the aim in improving the court’s status is apparently to increase that load still further. If the judiciary is viewed in part as a business, then the more satisfied the customers—in this case, the bar associations and divorcing parents who expect custody—the more customers will be attracted. Again, in Judge Page’s words, “With improved services more persons will come before the court seeking their availability. . . . As the court does a better job more persons will be attracted to it as a method of dispute resolution. . . . The better the family-court system functions the higher . . . the volume of the persons served” (1993, 20). In this view, the more attractive the courts make divorce settlements for custodial parents, the more prospective custodial parents will file for divorce and the more children will be removed from, in most instances, their fathers.

### **Batterers or Protectors?**

A punitive quality seems to pervade the treatment of fathers in general throughout divorce court, but the presumption of guilt becomes explicit with accusations of spousal or child abuse. Fathers accused of abuse during divorce are seldom formally charged, tried, or convicted because there is usually no evidence against them; hence, they never receive due process of law or the opportunity to clear their names, let alone recover their children. Yet the accusation alone prohibits a father’s contact with his children and causes his name to be entered into a national database of sex offenders (Parke and Brott 1999, 49–50).

Although initial accusations do not necessarily result in the father’s arrest, they do confirm his status as a quasi-criminal whose movements are controlled by the court. This control takes the form of an *ex parte* restraining order, whose violation results in imprisonment. Orders separating fathers from their children for months, years, and even life are issued without the presentation of any evidence of wrongdoing. They are often issued at a hearing at which the father is not present and about which he may not even know, or they may be issued over the telephone or by fax with no hearing at all. A father receiving an order must vacate his residence immediately and make no further contact with his children.

Boston attorney Elaine Epstein, former president of the Massachusetts Women’s Bar Association, has written that “allegations of abuse are now used for tactical advantage” in custody cases and that restraining orders are doled out “like candy.” “Restraining orders and orders to vacate are granted to virtually all who apply,” and “the facts have become irrelevant,” she writes. “In virtually all cases, no notice, meaningful hearing, or impartial weighing of evidence is to be had.” Massachusetts judges alone issue some sixty thousand orders each year (1993, 1).

Arresting fathers for attending public events such as their children's musical recitals or sports activities—events any stranger may attend—is common. In 1997, National Public Radio reported on a father arrested in church for attending his daughter's first communion. During the segment, an eight-year-old girl wails and begs to know when her father will be able to see or call her. The answer, because of a lifetime restraining order, is never. Even accidental contact in public places is punished with arrest. New Jersey municipal court judge Richard Russell captured the rationale in a 1994 judges' training seminar: "Your job is not to become concerned about the constitutional rights of the man that you're violating as you grant a restraining order. Throw [the man] out on the street, give him the clothes on his back and tell him, see ya around. . . . They have declared domestic violence to be an evil in our society. So we don't have to worry about the rights" (qtd. in Bleemer 1995, 1).

Some argue that judges must "balance" the rights of accused men with the genuine need of women for protection, yet we do not normally restrain citizens from their basic constitutional rights, including the right of free movement and free association (especially with their own children) merely because someone asks us to do so. We assume that all citizens are innocent until proven guilty, that they have a right to due process of law, that they should enjoy basic freedom until evidence of an infraction is presented against them, and that knowingly false accusations will be punished.

Some suggest that protective orders are issued on the principle of "better safe than sorry," yet this suggestion begs the most telling question of how protective orders can prevent violence, inasmuch as violence is already illegal. A father whose wife obtained a restraining order against him was, according to the *St. Petersburg Times*, "enjoined and restrained from committing any domestic violence upon her" (Schroeder and Sharp 1992, 2). Was he, along with the rest of us, not so restrained to begin with? The orders seem designed not so much to prevent wrongdoing as to eliminate and criminalize fathers. Forcing a father to stay away from his children even though he has done no wrong may provoke precisely the kind of violent response it ostensibly intends to prevent. "Few lives, if any, have been saved, but much harm, and possibly loss of lives, has come from the issuance of restraining orders and the arrests and conflicts ensuing therefrom," retired judge Milton Raphaelson of the Dudley, Massachusetts, District Court writes. "This is not only my opinion; it is the opinion of many who remain quiet due to the political climate. Innocent men and their children are deprived of each other" (2001, 4).

