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# The Role of the Father After Divorce

Ross A. Thompson

## Abstract

Fathers figure prominently in a child's postdivorce life whether they are involved or disinterested, but concerns about inadequate child support, noncustodial fathers who fail to visit, and the economic plight of single mothers have together raised policy questions about how better to enfranchise fathers with the rights and responsibilities of parenting and ensure them a continuing and meaningful role in the lives of their offspring. This article focuses on obstacles and avenues to ensuring a meaningful postdivorce parenting role for fathers by examining the effects on them of custody standards, visitation policies, child support guidelines and their enforcement, and the other economic arrangements surrounding contemporary divorce. In the end, public policies that foster the child's unconflicted relationships with each parent in the context of reliable and adequate economic support will require new ways of structuring relations between ex-spouses in the interests of offspring (for example, new approaches to custody and visitation), nonadversarial modes of assisted dispute resolution to accommodate postdivorce changes in family life, child support policies which guarantee that a child's economic needs will be met when parents are unable to provide adequately (and that assist parents who are unable to provide), and that recognize and ensure both the relational and the economic contributions of each parent to a child's well-being.

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**I**n a recent edition of the popular Sunday comic "The Family Circus," cartoonist Bill Keane pictures a father listing the assets he shares with his wife. Looming behind the house, car, furniture, investments, and other property are the shadows of the couple's four children, the most important marital assets they share. If the couple should divorce, they would be required not only to negotiate the division of their tangible property but also to make long-term decisions concerning their intangible assets, such as their relationships with offspring. Because the value of the latter cannot be quantified and therefore cannot easily be divided between them, divorce forces men and women to confront the complex challenges of allocating human resources whose value is personal and inestimable. How they do so dramatically affects not only their individual well-being following divorce, but also the quality of life enjoyed by their children.

In popular portrayals in this country, fathers figure very prominently in the morality tale of divorce and its consequences for children. They are the "deadbeat dads" who are delinquent in their child

support payments and who often provide no support at all. They are the absent fathers who fail to see their children for months or years at a time, or who reenter their children's lives unpredictably and

inconsistently. They are the vindictive former spouses who coerce unfair property settlements and refuse to pay spousal support, thus contributing to the “feminization of poverty” that undermines their children’s economic well-being. In short, to the extent that divorce has always entailed judgments of blame and wrongdoing, fathers are often the villains of contemporary divorce. And based on this portrayal, the remedies proposed to correct the inequities of divorce are equally simple and straightforward. More coercive child support enforcement strategies should be enlisted to force fathers to contribute more to their children’s care. Negotiations over property settlements and spousal support should be conducted under new rules giving women a greater share of marital assets, broadly defined. And if fathers refuse to visit regularly with their children, perhaps their visitation rights should be terminated to end the emotional turmoil and persistent uncertainty that children experience.

This contemporary view contains considerable truth: many fathers abandon responsibility to their children after divorce. But like most portrayals of complex social problems, this portrayal is also misleadingly simplified. Fathers, of course, have their own perceptions of the inequities of contemporary divorce. They protest custody standards that are gender-neutral in name only, that contribute to their lawyer’s recommendation not to ask for more than visitation, and that seem to relegate them to the status of economic providers alone. They question the increasing coerciveness of child support enforcement procedures without equally helpful avenues to ensure that their visitation privileges are not undermined or restricted by a former spouse. And they wonder whether proposed new rules governing economic negotiations that involve long-term income sharing and equalized standards of living are punitive rather than equitable, emphasizing only a few of the diverse mutual accommodations that spouses contribute to marriage and recog-

nizing few of their own sacrifices for the family. Above all, fathers experience many losses from divorce which make their characterization as the villains of contemporary divorce seem unjust and unfair. Primary among these, for many fathers, is the painful loss of a meaningful and satisfying relationship with offspring.

The most important reason for thoughtfully considering the experience of fathers in divorce is not merely fairness to fathers, however. It is to advance the welfare of children. Children strongly miss the absent father who does not visit long after he has ceased to be part of their everyday experience. Children benefit when their mothers and fathers can cooperate satisfactorily on their behalf regarding issues of visitation, financial support, health care, educational costs, and other concerns that affect their well-being. Children suffer significant economic disadvantages from a father’s failure to provide adequate child support and, conversely, gain from his reliable financial commitment to them. Fathers thus figure prominently in a child’s postdivorce life whether they are involved and supportive or distant and disinterested. To better enlist fathers in advancing the welfare of children, therefore, it is essential to understand the

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obstacles and difficulties men experience in their efforts to remain involved and to appreciate why so many men abdicate their responsibilities to children after divorce. Characterizing fathers as the villains of contemporary divorce does little to advance the goal of creating arrangements that can maintain a child’s unconflicted

relationships with each parent in the context of financial support that is reliable and adequate to the child's needs.

This discussion seeks to advance that goal by describing the experience of fathers in divorce, not to advance a "father's rights" perspective, but to foster a more multifaceted understanding of divorce and its consequences for the family. The author is a developmental psychologist who also teaches about family policy. His experiences in these areas have convinced him that public policy concerning divorce is too blunt an instrument for use in regulating complex and individualized

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private relationships, but it can provide incentives and supports that may strengthen family functioning. Given the difficult contemporary experience of children and their custodial parents after divorce, and the significant role of fathers in shaping that experience, it is essential to consider how fathers can be given more multifaceted and meaningful roles in their children's postdivorce lives.

## Values and Goals

Public values concerning divorce and custody have changed appreciably in recent years. A traditional concern with the assignment of responsibility for marital failure and a view of children as marital property has evolved into a preeminent concern with children's welfare in the context of a no-fault divorce regime. At the same time, divorce, custody, and child support statutes have evolved to reflect changing gender roles—both realized and idealized—in contemporary family life and, more recently, growing concern about the well-being of single mothers and their offspring. As a consequence of these changes, contemporary discussions of divorce and custody, visitation, child support, and other features of postmarital life reflect a variety of implicit goals, priorities, and value assumptions. It is im-

portant to think clearly about value preferences in this area not only to clarify the basis for preferring one policy proposal over another, but also to foster coherent public policy concerning divorce and its consequences which is designed to advance clear public purposes.

## Changing (Not Terminating) Relations Between Parents

In the minds of most people, divorce signifies a "clean break" between two adults who have decided that they can no longer live together. As the final termination to an unhappy marriage, divorce is intended (among other things) to permit former spouses to inaugurate new relationships with other partners and begin new lives apart. But even within this traditional conception of divorce, many things keep former partners in contact with each other. The most important of these are children, who require that their parents coordinate their lives to foster visits with the noncustodial parent (or shared custody with each parent), negotiate child support arrangements that may be modified as family conditions change, and occasionally meet congenially on special occasions (like graduations or weddings). After all, divorcing a spouse does not require divorcing offspring. Moreover, as family conditions become increasingly fluid, events like remarriage, the birth of new offspring with a new partner, changes in employment and income, residential mobility, and the break-up of a remarriage can each compel modifications of visitation, support, or custody arrangements. Thus contemporary divorce surprises a couple with the discovery that, even though they are making a "clean break," they must nevertheless maintain a future relationship.