Connected here is the rapidly growing system of government-funded visitation centers for which fathers not necessarily convicted of any crime must pay as much as \$80 an hour to see their own children under the gaze of social workers. "People yell at you in front of the children. They try to degrade the father in the child's eyes," the *Massachusetts News* quotes father Jim O'Brien in August 1999. "I wish I'd never come here. . . . They belittle you." When O'Brien asked his daughter if she'd made her first communion in the six years since he had seen her, the social worker jumped in and said, "You're not allowed to ask that!" (Maguire 2000).

The practice of supervised visits is promoted by the Supervised Visitation Network (SVN), a group whose membership has mushroomed since its founding in 1992. The “standards and guidelines” on SVN’s Internet site make clear that supervised visitation is not limited to cases of violence or potential violence by the noncustodial parent against the children, which it clearly regards as exceptional, but is appropriate in any circumstances of “conflict” between parents. SVN defines *family violence* to include matters that are not physical or illegal or, indeed, violent: “Family violence is any form of physical, sexual, *or other* abuse inflicted on any person in a household by a family or household member” (SVN 2001, emphasis added).

Domestic violence is now a major industry funded through interlocking government programs at the federal, state, and local levels and by private foundations and international organizations. The premise on which this industry is largely based—that domestic violence is a political crime perpetrated exclusively by men against women—has already been refuted by many studies that show that men and women commit domestic violence at roughly equally rates, so it requires no further treatment here (Fiebert 1997; Straus forthcoming). In a legal sense, of course, it does not matter what percentage of domestic violence is committed by which sex because the important issue is due process of law for every individual. Yet the very recognition of a special category of “domestic violence,” separate from other forms of assault—a category defined by the private relationship between the parties rather than by the nature of their actions—blurs the distinction between crime and noncriminal personal conflict.

The power to criminalize nonviolent private behavior, personal imperfections, and routine family disagreements is conveyed concisely in the term *abuse*, which is ambiguous and elastic enough to be stretched beyond what is usually considered physical and criminal. “You do not have to be hit to be abused” is now a standard line in the abuse literature. Abuse can be defined as “criticizing you for small things” and “making you feel bad about yourself.” Criminal justice agencies now accept these definitions in official publications. The National Victim Assistance Academy, a project funded by the U.S. Department of Justice and published on its Internet site, includes such items as “extreme jealousy and possessiveness,” “name calling and constant criticizing,” and “ignoring, dismissing, or ridiculing the victim’s needs” in its chapter on domestic violence (Coleman et al. 2000). By these criteria, violence becomes whatever the alleged victim says it is. In her influential book *The Battered Woman*, psychologist Lenore Walker excuses a woman who violently attacked her husband because he “had been battering her by ignoring her and by working late” (1979, xv).

What matters here is to what degree this domestic violence hysteria is aimed specifically at removing children from their fathers. There is reason to believe that this objective is the main thrust behind it. Feminists point out that most domestic violence occurs during “custody battles” and that the vast preponderance of domestic violence takes place among divorced and separated couples (Rennison and Welchans 2000, 4–5). Susan Sarnoff of Ohio State University points out that the Violence Against Women Act II, passed by Congress in 2000, not only legitimizes the making of know-

ingly false accusations, “but . . . offers abundant rewards for doing so—including the ‘rights’ to refuse custody and even visitation to accused fathers—with virtually no requirements of proof.” Moreover, “the bill’s definition of domestic violence . . . is so broad that it does not even require that the violence be physical” (1998, 1, 12).

The most serious effect of forcibly removing fathers after quasi-criminal accusations is the abuse of children it induces. Contrary to popular belief, it is not fathers, but mothers—especially single mothers—who are most likely to abuse children. An HHS study found that women ages twenty to forty-nine are almost twice as likely as men to be perpetrators of child maltreatment: “It is estimated that . . . almost two-thirds [of child abusers] were females” (HHS 1998a, xi–xii). Given that male perpetrators are not necessarily fathers but more likely to be boyfriends and stepfathers, fathers emerge as the least likely child abusers. Researcher Robert Whelan found that children are as much as thirty-three times more likely to be abused when a live-in boyfriend or stepfather is present (1993, 29). And “[c]ontrary to public perception,” write Patrick Fagan and Dorothy Hanks of the Heritage Foundation, “the most likely physical abuser of a young child will be that child’s mother, not a male in the household” (1997, 16). Mothers accounted for 55 percent of child murders, according to a 1994 Justice Department report, whereas fathers were responsible for only a relatively tiny percentage (BJS 1994). From the father’s perspective, it appears that the real abusers have removed him from the family so they can abuse his children with impunity. Fatherhood advocate Adrienne Burgess writes that “fathers have often played the protector role inside families” (Burgess 1997, 54). This claim is confirmed by academic research, however diffident scholars may be about saying so. “The presence of the father . . . placed the child at lesser risk for child sexual abuse,” concludes a study of low-income families. “The protective effect from the father’s presence in most households was sufficiently strong to offset the risk incurred by the few paternal perpetrators” (Rowland, Zabin, and Emerson 2000).

Not only has this protective role become ideologically incorrect, but it may also criminalize the father. Such violence by men as does occur may be more often the result than the cause of fathers’ losing their children; common sense suggests that fathers with no previous proclivity to violence might well erupt when their children are taken from them. “A significant percentage of domestic violence occurs during litigated divorces in families who never had a history of it,” according to Douglas Schoenberg, a New Jersey divorce attorney and mediator (qtd. in Braver 1998, 240). Anne McMurray of Australia’s Griffith University found that domestic violence usually arose “during the process of marital separation and divorce, particularly in relation to disputes over child custody, support, and access.” McMurray’s subjects describe how violence “had not been a feature of the marriage but had been triggered by the separation” (1997, 543, 547).

Violent attacks against judges and lawyers are also usually connected with custody litigation. “Judges and lawyers nationwide agree . . . that family law is the most dangerous area in which to practice,” reports the *California Law Week* (McKee 1999). The year 1992 was “one of the bloodiest in divorce court history—a time when angry

and bitter divorce litigants declared an open season on judges, lawyers, and the spouses who brought them to court” (Cheever 1992, 29). Dakota County, Minnesota, district attorney James Backstrom says family court produces far more violence than criminal court does: “We’re most concerned about the people in family court—the child support and divorce cases” (qtd. in Worden 2000). The *Boston Globe* reports that some judges now carry guns under their robes to protect themselves not from criminals but from fathers (McGrory 1994, 33). In December 1998, the ABC television magazine *20/20* also reported on this phenomenon. No father was quoted, but fathers generally were portrayed as little better than dangerous animals. One of the many lawyers interviewed comments, “You really don’t know what monsters lurk behind regular people.” It ought hardly to surprise anyone that interfering with their children is one way to find out.

### Deadbeat Dads or Plundered Pops?

As noted earlier, noncustodial parents can be arrested for unauthorized contact with their children, but the criminalization of most fathers takes place through the child-support system. A parent who loses custody must pay child support to the parent who wins custody. This assignment has the tendency to turn children into cash prizes. In fact, it exerts a similar effect on the government, for the money passes through the state treasury, where it is used to earn federally funded bonuses for the state. According to the Deadbeat Parents Punishment Act, if for any reason the parent falls more than \$5,000 behind, he becomes a felon. Theoretically, he can become an instant felon as soon as he loses his children. If the ordered payments are high enough and backdated to exceed the \$5,000 threshold, he will be subject to immediate arrest, even before he has had an opportunity to pay.

A father charged with “civil contempt” connected with child support may be exempted from due process of law and legally presumed guilty until proven innocent. “The burden of proof may be shifted to the defendant,” according to a legal analysis by the National Conference of State Legislatures (NCSL), an organization that encourages aggressive prosecutions. The father can also be charged with criminal contempt, for which in theory he must be duly tried, but in fact sometimes is not. “The lines between civil and criminal contempt are often blurred in failure to pay child support cases,” the NCSL continues. “Not all child support contempt proceedings classified as criminal are entitled to a jury trial.” Further, “even indigent obligors are not necessarily entitled to a lawyer.” Thus, a father who has lost his children through literally no fault of his own can be arrested and required to prove his innocence without a formal charge, without counsel, and without a jury of his peers (Myers n.d.).

As noted earlier, fathers who allegedly fail to pay child support—“deadbeat dads”—are now the subjects of a national demonology, officially designated villains whose condign punishment is applauded by politicians, press, and public alike. Yet the reality is somewhat different. Scholars have already challenged the deadbeat dad

stereotype, so it requires only brief treatment here. Braver found that government claims of nonpayment are produced not from any compiled data (which do not exist), but simply from surveys of custodial parents. Like others, he concluded that “the single most important factor relating to nonpayment” is unemployment (1998, 21–22 and chap. 2).