Should the process of divorce continue to encourage partners to perceive their relationship as ended, or should it instead institute structures for facilitating ongoing interaction between them? Although there are many reasons that adults would prefer to terminate all contact with a former spouse (especially in the context of an unhappy or acrimonious marriage), when children are involved it is difficult to do so, and wise public policy might be usefully devoted to abandoning "clean break" notions and, instead, fostering a new and different postdivorce relationship between former spouses in the interests of their children. The effort to

foster a different postdivorce relationship could include, for example, providing access to mediation not just during divorce negotiations but subsequently as clarifications or modifications in these arrangements seem necessary because of changed family circumstances. It might also include the negotiation of parenting plans by which former spouses make explicit agreements concerning each partner's long-term postdivorce commitment to the child's well-being. And it could also mean discouraging former spouses from making private agreements that enable them to terminate contact, such as when fathers pay no child support but make no visitation demands, or when mothers request no child support award to avoid obligations to the father. In these circumstances, a former spouse ensures a "clean break" but at a considerable cost to children—and to the other parent.

To be sure, children may pay a price,<sup>1</sup> as well as receive a benefit, when their parents are required to remain in contact over issues that are important to their well-being, and special provisions are necessary when severe postmarital conflict colors these interactions. But public policies that foster the expectation of a continuing relationship with a former partner after divorce might help to ensure that adults realize that they maintain continuing obligations to offspring—and sometimes to each other—despite their desire to part. Such an expectation may change the negotiations surrounding divorce and the behavior of parents following the end of the marriage, especially if it is in the context of divorce procedures that help to establish the framework for such a future relationship. Even if they might desire it, neither partner should expect to purchase autonomy after divorce at the cost of children or of the former spouse.

#### **Fairness in the Gendered Acquisition and Division of Marital Resources**

Historically, divorce and custody standards have reflected prevailing assumptions concerning gender roles and the nature of family functioning. A traditional assumption that the legitimate offspring of marriage were the father's property evolved, during the past century, into the view that young children's needs dictated custody to mother during their "tender years." In similar fashion, alimony payments to a former wife reflected the traditional assumption that marriage created

an enduring support commitment, but this assumption eroded with women's rejection of dependent social roles. More recently, changes in divorce and custody standards have been guided not only by changes in gender roles, but also by efforts to eliminate sexism in domestic policy-making. Today, the most common standard is the gender-neutral "best interests of the child" standard which reflects (among other things) the view that parents should be preferred as custodians not on the basis of gender but rather because of their relationships with children, and gives social recognition to the diverse caregiving roles and responsibilities that mothers and fathers can assume in modern families.

But striving to avoid sexism in divorce standards can be a difficult task because men and women are treated differently and often make different choices in the context of a sexist culture. Contemporary reformulations of marital property and spousal support obligations reflect the broader question of whether divorce

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standards should provide compensation for gender-based marital roles that jointly contribute to marital well-being but may result in serious postmarital inequities. In the large majority of families, for example, women typically devote more time to the care of offspring while men assume primary economic support responsibility; after divorce, men have their career assets and women have custody of the children. How should the allocation of marital resources at divorce sort through the merging of human capital that marriage entails and avoid serious disadvantages to either partner after divorce? Do only potential economic inequities (such as lost earning capacity) merit compensation or should other potential inequities (such as diminished postdivorce contact with offspring) be considered? How are the benefits balanced against the sacrifices each partner experienced during marriage? To what extent should these determinations be altered by how marital roles were affected

by the premarital choices of each partner, or by the fact that their decisions were shaped by broader societal gender roles for which neither partner is responsible? These are indeed difficult questions.

The problem with proposed guidelines for financial arrangements that are intended to compensate former spouses for gender-related inequities arising from marital decisions is that these rules must define *which* inequities merit compensation and *how* compensation should be made in a manner that encompasses the range of mutual (and complementary) accommodations that men and women each make to family demands. The fact that each partner both benefits from and sacrifices for their mutual well-being makes this task of awarding compensation through divorce settlements a formidable one if the goal is to accommodate each partner's marital choices and their long-term consequences. Moreover, the assets that marital partners jointly create are both quantifiable (like income and career growth) and nonquantifiable (such as relationships with offspring). While one partner is justifi-

to recognize that this goal must encompass the variety of tangible and intangible marital assets to which each partner has contributed and of which each deserves a meaningful share.

### Effectively Intersecting Private and Public Ordering

Current debate over the financial settlements of divorce also reveals concerns about *how* such settlements are achieved. In the past, custody standards that explicitly awarded children to mothers or fathers were accompanied by judicial judgments of fault for marital failure that guided alimony awards, property distributions, child support provisions, and other considerations. With the advent of no-fault divorce, these meritorian considerations have been largely abandoned and replaced by less explicit criteria related to the child's "best interests" in custody decisions and by equity and need in financial arrangements. Not surprisingly, judges have considerable difficulty determining whether a child's "best interests" mandate custody to mother or father (or both) and deciding on appropriate levels of child support when divorcing spouses remain in conflict about these issues. Therefore, one reason for emphasizing the private ordering of these decisions—that is, offering incentives for the disputants to negotiate their conflict rather than relying on a third party, such as a judge—is that divorcing spouses best know the interests and needs that should predominate in making these decisions. In addition, private ordering of divorce-related decisions through mediation is more efficient (by reducing demands on courts and other public agencies), is more cooperative (because decisions are negotiated rather than disputed in an adversarial forum), and often results in greater satisfaction with the outcome.<sup>3</sup>

But enthusiasm for private ordering of divorce matters has waned recently for several reasons.<sup>4</sup> Many concerns focus on the process of mediation itself. Some critics have noted, for example, that children are absent from private negotiations between parents which affect their interests. Others comment that the training and values of the mediator can significantly affect divorce negotiations and that publicly sponsored mediation efforts may be perfunctory exercises because of limited public resources. Most important, however, is how private ordering can be affected by the relative bargaining power of

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fiably concerned with lost earning potential after divorce, the other may be equally worried about maintaining a meaningful parenting role with offspring. Efforts to achieve fairness in the allocation of marital resources must take into account both kinds of assets and, in turn, seek to avoid postmarital inequity in each. Children are, for example, an economic burden but a relational benefit to which each partner contributed during marriage and which each parent should share in postmarital life. The task, therefore, of devising new rules governing the financial allocation of marital resources to avoid potential future gender inequities is very difficult to accomplish, and anyone undertaking this task risks replacing older gender inequities with new ones.<sup>2</sup> The answer is not to reduce efforts to ensure fairness in the postdivorce allocation of marital resources, but

each spouse. Divorcing spouses may bargain unequally because of their relative financial resources or a relational history of dominance or abuse or because of a willingness to adopt bargaining positions that threaten valued interests of the partner (for example, by asserting a non-serious claim to child custody). As a consequence, the agreements that result from private ordering may be inequitable for a spouse or for offspring. Critics of private ordering have proposed that negotiations over divorce-related issues be constrained by mandatory guidelines that will ensure equity in the resulting settlements, accompanied by strong enforcement procedures to ensure that partners maintain fidelity to these settlements. For example, the Family Support Act of 1988 mandated that states establish guidelines to define the framework within which child support negotiations may occur.<sup>5</sup> In this respect, private ordering occurs within publicly defined parameters.