Revolving doors and other channels connect family courts with executive branch enforcement bureaucracies. David Ross, head of federal child-support enforcement in the Clinton administration, began his career as a family-court judge before moving on to higher courts and a stint in a state legislature. The 2001 web page of the federal Office of Child Support Enforcement (OCSE) said he was honored as “Judge of the Year of America” by the National Reciprocal Family Support Enforcement Association in 1983 and as “Family Court Judge of the Nation” by the National Child Support Enforcement Association [NCSEA] in 1989.” The fact that enforcement agents are bestowing honors on supposedly impartial and apolitical judges indicates the agents’ interest in family-court decisions, primarily the decisions to remove children from their fathers and then to award the punitive child support that necessitates their services. That a government Internet page would boast about awards given to its officials by pressure groups indicates how little ethical scrutiny these connections receive. The NCSEA web page describes its members as “state and local agencies, judges, court masters, hearing officers, district attorneys, government and private attorneys, social workers, caseworkers, advocates, and other child support professionals,” as well as “corporations that partner with government to enforce child support” (NCSEA 2001). In other words, it includes officials from at least two branches of government and members of the private sector who have a financial interest in separating children from their fathers.

Setting child-support levels is a political process conducted by pressure groups involved in divorce but from which parents who pay the support are largely excluded. Approximately half the states use guidelines devised not by the legislature but by courts and enforcement agencies, and in all states these officials have a dominant role (Morgan 1998, table 1-2). Under the separation of powers, we normally do not permit police and courts to make the laws they enforce and interpret because doing so would create an obvious conflict of interest for those with a stake in having criminals to prosecute. At the same time, legislative enactment is no guarantee of impartiality because legislators can divert enforcement contracts to their own firms. An extreme example led to federal racketeering convictions of Arkansas state legislators in 2000.

Provisions for citizen input appear perfunctory for the most part. Virginia requires legislative enactment, but its review of its child-support guidelines in 1999 was conducted by a commission that included one part-time representative of parents paying child support and ten employed full-time by agencies and organizations that benefit directly from divorce (Koplen 1999, 4). “The commissions appointed to review the guidelines have been composed, in large part, of individuals who are unqualified to assess the economic validity of the guidelines, or who arguably have

an interest in maintaining the status quo, or both,” writes Georgia district attorney William Akins. “In 1998 . . . of the 11 members of that Commission, two were members of the judiciary, two represented custodial parent advocacy groups, four were either present or former child support enforcement personnel and two were state legislators” (2000, 12). In a case involving a noncustodial mother, a Georgia superior court agreed with this assessment, declaring the state’s guidelines unconstitutional on “numerous” grounds. “The guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child” and create “a windfall to the obligee.” Characterizing the guidelines as “contrary both to public policy and common sense,” the court noted that they bear no connection to the cost of rearing children. “The custodial parent does not contribute to child costs at the same rate as the non-custodial parent and, often, not at all,” the court noted. “The presumptive award leaves the non-custodial parent in poverty while the custodial parent enjoys a notably higher standard of living” (*Georgia DHR v. Sweat*, Georgia Supreme Court, no. SO3A0179 [April 29, 2003]). A Tennessee court likewise struck down that state’s child-support guidelines as violating the equal protection clause of the Constitution. The Tennessee Department of Human Services, which regularly jails fathers for minor violations of court orders, announced it would ignore the court’s ruling (*Gallaber v. Elam*, Tennessee Appeals Court, no. E2000-02719-COA-R3-CV [January 29, 2002]).

The conflicts of interest appear even more clearly in the private sector. Child-support enforcement is now a \$5 billion national industry in terms of the money expended; in terms of the money it aims to collect, it is a multi-billion-dollar enterprise. Privatization has created a class of government-subsidized bounty hunters with a financial interest in creating “delinquents.” In 1998, Florida taxpayers paid \$4.5 million to Lockheed Martin IMS and Maximus, Inc., to collect \$162,000 from fathers (Parker 1999). Supportkids of Austin, Texas, describes itself as “the private-sector leader” in what it calls the “child support industry.” The company is confident of rich investment opportunities in coming years, optimistic that delinquencies will only increase. “The market served totals \$57 billion and is growing at an annual rate of \$6 billion to \$8 billion per year,” reports a company press release on March 13, 2000. “There is a huge market for the private sector to serve” (Supportkids 2000). The size of this “market” is determined not by demand from sovereign consumers but by how many parents can be forcibly separated from their children and criminalized by forced debts that are “contrary to common sense,” as the Georgia superior court judge put it.

The debts have been set indirectly by the very companies that collect them. From 1983 to 1990, Dr. Robert Williams, later president of Policy Studies Inc. (PSI), was a paid consultant with HHS, where he helped to establish uniform state guidelines in the federal Child Support Guidelines Project under a grant from the National Center for State Courts. He also consults directly with many states. During this time, “a federally-driven approach . . . significantly increased child support obligations,”

according to James Johnston, a member of the Kansas Child Support Guidelines Advisory Committee. Congress also passed the Family Support Act of 1988, requiring states to implement presumptive guidelines and giving them only a few months of legislative time to do so (Rogers and Bieniewicz 2000, 2, 5). Virtually all states met the deadline, many by quickly adopting Williams's model. "The guidelines were enacted in 1989 to insure [*sic*] Georgia's receipt of an estimated \$25 million in federal funds," writes Akins (2000).

One year after joining HHS and the same year the mandatory federal guidelines were implemented, Williams started PSI. "With his inside knowledge [Williams] has developed a consulting business and collection agency targeting privatization opportunities with those he has consulted," Johnston explains. "In 1996, his company had the greatest number of child support enforcement contracts . . . of any of the private companies that held state contracts" (1999). The *Denver Business Journal* reports that PSI grew "by leaps and bounds because of the national crackdown on 'deadbeat dads.'" From three employees in 1984, it expanded rapidly to more than five hundred in 1996, before welfare reform legislation took effect, by which the company "stands to profit even more" (Mook 1997).

Yet more serious than the profiteering is the level of obligation. A collection agency profits only if there are arrearages. Not only does Williams have an interest in making the child-support levels as high as possible to increase his share overall, but he also must make them high enough to create hardship, arrearages, and "delinquents."

Williams's model has been widely and severely criticized for its methodology (Rogers 1999). He himself has acknowledged that "there is no consensus among economists on the most valid theoretical model to use in deriving estimates of child-rearing expenditures" and that "use of alternative models yields widely divergent estimates." Donald Bieniewicz, member of an advisory panel to the OCSE, comments, "This [statement] is a shocking vote of 'no confidence' in the . . . guideline by its author" (1999, 2). Yet on the basis of Williams's guideline, parents are being jailed, usually without trial.

Governments, too, can reap substantial profits from child support. "Most states make a profit on their child support program," according to the House Ways and Means Committee, which notes that "states are free to spend this profit in any manner the state sees fit." States profit largely through federal incentive payments, as well as by receiving two-thirds of operating costs and 90 percent of computer costs (U.S. House of Representatives 1998).

To collect these funds, states must channel payments through their criminal enforcement machinery, further criminalizing the fathers and allowing the government to claim that its enforcement measures are increasing collections despite the consistent operating loss in the federal program. In January 2000, Secretary Shalala announced that "the federal and state child support enforcement program broke new records in nationwide collections in fiscal year 1999, reaching \$15.5 billion, nearly doubling the amount collected in 1992" (HHS 2000). Yet the method of arriving at these figures is questionable.

When we hear of collections through enforcement agencies, we assume they involve arrearages or that they target those who do not otherwise pay and whose compliance must be “enforced.” In 1992, most child support was still being paid voluntarily and directly, without coercion or accounting by the state. Increasingly over the past decade, all payments (including current ones) have been routed through enforcement agencies by automatic wage garnishing and other coercive measures that presume criminality. Moreover, OCSE figures show that whereas the number of welfare-related cases (where collection is difficult) has remained steady since 1994, the number of nonwelfare cases (where compliance is high) has steadily increased (OCSE 1999, 4). The “increase” in collections was achieved not by collecting the alleged arrearages built up by poor fathers already in the criminal collection system, but rather by bringing in more employed middle-class fathers who pay faithfully. The payments and the accounting mechanism also provide additional incentives to squeeze as many dollars out of as many fathers as possible and have the added effect of further institutionalizing their status as semicriminals.