What should be the relative balance of public versus private ordering of divorce matters? Although mandatory, enforceable guidelines for child support awards and other settlements have the appeal of ensuring minimally adequate levels of financial support for custodial parents and offspring, strictly enforced rules have traditionally had several disadvantages for ordering domestic relations. Because these rules are written to apply to general cases, they can be difficult to adapt to the range of family conditions that often emerge from divorce negotiations. Mandatory child support guidelines based on income and number of children, for example, are sometimes inequitable when applied to situations in which one parent has physical custody of offspring, but the other parent assumes exclusive care of offspring during frequent and/or extended visitation periods.

The inflexibility of strict guidelines, combined with strong enforcement procedures, also poses problems for the kinds of informal modifications of caregiving arrangements that often occur during the years following divorce. A longitudinal study of California families after divorce revealed, for example, that children often changed their primary residence within two or three years after the divorce, and parents accommodated these changes with informal modifications of their child support and visitation agreements.<sup>6</sup> It is unclear how easily such informal changes

could be accommodated within mandatory guidelines combined with a strict enforcement regime. In short, simple rules are often inadequate when applied to complex and changing family conditions, which is why private ordering (and reordering, as necessary) of divorce-related matters is often preferred.

The inclusion of public ordering in the private negotiations of divorce settlements also raises a broader question concerning public responsibility when financial arrangements prove inadequate to the child's well-being. Does the public have an obligation not only to ensure equity in divorce settlements, but also to ensure adequate economic support to the offspring of single mothers when the father's sup-

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port capabilities prove inadequate? In other words, do public *responsibilities* accompany public *ordering* of divorce negotiations? As we shall see, many fathers who are in arrears in their child support obligations are incapable of contributing much more to their children's welfare.<sup>6,7</sup> An affirmative regard for public responsibility in such situations suggests that public support guarantees to their children may be necessary.

## Child Custody Concerns

Although the advent of joint and shared custody alternatives has broadened the range of options that divorcing couples can consider when negotiating the physical custody of offspring, mothers still overwhelmingly predominate in physical custody awards. By some estimates, 85% to 90% of children of formerly married parents reside with their mothers while only about 10% live with their fathers.<sup>8</sup> While joint physical custody arrangements alter these figures somewhat, children in joint custody are still much more likely to end up with their mothers than their fathers.<sup>6</sup>

To a great extent, these arrangements reflect prevailing social realities concern-

ing who cares for children. Despite recent evidence for enhanced paternal involvement with offspring (and the popularization of “involved dads”), the consensus of current research indicates that mothers assume primary responsibility for domestic labor and child rearing, even when they also work outside the home.<sup>9</sup> Given that many mothers assume a disproportionate role in the lives of their children, it is reasonable that, when custody

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requires a choice between mothers and fathers, mothers are more often awarded physical custody of offspring. Indeed, because the large majority of custody arrangements are privately negotiated by parents and judicially accepted,<sup>10</sup> the predominance of maternal custody might be viewed as parents’ consensual decisions rather than the outcome of judicial judgments.

But the overwhelming predominance of maternal custody remains surprising even in light of these social realities and suggests that other processes may also be at work. For example, fathers may agree to maternal custody awards because they believe that they could achieve no better than a visiting relationship with offspring if they were to dispute such a claim, even if they believed they deserved a more generous arrangement (such as joint or sole custody). There is some evidence that this might be true in an important longitudinal study of 1,100 divorcing California couples with children conducted recently by Eleanor Maccoby and Robert Mnookin of Stanford University.<sup>6</sup> In the mid-1980s, these scholars and their colleagues interviewed parents periodically throughout the divorcing process, beginning with the initial separation and continuing for several years after the divorce. They compared each parent’s preference for the custody award shortly after the petition for divorce was filed with what that parent formally requested, as well as with the actual custody award in the divorce decree.

They discovered that the overwhelming majority of mothers (82%) wanted sole physical custody of offspring, and this is what the large majority of them requested and, eventually, achieved from the court. By contrast, fathers initially wanted a broader variety of custody arrangements—paternal, maternal, and joint custody in roughly equal proportions—but more than one-third of them did not actually request as much physical custody in the divorce petition as they wanted. That is, fathers who wished for sole or joint physical custody did not file a request for it or, instead, requested maternal custody. In short, mothers were far more likely to act on their stated desires for custody than were fathers.<sup>11</sup>

Why was this so? Maccoby and Mnookin suggested that many fathers may have decided that their efforts to achieve a more generous physical custody arrangement were likely to fail in the face of the mother’s determination to have sole physical custody of offspring. There was, in fact, considerable reason for their fear. The Stanford study reported that, when parents made conflicting physical custody requests, mothers’ requests were granted about twice as often as fathers’ requests. Indeed, even when both parents agreed that fathers should have sole custody of offspring, judges contravened this agreement about one quarter of the time. The authors concluded that: “[A]lthough gender stereotypes are no longer embedded in the statute books themselves, and California law is certainly viewed as sympathetic to more androgynous forms of physical custody, the actual custodial outcomes still reflect profound gender differentiation between parents: the decree typically provides that the children will live with the mother.”<sup>12</sup>

### **Problems in Applying the “Best Interests” Standard and the “Primary Caretaker” Presumption**

#### **The “Best Interests” Standard**

One of the obstacles men encounter in considering whether to ask for an enhanced future role in the lives of offspring is that the vagueness of the “best interests of the child” standard provides courts with considerable latitude to interpret children’s needs in various ways. If many judges believe, for example, that children properly belong in maternal care—especially during their early years—the “best interests” standard provides the flexibility

necessary to justify such a decision, regardless of the meaning to the child of the relationships she or he shares with each parent. Indeed, the preeminence of maternal custody awards could reflect, in part, the continuing influence of the “tender years doctrine” in the minds of many judges and their belief that mothers are better suited than fathers for the care of children.<sup>13</sup> Fathers who must negotiate with their wives over custody issues realize that, if their dispute comes to court, their chances of achieving a more generous custody settlement are remote at best.<sup>6</sup> As a consequence of this “bargaining in the shadow of the law,”<sup>14</sup> fathers may not press for the kind of custody arrangement that they prefer and that, they might believe, reflects children’s best interests because it allows them a more meaningful, continuing role in the child’s life.

#### The “Primary Caretaker” Presumption

The vagueness of the “best interests of the child” standard has led to a search for presumptive standards that can more reliably guide custody decision making.<sup>10,15</sup>

A presumption that has been long advocated by legal scholars and social scientists is to award custody to a fit parent who is the child’s “primary caretaker.”<sup>16</sup> By ensuring the child’s continued contact with the parent who has assumed the predominant role in parenting, it is argued, courts can advance the child’s best interests. How do courts determine who is a child’s “primary caretaker”? The criteria used in West Virginia have been articulated by Richard Neely, Chief Justice of the West Virginia Supreme Court of Appeals. According to Neely, the “primary caretaker” may be defined as the parent who “(1) prepares the meals; (2) changes the diapers and dresses and bathes the child; (3) chauffeurs the child to school, church, friends’ homes and the like; (4) provides medical attention, monitors the child’s health, and is responsible for taking the child to the doctor; and (5) interacts with the child’s friends, school authorities, and other parents engaged in activities that involve the child.”<sup>17</sup>

Similar criteria are enunciated in other standards.<sup>18</sup> Are these adequate criteria for identifying the parent whose relationship to the child merits custody? Are they appropriate for children of all ages? Although efforts to identify the child’s “primary caretaker” have the appeal of providing a straightforward, apparently valid, and readily assessable

means of distinguishing parenting roles and relationships, it is not necessarily an easy task to define this status in a manner that is appropriate to children’s changing developmental needs and competencies. Chief Justice Neely’s criteria are obviously well-suited to infants and very young children for whom, as he remarks, “[t]his list of criteria usually, but not necessarily, spells ‘mother.’” But as children mature, their psychological growth demands far more multidimensional parental roles and responsibilities. Where, among these criteria, is the importance of play, moral instruction, gender socialization, and academic encouragement—responsibilities mothers and fathers share more equally in typical families and in which fathers often assume a leading role?<sup>19</sup> Indeed, as I suggested ten years ago when advancing the primary caregiver presumption in custody decision making, it is not at all clear that distinctions can be made between primary and secondary caregiving roles in many families with children above age four because of the diversity of children’s needs and the multidimensionality of parenting roles and responsibilities.<sup>20</sup> Because both parents assume meaningful

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but different roles and relationships with offspring, each parent is a “primary caretaker” of older children in different ways, and custody decisions might better focus on maintaining relationships with each parent rather than just the “primary” one.

Moreover, it is not at all clear that, when both parents assume *some* responsibility for the child’s bathing, feeding, health, and basic care—that is, when both parents are involved to some degree in the child’s well-being—the relative extent of their responsibility for these tasks defines the most significant dimension on which to rest a custody decision. In a sense, Chief Justice Neely’s criteria for defining “primary caretaker” status are among the *least* meaningful indices because basic maintenance tasks like meal preparation, dress-

ing, bathing, and chauffeuring can be readily assumed by either parent regardless of the level of his or her predivorce responsibility for these concerns. Many of these responsibilities are activities done *for* the child rather than *with* the child.<sup>21</sup> The focus of a custody inquiry should properly be the meaning and significance of each parent's *relationship with* the child, which is far more difficult to assess and which is not easily indexed by inquiring which parent regularly dressed and bathed the child. Substituting quick evaluations of parental responsibility for maintenance care for a searching inquiry into parent-child relationships does not contribute to valid or meaningful child custody decisions.

Alternatively, one could regard the award of custody to the primary caretaker as a reward for prior caretaking involvement, regardless of the relative significance of parenting relationships to the child.<sup>22</sup> Legal scholar Martha Fineman offers such an argument in which she explicitly urges disregarding the quality of the relationship between parents and children. In response to criticism that such an approach disadvantages fathers in application, she notes, "[i]f fathers are left out, they can change their behavior and begin making sacrifices in their careers and devoting their time during the mar-

riage to the primary care and nurturing of children. Men can exercise the same 'free' choice that women traditionally have in these matters, adjusting their outside activities to care for their children."<sup>23</sup>

But is this realistic? The same sexist society that denigrates the earning potential of women makes it harder for men to make career sacrifices in favor of enhanced caregiving involvement with offspring when they are primarily responsible for supporting the family. For many parents, in fact, the mutual allocation of economic and domestic responsibilities is based on a realistic assessment of each spouse's current and potential contribution to family income that partly derives, however unfairly, from cultural sexism in earning power for which neither is responsible. The result is that, for many men, assuming a lesser-paying (but more flexible) job or taking a leave of absence to help care for offspring simply is not an option without undermining the family's standard of living. But under the "primary caretaker" presumption, this decision is penalized because "good providers" are also "secondary caregivers"; moreover, their prior economic support responsibilities obligate them to postdivorce support responsibilities also. Just as the postdivorce earning potential of mothers

is hampered by their predivorce caregiving commitment, the capacity of fathers for a meaningful postdivorce caregiving role is undermined by their predivorce economic support responsibility under the “primary caretaker” standard. Sexism in our society functions both ways.

### Fathers as Caretakers

Defining the child’s “primary caretaker” in terms of the basic maintenance responsibilities commonly assumed by mothers might also be justified if we believed that men were, in general, inadequately prepared to assume a primary caretaking role.<sup>24</sup> But of all the arguments supporting the criteria for defining “primary caretaker” status as outlined above, this is the least convincing. A large research literature examining the caretaking capabilities of fathers reveals extraordinary competence in child care, even of infants, for whom greatest doubt has traditionally existed concerning male caretaking competency.<sup>19,25</sup> Although fathers typically defer to their wives the basic maintenance care of young children (a responsibility their spouses also often prefer to assume<sup>26</sup>), researchers have consistently found that, when fathers are asked to feed, bathe, and otherwise nurture their young offspring, they behave very much like mothers. They are comparably sensitive and responsive to infant cues, they show comparable concern and attention, and their nurturance is comparably successful (that is, infants are adequately fed and bathed). And not surprisingly, infants respond to paternal caretaking as they do to maternal care: infants develop deep emotional attachments to their fathers that do not depend on the security they derive from their attachments to mothers.<sup>27</sup> As children mature, fathers are involved in the lives of offspring in increasingly more diverse ways as role models, teachers, homework consultants, and disciplinarians. In short, caretaking competence—defined narrowly or broadly—is not gender-specific.

The same conclusion applies to studies of single fathers, whether their parenting status occurs through a divorce custody award or in other ways. Although single fathers often express concern about their ability to assume the responsibilities normally shared by two parents (as do many single mothers), researchers have consistently found that children living with single fathers are well-adjusted. In single-father house-

holds, domestic tasks are adequately managed, and employment and domestic responsibilities are satisfactorily juggled (with some effort).<sup>25,28</sup> There is some evidence that sons fare better with single fathers than do daughters,<sup>29</sup> but children of each sex receive good care. Moreover, children in single-father care are more likely to enjoy positive relationships with both their mothers and their fathers than are children with single mothers, partly because noncustodial mothers have more success maintaining continuing contact with offspring.<sup>6,30</sup> In short, studies of single fathers reveal that their personal experiences and their child care practices are strikingly similar to those of single mothers.