### The Ends Justify the Means

Advocates of unilateral divorce portray it as a “citizen’s right” and a “civil liberty,” yet in practice the regime of involuntary divorce has led to authoritarian measures against forcibly divorced parents and others. Some sixty thousand government agents, some of them armed, now enforce child support, approximately thirteen times the worldwide number of Drug Enforcement Administration agents.

These plainclothes police now command sweeping powers to seize property and persons involved involuntarily in divorce proceedings, including the power to issue arrest warrants. They also have powers to gather information on private citizens unknown to other officials. Hunting alleged deadbeats even rationalizes the monitoring of citizens who have no connection with child support. In addition to automatic wage garnishing of all obligors even before they become delinquent, the New Hires Directory now compels employers to furnish the names of all new employees to the federal government. “Never before have federal officials had the legal authority and technological ability to locate so many Americans found to be delinquent parents—or such potential to keep tabs on Americans accused of nothing,” reported the *Washington Post* (O’Harrow 1999, A1). “Just like in totalitarian societies, government bureaucrats will soon have the power to deny you a job, and the ability to monitor your income, assets, and debts,” said Libertarian Party chairman Steve Dasbach in a 1998 press release. “This law turns the presumption of innocence on its head and forces every American to prove their innocence to politicians, bureaucrats, and computers” (Dasbach 1998). At least one state government has dissented. “Under the guise of cracking down on so-called deadbeat dads, the Congress has required the states to carry out a massive and intrusive federal regulatory scheme by which personal data on all state citizens” is collected, the Kansas attorney general’s office charged in a federal suit challenging the mandate’s constitutionality (qtd. in Boczkiewicz 2000).

Echoing a term used by fathers' groups, one Kansas legislator called the federal directives *extortion*, and colleagues in Nebraska described them as "a form of blackmail" (Christensen 2001, 69).

The line between the guilty and the innocent becomes unclear because officials track not only parents with arrearages, but also those whose payments are current and those who are not under any order at all. (At one point, former attorney general Janet Reno referred to even noncustodial parents who do pay as "deadbeats" [DOJ 1994].) One agent expressed the presumption of guilt, boasting to the *Washington Post*, "We don't give them an opportunity to become deadbeats" (O'Harrow 1999, A1). The NCSL points to the presumptions not only that all parents under child-support orders are already quasi-criminals, but also that all citizens are potential criminals against whom preemptive enforcement measures must be initiated now in anticipation of their future criminality. "Some people have argued that the state should only collect the names of child support obligors, not the general population," they suggest. But "this argument ignores the primary reason" for collecting the names: "At one point or another, many people will either be obligated to pay or eligible to receive child support" (Top 5 Questions).

Between the incentive payments, the patronage, and the bureaucratic conflicts of interest, aggressive collection methods now seem to be the norm rather than the exception. Perhaps most disturbing is the case of Brian Armstrong of Milford, New Hampshire, who some claim received a summary "death sentence" for losing his job. Armstrong was jailed without trial in January 2000 for missing a hearing about which his family claims he was never notified. One week later he was dead, apparently from a beating by correctional officials.<sup>2</sup>

Fatal beatings of fathers are probably not widespread in North American jails, but other fatalities exemplify a more common form of "death penalty" routinely meted out to fathers who are neither charged with nor tried for any crime. In March 2000, Darrin White of Prince George, British Columbia, was denied all contact with his three children, evicted from his home, and ordered to pay more than twice his income as well as court costs in a divorce for which he gave neither grounds nor agreement. White hanged himself from a tree.<sup>3</sup>

In contrast to Armstrong's fate, White's seems to be common. "There is nothing unusual about this judgment," said former British Columbia Supreme Court judge Lloyd McKenzie, who pointed out that the judge in White's case applied *standardized* child-support guidelines (Lee 2000). The suicide rate of

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2. West 2000, and accompanying accounts by and interviews with Armstrong's family. The U.S. Attorney's office in Concord, New Hampshire, has refused to discuss the case.

3. Account compiled from interviews with White's daughter and with Todd Eckert of the Parent and Child Advocacy Coalition, who was assisting White before his death, and from reports by Donna Laframboise in the *National Post*, March 23, 25, and 27, 2000, in the *Vancouver Sun*, March 24, 2000, and in the *Ottawa Citizen*, March 24 and 27, 2000. Attacks on White in the *Toronto Sun* (April 9, 2000) and in other newspapers did not contest the essential facts.

divorced fathers has skyrocketed, according to Augustine Kposowa of the University of California. Kposowa (2000) attributes his finding directly to judgments from family courts.

Throughout the United States and abroad, child-support machinery has been beset with allegations of mismanagement and corruption (Baskerville 2003). In Colorado, “the results of a new audit showed that the state’s child support enforcement system is in disarray” (Franke-Folstad 1999), according to those involved in the process. “It’s not like it’s gone from good news to bad news. It’s just worse news,” says Richard Hoffman of the organization Child Support Enforcement (qtd. in Franke-Folstad 1999). According the *Weekly Wire*, “Tennessee, like many states around the country, has recently begun pursuing deadbeat parents with a new level of determined vengeance.” Yet the state collection agency’s own *Child Support Fact Sheet* indicates that Tennessee actually “collected less in child support per dollar of state expenditure in fiscal year 1997 than it has in any of the preceding four years during which this indicator has steadily trended negatively” (Granju 1998; see also Loggins 2001). The *Aurora Beacon News* in Illinois reported on October 16, 1999, that “a new state child support processing system . . . has delayed payments to thousands of parents,” and mothers are refusing to let children see their fathers “under the belief that the parents responsible for child support haven’t made their payments” (Olsen 1999).

In Britain, the *London Times* editorialized in 1999 that the nation’s Child Support Agency had become “a monstrous bureaucracy, chasing responsible parents and wrecking the families it was meant to support.” As elsewhere, the directors promise a “thorough overhaul,” yet with uncertain logic place the blame not on the government but on the “responsible parents” whose families it is wrecking: “In future, absent fathers will have to prove they are not the father of a child,” reported the *Times*, apparently oblivious to the contradiction (Father Figures 1999). In Australia, a 2000 parliamentary inquiry into the Child Support Agency (CSA) found “systemic corruption by public servants.” Robert Kelso of Central Queensland University reports “evidence the CSA is . . . creating false debt by exaggerating incomes of fathers.” Commission chairman Roger Price said no one should have any illusions that the CSA was set up to benefit children: “It is not about the best interests of children and never has been” (Kelso and Price qtd. in Stapleton 2000, 26).

Current enforcement practice overturns centuries of common law precedent that a father 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 court 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” (*Butler v. Commonwealth*, 132.Va.609, 110 S.E. 868 [1922]). As recently as 1965, the Oregon Supreme Court held that “a husband whose wife left him without cause was not required to support his children living with her” and that “parents generally may decide, free from government supervision, at

what level and by what means they will support their children” (qtd. in Harris, Waldrop, and Waldrop 1990, 711, 689).

Today, these precedents are ignored, so much so that a father becomes a “deadbeat” if he fails or refuses to surrender control of his children to the government hegemony. “Child support is ‘paid’ only when it’s paid in a bureaucratically acceptable form,” writes Bruce Walker of the District Attorney’s Council in Oklahoma City, who claims to have jailed hundreds of fathers. “Men who provide non-monetary support are deadbeat dads according to the child-support system,” says Walker. “Even men who are raising in their homes the very children for whom child support is sought are deadbeat dads. If the mother gives the father the children because she cannot control them or has other problems, then he is still liable for child support” (1996, 18).

Fathers who lose their jobs are seldom able to hire lawyers to have their child-support payment lowered, and judges rarely lower it anyway. Yet government lawyers will prosecute a father free of charge, regardless of his or the mothers’ income. It is also now a federal crime for a father who is behind in child support, for whatever reason, to leave his state, even if doing so is his only way to find work. This law has even been used to prosecute a father whose former wife moved to another state with his children (Parke and Brott, 64–65).