Taken together, therefore, it appears that differences between men and women are not primarily in caregiving competence but in the assumption of caretaking responsibilities. Why, then, do fathers not normally assume a stronger role in the basic care of young children? Summarizing the diverse answers that have been offered to this question is beyond the scope of this discussion, but any answer is

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### *A large research literature examining the caretaking capabilities of fathers reveals extraordinary competence in child care, even of infants.*

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incomplete which neglects the gender-typed socialization that contributes to how fathers perceive their roles and responsibilities in relation to offspring.<sup>31</sup> In a sexist society that continues to address child-rearing advice almost exclusively to women, that calls fathers-to-be “coaches” (a replaceable role in the sports world) in Lamaze classes and “donors” in surrogate parenting cases, and that still regards the paternal role primarily in terms of economic support, it is perhaps not surprising that men approach the role of fatherhood with considerable uncertainty concerning role expectations, responsibilities, and options. The same society also offers powerful images of fatherhood that alternate idealized “good (involved, nurturant, responsibility-sharing) dad” portrayals with demonized “bad (dead-

beat, absent, career-oriented) dad” images<sup>32</sup> when the reality involves deeper conflicts, compromises, and contingencies. The expressive function of the law itself should not be ignored: the enforcement of the economic obligations of divorced and unwed fathers for offspring without assurances of a meaningful parenting role in the child’s life also provides powerful messages to men concerning the limits of their paternal role. In the end, while there is evidence that paternal caregiving involvement is incrementally increasing,<sup>9</sup> parity with the high levels of maternal investment in children is unlikely to occur soon in a society that is itself ambivalent about the father’s role.

### Joint Custody as an Option

In light of these considerations, it is perhaps apparent why many fathers have welcomed the movement toward joint custody as a viable custody option in many jurisdictions. In the face of a spouse with a concerted claim to custody, joint physical custody presents fathers with the opportunity to assume a significant parenting role in the lives of offspring without having to deny mothers their legitimate interests also.<sup>33</sup> Moreover, when parents are capable of reasonable cooperation on behalf of offspring, joint custody can potentially benefit children by enabling them to maintain access to each parent in a manner that preserves some of the beneficial qualities of predivorce family life. Although joint custody can be a disadvantage to children when parents remain in serious conflict, it is not yet clear how much interspousal cooperation is required to ensure the benefits of joint custody. For example, many parents remain distant and disengaged after divorce, but not acri-

future role in the lives of offspring, and children win as a consequence.<sup>34</sup>

The controversy surrounding joint custody concerns how joint custody is awarded.<sup>35</sup> Few argue that joint custody should be denied divorcing spouses who mutually wish to share custody of offspring (although some critics would reasonably seek to ensure that this did not result from coercive predivorce bargaining). Disagreement exists, however, over whether courts should have the option of awarding joint custody over the objections of one parent. The reason for this concern is that the success of joint custody—especially its potential benefits to children—depends on the capacities of each parent to cooperate on behalf of offspring, and a parent who is coerced into a joint custody arrangement may be unlikely to cooperate. Moreover, critics contend that, if judges are capable of awarding joint custody over the objections of a parent—typically the mother—it adds to the bargaining leverage of the partner, who may negotiate unfairly by raising a nonserious claim to joint custody of offspring. This unfair bargaining leverage is enhanced when statutory joint custody provisions are accompanied by “friendly parent” provisions that instruct courts to consider, if joint custody is not awarded, which parent would best facilitate the child’s continuing relationship with the other parent. The parent who requests joint custody is more likely to be regarded as the “friendly parent” and may be at an advantage in seeking sole custody if joint custody is denied.

These objections have merit. But it is important to remember that remedies to correct potential bargaining inequities may create new inequities in their place. When joint custody is awarded only by the mutual consent of both parents, the parent who would otherwise receive sole custody has a significant bargaining advantage over the partner because it is only with this parent’s consent that the partner can achieve joint custody. Thus under current conditions, mothers can effectively veto the prospect of joint custody—or threaten to do so—with the assurance that doing so will not hinder their future contact with offspring. Indeed, in the Stanford study,<sup>6</sup> mothers received sole custody of offspring more than two-thirds of the time when their request for sole custody conflicted with fathers’ request for joint custody.

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### *Fathers have welcomed the movement toward joint custody as a viable custody option in many jurisdictions.*

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monious.<sup>6</sup> (See the article by Johnston in this journal issue.) At its best, joint custody presents the possibility that each family member can “win” in postdivorce life rather than insisting that a custody decision identify “winners” and “losers”: mothers and fathers each win a significant

It seems unfair to invest so much bargaining leverage in one partner, especially when reasons for the denial of joint custody need not be demonstrably tied to children's needs or interests. A wiser course is to institute a judicial presumption concerning the desirability of joint custody contingent on the agreement of both parents, children's preferences, and other evidence concerning the workability of joint custody for the particular family in question. In such circumstances, one partner's objection to joint custody would not be sufficient to impede this option without additional evidence that joint custody is inconsistent with children's best interests in the custody decision. Merely to assume that a parent who initially objects to joint custody would make this arrangement untenable underestimates the capacity of parents to adapt to caretaking arrangements that benefit offspring and neglects the adaptations that are inherently required of each parent by the transition to postdivorce life. Moreover, the transition to a successful joint custody arrangement could be facilitated by predivorce counseling and/or mediation that would help parents create a plan to implement joint custody in a manner that accommodates the needs and concerns of each. Just as parents must strive to adapt successfully to patterns of single parenting and noncustodial visitation in the interests of offspring—and usually they do<sup>6,36</sup>—so also must they adapt to make joint custody successful in the interests of offspring, even though one parent may not have initially sought this arrangement.

### Future Directions

In the end, the preeminence of maternal custody awards not only disadvantages men but may also work against children, whose interests (especially after the early years) may be misrepresented by the perpetuation of "tender years" assumptions in judges' applications of the "best interests" standard and the "primary caretaker" presumption, and by the effects of these judicial assumptions on their parents' predivorce bargaining over custody. As Herma Hill Kay has noted concerning the "primary caretaker" standard, "The predictability that such a presumption brings to custody awards is purchased at the cost of legitimating the maternal preference under an easily penetrated veneer of gender neutrality that effectively excludes the vast majority of fathers as potential custodians. Contemporary social, cultural, and eco-

nomic factors all tend to inhibit fathers from any realistic commitment to qualifying as the primary caretaker of children. Indeed, the normative effect of such a legal preference actually might tend to discourage fathers from participating in the care of their children during marriage while reinforcing the existing cultural directive

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*Greater explicit consideration of the child's wishes in custody-related matters may also be desirable.*

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that women ought to regard mothering as their primary role."<sup>37</sup> The preeminence of maternal custody not only reinforces undesirable cultural portrayals of the capacity and willingness of men to nurture but also does so for women, whose postdivorce options are shaped by the expectation that they will assume sole custody of children.

In an insightful recent analysis, Elizabeth Scott has criticized contemporary custody standards for failing to maintain the complementary parental roles and responsibilities that characterized predivorce life.<sup>38</sup> She urges an alternative standard that would seek to approximate, in custody and visitation arrangements, the sharing of responsibilities that had previously existed. Moreover, if one of the goals of wise public policy concerning divorce is to foster the child's continued, unconflicted relationships with each parent, it is perhaps desirable to guide parents' private ordering of custody matters under new rules that encourage joint parenting after divorce, either in formal joint custody arrangements or in parenting plans<sup>39</sup> that provide each partner with a meaningful future relationship with children. Such plans would emphasize the responsibility of each parent for maintaining continuing obligations to children after divorce for care, financial support, and other responsibilities in the context of explicit guidelines concerning parental obligations and prerogatives. A presumption that joint legal custody would be shared by each parent after divorce might also help to encourage shared parenting. Greater explicit consideration of the child's wishes in custody-related matters may also be desirable, especially as they are incorporated

into parenting plans and future modifications of custody and visitation agreements. Unfortunately, current rules that enable one parent to veto the option of joint custody and that portray “primary caretakers” as mothers will only continue the status quo.

## Visitation

### The Father’s View of Visitation

To many fathers, equitable child custody arrangements are essential in light of the alternative. It is very difficult to maintain a successful “visiting” relationship with offspring as a noncustodial parent, especially as a father. It is not hard to see why. Consider the following description of this relationship from researchers who have long studied families of divorce:<sup>40</sup> “At its core, the visiting relationship is ambiguous and therefore stressful. A visiting father is a parent without portfolio. He lacks a clear definition of his responsibility or authority. He often feels unneeded, cut off from the day-to-day issues in the child’s life that provide the continuing agenda of the parent-child relationship. The narrow constraints of the visit are often reflected in the need to schedule a special time and place to be with one’s child, the repeated

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*A visiting father lacks a clear definition of his responsibility or authority. He often feels unneeded, cut off from the day-to-day issues in the child’s life.*

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leave-taking, and the need to adapt flexibly to the complex changing needs of the child. The forced interface with new adult figures within what sometimes is the father’s former home, and the continued crossing and recrossing of new family boundaries in the child’s life, are murky and burdensome aspects of the visiting parent’s role because they are largely undefined and therefore unsupported by social convention. They generate a changing mix of frustration, anxiety and gratification. The conflicting psychological strains on the visiting father usually pull him between the need to remain close to his children out of his love, dependence, sense of commitment, and legal obliga-

tion, and the countervailing desire to take flight in order to escape the painful feelings associated with the failed marriage. For a significant number of fathers, the urge to take flight can be irresistible.”<sup>41</sup>

Studies of divorced fathers support this conclusion. Although a substantial minority of fathers maintain or enhance the frequency of visitation over time, for most men, contact with children may initially increase immediately after the divorce but then it typically declines, sometimes strikingly, during each successive year.<sup>6,42</sup> The same reports indicate that, when visits occur, they are often social and recreational in nature, confirming the popular stereotype of the visiting father as a “Sunday Santa” or activities director. The absence of the visiting parent from the ordinary variety of daily activities that children experience—from helping with homework to sharing domestic tasks—undoubtedly contributes to the artificiality of their relationship and the feeling that the visiting parent has ceased to function as a genuine parent in the child’s life. As an indication of this fact, in one study only half the children interviewed included their noncustodial fathers in their list of family members, and very few children did so when the father rarely visited.<sup>43</sup> These researchers concluded, “[m]arital disruption effectively destroys the ongoing relationship between children and biological parents living outside the home in a majority of families.”<sup>44</sup>

Some researchers have concluded from survey data that children’s well-being is not significantly altered by whether fathers choose to remain involved after the divorce.<sup>45</sup> But these findings, based only on children 11 to 16 years old, must be regarded cautiously because they are inconsistent with children’s own preferences to see more of their fathers.<sup>46</sup> In one study, more than 85% of children wished for their parents’ reconciliation three years after their divorce.<sup>47</sup> Moreover, as we shall see, patterns of involvement as a visiting father are strongly related to the reliability of child support payments, implicating the child’s economic well-being in this relationship also.<sup>48</sup>

### Difficulties in Maintaining the Visiting Relationship

Why, then, is the visiting relationship of the noncustodial father so difficult to maintain? Explanations vary and are multiply influential.<sup>6,49</sup> The residential mobility of

either parent can pose formidable geographical obstacles to regular visitation. The remarriage of one or both parents can likewise pose relational challenges to the maintenance of visitation, especially if it entails the assumption of responsibility for new offspring. The passage of time itself can impede the continuation of a visiting relationship, especially as noncustodial parents and children each develop new interests and relationships that they do not share with each other. Socioeconomic status is likewise also a positive predictor of the maintenance of visitation, probably due to the resources a noncustodial parent can devote to frequent visits with children. The manner in which the divorce was negotiated (involving litigation or private mediation) and the acrimony surrounding these negotiations also influence patterns of visitation because visitation is more likely when former spouses are cooperative. Even the way that visitation occurs—through overnight visits, weekends together, or only day visits—can predict whether visitation will be maintained.<sup>6</sup> The significance of these diverse postmarital influences is reflected in the fact that, when researchers have examined the influence of the father's predivorce involvement with children on visitation, expecting that fathers who were strongly committed to their offspring during their marriage would likewise become committed noncustodial parents, they have been surprised to discover that predivorce parenting does not predict postdivorce visiting.<sup>46</sup> The quality of a noncustodial father's relationship with offspring is shaped primarily by influences in postdivorce life.

Among the more salient obstacles to visitation is the desire of parents to limit the amount of mutual contact they must endure. Fathers may do so by neglecting to visit with offspring. Custodial mothers may do so by being unavailable when visits are to occur, by rescheduling visits for inconvenient times, or by raising objections to new visitation plans. Although mothers are usually not primarily to blame for fathers' lack of visitation, researchers have reported that they impose obstacles to visitation to a surprising extent: by some estimates, one quarter to one-half of fathers report serious visitation problems with their ex-spouses.<sup>6,50</sup>

Part of the problem is the ambiguity with which visitation expectations are sometimes defined in divorce statutes: by contrast with the precision by which child

support awards are outlined in many jurisdictions, "reasonable" visitation can be interpreted in various ways. The broader problem, however, is that visitation almost inevitably requires contact between ex-spouses. Although custodial mothers often complain that fathers assume too little responsibility for children,

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***About 15% to 25% of noncustodial fathers maintain weekly visits even several years after divorce, and the proportion may be growing.***

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they also report few efforts to consult with fathers concerning child-rearing matters and little interest in having more contact with the former spouse. In the words of one researcher, "coparenting conflicts with the preference of the vast majority of divorced individuals to establish as much distance as possible from their ex-spouses."<sup>51</sup> The "clean break" they desire after divorce may undermine the success of visitation.

It is important to note that a substantial minority of noncustodial fathers succeed in maintaining an ongoing relationship of frequent visitation despite these factors. About 15% to 25% of noncustodial fathers maintain weekly visits even several years after divorce, and the proportion may be growing.<sup>52</sup> In the recent Stanford study, 64% of children reported seeing their fathers during the preceding month after more than three years had passed since parents separated.<sup>6</sup> Thus diminished visitation is neither a necessary nor an inevitable long-term accompaniment of noncustodial parenthood.