Why so many divorced fathers seem to be unemployed or penurious may be accounted for by the strains that legal proceedings place on their emotions and work schedules. Many fathers are summoned to court so often that they lose their jobs, whereupon they can be jailed for being unemployed. Many divorced fathers are either ordered out of their homes or must move out for financial reasons, so they are immediately homeless. They may also lose their cars, which may be their only transportation to their jobs and children. Those who fall behind in child support, regardless of the reason, have their cars booted and their driver’s licenses and professional licenses revoked, which in turn prevents them from getting and keeping employment. An odd myopia is demonstrated in a controversy over whether to give child support priority over other debts during bankruptcy, when no one seems willing to ask the obvious question of why large numbers of allegedly well-heeled deadbeats are going through bankruptcy in the first place (U.S. House of Representatives 1998). A Rutgers and University of Texas study found that “many of the absent fathers who[m] state leaders want to track down and force to pay child support are so destitute that their lives focus on finding the next job, next meal or next night’s shelter” (Edin, Lein, and Nelson 1998). In what some have termed a policy of “starvation,” a proposed federal regulation will render these impecunious playboys ineligible for food stamps (*Federal Register*, 64 FR 70919, December 17, 1999).

Though ostensibly limited by guidelines, a judge may order virtually any amount in child support. If a judge decides that a father could be earning more than he does, the judge can “impute” potential income to the father and assess child support and legal fees based on that imputed income. The result is that child-support

payments can exceed what the father actually earns. If a father at any point works extra hours (perhaps to pay attorneys' fees) or receives other temporary income, he is then locked into that income and those hours and into the child-support level based on them. If a relative or benefactor pays the child support on his behalf, that payment is considered a "gift" and does not offset the obligation that the father still owes. If the payment is made to the father, it becomes "income," which is then used to increase his monthly obligation.

It is hardly surprising that some fathers who have been through this ordeal eventually do disappear. Anyone who has been plundered, vilified, and incarcerated—all on the claim of supporting children who have been taken away from him through no fault of his own—will eventually reach the limits of his endurance. Some may be tempted to conclude that this outcome is precisely what the enforcement system is designed to encourage, for certainly it does no harm to the enforcers' business.

### Promoting Marriage or Divorce?

The relentless (il)logic of the child-support system extends up to the level of federal policy, to the point where the tail seems to wag the dog. Although new federal programs claim to "promote fatherhood" and "enhance relationships," no explanation is forthcoming from HHS of how precisely the government can achieve these objectives. What requires no explanation is that the government can arrest and incarcerate people, which seems to be what it is doing to those whose marriages it is unable to save.

In May 2003, HHS announced grants to "faith-based groups." In Idaho, Healthy Families Nampa (whose name seems tailored to the federal program) will use \$544,400 for "counseling and other supportive services to parents who are interested in marrying each other," Assistant Secretary Wade Horn told the Associated Press. Horn said the grants are "targeted at preventing divorce among those who are married and at improving parenting skills of both married and non-married couples" (qtd. in Meckler 2003). HHS documents make clear, however, that in fact the grants are for collecting child support. Michigan's enforcement agency will receive almost a million dollars above its regular federal subsidies. Horn claimed the aim is to "enhance the overall goals and effectiveness of the child support enforcement program by integrating the promotion of healthy marriage into existing child support services" (HHS 2003). He did not explain how law enforcement agents can enhance anyone's marriage.

Evidence suggests that these agents are having precisely the opposite effect. Bryce Christensen of the Howard Center for Family, Religion, and Society points to "evidence of the linkage between aggressive child-support policies and the erosion of wedlock" because child-support enforcement subsidizes divorce. The latest moves by HHS seem to validate Christensen's conclusion. "Politicians who have framed such [child-support] policies . . . 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 [of a two-parent family] can bring” (2001, 67, 63).

Here we have the ingredients of a government perpetual-growth machine, one that extends well beyond family policy. Identifying fathers rather than governments as the culprits behind family dissolution not only justifies harsh law enforcement measures, but also rationalizes policies that contribute further to the absence of fathers, which they ostensibly are meant to prevent. Further—given the undeniable correlation that the fatherhood advocates have established between fatherlessness and today’s larger social pathologies, such as poverty, crime, and substance abuse—it allows officials to ignore the simplest and safest solution to these ills, which is to stop eliminating fathers. Instead, governments devise elaborate schemes, invariably extending their reach and power, to deal with the problems that their removal of the fathers has created: not only fatherhood promotion and marriage therapy, but larger antipoverty programs beloved of the left and law enforcement measures dear to the right. By concocting a fatherhood crisis where none previously existed, government across the spectrum has neutered the principal rival to its power and created an unlimited supply of problems for itself to solve.

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