It appears, however, that events of the early postdivorce years significantly shape a noncustodial father's expectation of whether he will be able to play a meaningful role in his child's future that guides his behavior concerning visitation, child support, and other postdivorce issues. Fathers who encounter significant obstacles to visitation may progressively withdraw from offspring and, in so doing, lessen their own discomfort and anxiety in the visiting relationship.<sup>53</sup> Conversely, fathers who anticipate a meaningful future role in the child's life are likely to persist in

visitation despite the impediments they encounter. The first year or two after divorce, therefore, may be the crucial period for establishing cooperation between former spouses that allows fathers a meaningful future parenting role with offspring. One way of doing so is with more explicitly defined visitation arrangements that have clear enforcement mechanisms and accessible modes of dispute resolution when visitation disagreements arise. Parenting plans that are jointly negotiated by parents, perhaps with mandatory visitation expectations—or “dual parenting orders”<sup>54</sup>—might help to foster continued involvement of fathers in the child’s postdivorce life.

Involving fathers is important because, in the end, children are likely to benefit the most when fathers remain involved. To the extent that children desire continuity in parenting relationships after divorce, efforts to strengthen the non-custodial father’s commitment to offspring are worthwhile. To the extent that children may benefit, as they grow up, from access to their fathers for guidance and support, efforts to ensure that non-custodial fathers do not disappear from the child’s life are valuable. The tragedy of declining visitation is that children may lose any possibility of future access to a parent who may be capable of providing

regularly with offspring or because fathers who encounter obstacles to visitation feel less fidelity to child support orders. It is also true that fathers who cannot maintain child support payments are likely to otherwise disappear from their children’s lives either because they wish to avoid detection or because they are denied access by the children’s mother or because they cannot justify visiting offspring whom they cannot help support. Sometimes child support and visitation are linked to common influences: when mothers remarry, fathers sometimes feel excluded from their children’s lives and also believe there is less need for child support payments now that a stepfather is in the picture. Or the father’s own remarriage may diminish his interest in visitation and his perception of his capacity to pay child support. The geographic relocation of either parent can have similar consequences. In short, visitation and child support are complexly, but strongly, tied to each other. Perhaps unsurprisingly, although unfortunately, fathers too often show inconsistent and faltering fidelity to child support orders in a manner similar to their declining visitation with offspring.<sup>56</sup>

Child support is among the most important obligations of out-of-home fathers to their children, and provision of adequate support is central to a child’s economic well-being. Current estimates indicate that only about half of single mothers due child support payments receive the full amount from fathers, with half the remaining women receiving partial payments and the remainder, none at all.<sup>57</sup> Yet the problem of child support is more complex than the simple portrayal of the “deadbeat dads” of divorce. These reports typically aggregate, for example, the child support payments of divorced fathers with those of unwed fathers, who present far more formidable problems with child support enforcement and typically provide much less support than do divorced fathers. The feminization of poverty—and the poverty of children—clearly has origins in the plight of never-married women, as well as in divorce.<sup>58</sup> (See the article by Shiono and Quinn in this journal issue.)

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*Dual parenting orders might help to foster continued involvement of fathers in the child’s post-divorce life.*

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not only love and support but also a link to the child’s heritage. And because the regularity of visitation and fidelity to child support orders are so closely linked, enfranchising fathers relationally also has important economic benefits for offspring.

## Child Support

Visitation and child support are related attitudinally, empirically, sometimes even legally.<sup>6,55</sup> But their linkage is complex. Fathers who do not visit with their children are less likely to pay child support, but this may be because fathers who refuse to pay child support lack the commitment to visit

In addition, one of the reasons for inadequate child support is that more than 42% of single mothers never receive a child support award. Of these, about 22% do not want such an award.<sup>57</sup> Their reasons for this decision vary: some mothers may doubt the father’s capacity or

willingness to pay, others may have their own resources to draw upon, and still others may decline a child support award to avoid any obligations to the father deriving from his support.<sup>6,59</sup> Another 19% want a support award but, for various reasons, do not pursue it, and another 14% believe that the father is financially unable to pay and, for this reason, do not request child support payments.<sup>57</sup> In short, when children suffer economically, their suffering may be the result of their living with a never-married mother or of the absence of a support award rather than of a divorced father's noncompliance with court-ordered child support.

Nevertheless, child support payments have remained small even when women have an award. By many estimates, the total amount of child support awarded a mother is inadequate to the true costs of raising children. Moreover, even when payments are received, they are often partial or inadequate, averaging \$3,322 per family in 1989 for divorced women.<sup>57</sup> Of course, this picture is likely to change substantially with the mandatory child support guidelines and enforcement mechanisms required under the Family Support Act of 1988 discussed below.<sup>5</sup> Fathers may also contribute to a child's economic well-being in ways that are not accounted for in child support payments. They may directly purchase clothing, gifts, and other material items for children; they may pay dental or medical bills; they may subsidize school fees, lessons, or other activities—all of which are unlikely to be included in court records or other reports. Moreover, about 44% of fathers were required to include offspring in their own medical coverage.<sup>57</sup> In general, however, these informal sources of support tend to supplement rather than to substitute for formal child support payments.<sup>60</sup> Fathers who support the child economically through checks to the mother are most likely to do so in other ways also.

### Explanations

What factors can account for whether fathers will maintain fidelity to their child support obligations? One set of explanations focuses on child support in the context of the maintenance of other parenting responsibilities toward children: fathers are more likely to provide reliable child support when they have other meaningful roles in the child's life. Judith Seltzer and her colleagues<sup>61</sup> have argued that, just

as fathers in intact homes expect to spend time with children, provide for their material needs, and exercise authority over them, so also divorced fathers define their parenting role in terms of these three responsibilities. Seltzer's data suggest that these obligations tend to correlate in fathers' postdivorce relationships with offspring: those who participate with the

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*Fathers are more likely to provide regular child support payments when they enjoy regular visitation with offspring.*

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mother in decisions concerning children tend also to visit and maintain child support obligations; conversely, the abdication of one or two of these responsibilities tends to diminish them all. Thus a father's fidelity to child support obligations should be regarded within the context of the other commitments and responsibilities that define a father's postdivorce parenting role.<sup>53</sup>

Other research findings support this view. The association between visitation and fidelity to child support obligations has already been noted: fathers are more likely to provide regular child support payments when they enjoy regular visitation with offspring.<sup>55</sup> A father's maintenance of child support is also affected by the geographic distance between fathers and offspring (child support is more forthcoming when the father and children live in close proximity), and the quality of the relationship between ex-spouses.<sup>60,62</sup> Custody arrangements may also be pertinent to a father's capacity to maintain a sense of involvement with offspring. A higher proportion of fathers in joint custody maintain their child support obligations than fathers in other custody arrangements, and they are also more likely to provide children with other benefits not included in support payments.<sup>60,63</sup> Thus if Seltzer is correct, child support is part of an overall constellation of obligations to children that noncustodial fathers either feel committed to or tend to default on. Visitation and custody arrangements that foster fathers' perception of a meaningful

parenting role are likely to enhance their fidelity to child support obligations.

The father's financial capacity to provide reliable child support is another factor. More than 60% of the women due child support, but not receiving regular payments, cite the father's inability to pay as the cause.<sup>57</sup> Although many fathers who default on child support obligations are fully capable of making regular payments, a number of studies indicate that one of the best predictors of the amount of child support provided by fathers is their income and employment status.<sup>67</sup> It is not hard to see why. Lower-income fathers face multiple strikes against them: not only

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do they have fewer resources for satisfying their support obligations but also their child support payments typically constitute a higher proportion of their income, they have fewer ancillary resources on which to draw if they should fall behind in their support payments, and they are more aggressively prosecuted for failing in their support obligations (partly because they are already involved with social service agencies and can less easily frustrate child support enforcement efforts). Thus, these fathers are caught between limited income, few other resources, and rigorous child support enforcement.

Taken together, these factors suggest that their failure to maintain child support obligations does not confirm the popularized portrayal of "deadbeat dads" who are more interested in devoting their financial resources to personal pleasures rather than their children's needs. Instead, their support compliance can best be predicted by their more general financial circumstances and/or the kind of parenting role they can achieve in their postdivorce lives. Even when they refuse or cannot comply with their support obligations, most fathers accept their general responsibility for doing so and affirm the legitimacy of their children's postdivorce economic needs.<sup>64</sup> As Haskins, who has

studied these fathers, has commented, "I find no support in the empirical literature for either the claim that fathers believe child support to be unjustified or that they accept the validity of various reasons often cited as justifications for not paying child support. Fathers know they have an obligation to pay child support and that this obligation cannot easily be broken."<sup>64</sup>

### Remedies

One of the most important advances in divorce reform in the 1980s was the move to more systematic, coercive, and (not surprisingly) effective means of child support enforcement. As described more fully by Irwin Garfinkel in this issue, congressional action throughout the decade—culminating in the Family Support Act of 1988<sup>5</sup>—provided strong incentives for states to establish consistent guidelines for child support awards and to strengthen enforcement efforts significantly through salary withholding, interstate cooperation in locating delinquent fathers, and other means. As a consequence, the nation is moving toward a system of child support enforcement that has long been envisioned by those concerned with the impoverishment of single mothers and their offspring: clear guidelines that reduce judicial discretion, instituted through mandatory withholding to avoid default and other enforcement processes that enlist the government—rather than the mother—as the enforcement agent.

Such a system has many strengths, including the consistency of child support orders across different local jurisdictions and enforcement procedures that help to avoid direct, and often acrimonious, confrontations between former spouses. The likelihood that women will be coerced, in divorce negotiations, to eliminate or reduce the father's child support obligation is reduced within a framework of mandatory state guidelines. Moreover, when wage withholding is supplemented by public guarantees of assured benefits to recipients of support, these procedures help to ensure the economic well-being of single mothers and their children.

There are also disadvantages to these approaches. As earlier noted, mandatory support guidelines coupled with strict enforcement procedures provide little flexibility to adapt to atypical or changing family conditions absent options for periodic review. Fathers who assume an enhanced noncustodial parenting role may

be penalized, for example, by quantitative guidelines for calculating child support that assume more traditional patterns of visitation. Moreover, this system fails to address many of the important issues that complicate the determination of child support obligations. Should support awards be adjusted for inflation (especially when the cost of children's care rises with inflation, even though father's income often does not)? To what extent should support obligations be altered by events like the mother's remarriage (that may provide additional sources of financial support for the child), the father's remarriage (that may increase his other legitimate support obligations), significant changes in the employment of either parent, and other life circumstances? How much should child support obligations be affected, if at all, by the custodial parent's decision to work or not? Can mandatory guidelines help to ensure that children are the beneficiaries of child support payments? Perhaps most important, is it possible to estimate, in calculating universal support guidelines, the true costs of raising a child and how these costs are likely to change with the child's maturity and special needs?

Alternative methods of calculating child support obligations have advantages and disadvantages. The most popular proposed approach, which involves "taxing" the noncustodial parent's income by a predetermined percentage, has the advantage of straightforward simplicity and efficiency, as well as an inflation adjustment. But taxation approaches do not, taken alone, provide adequate support for the offspring of lower-income or unemployed fathers and do not take into account other resources that are (or are not) available for the child's support. By contrast, cost-sharing approaches include the custodial parent's contributions but require estimations of difficult-to-determine expenses of child rearing and have limited flexibility concerning later changes to the income of either parent. Consequently, a number of commentators have questioned whether these mathematical guidelines can really ensure equity in child support awards.<sup>65</sup>

What is most curious, this emergent system of child support enforcement fails to address the two most important causes of fathers' failure to maintain their support obligations. First, mandatory salary withholding does little to strengthen the

father's involvement in other features of the child's life—such as visitation and participation in child-rearing decisions—that best predict fidelity to support obligations. In a sense, the strong enforcement of financial support responsibilities in the context of few efforts to strengthen visitation or coparenting helps to reinforce cultural portrayals of fathers as economic providers alone, and this is an undesirable outcome of divorce policy.

Second, mandatory salary withholding does little to strengthen the capacity of fathers to pay when they are underemployed or work in low-wage jobs unless it is accompanied by job training and placement efforts. Although it is arguable that, when fathers are in difficult economic straits, their children still continue to need support, it makes little sense to accrue growing arrearages in child support payments that some fathers have little hope of paying and then to prosecute them aggressively for their inability to pay. By emphasizing enforcement over enablement in such instances, the emergent system of child support may, in the end, do little to improve the living conditions of children who are economically most in need. Conversely, by combining child support enforcement with programs to promote employment for underemployed fathers, the goal of advancing children's economic best interests can be advanced.

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*Emphasizing enforcement over enablement may, in the end, do little to improve the living conditions of children who are economically most in need.*

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In sum, a system of mandatory income withholding (combined, in the ideal if not in reality, with public guarantees of assured benefits) accomplishes only the worthwhile but minimal goal of child support enforcement: ensuring greater cash transfers from noncustodial to custodial parents. To be sure, this is an important first step, but it is necessarily incomplete. It does little to foster a postdivorce fathering role beyond that of economic provider and thus does little to make fathers an integral part of their children's postdivorce lives. It provides little assistance to fathers who cannot make ade-

quate child support payments and wish to do so. It fails to address thorny policy problems concerning the scope of child support obligations, the basis for modifications of support awards, and how best to estimate the actual expenses of raising children.

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*Is it fair to fathers (and children) to emphasize their economic provider role without also enhancing other parenting functions in the child's life?*

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Greater thought is needed on these issues in the context of the broader values they reflect. Is it fair to fathers (and children) to emphasize their economic provider role without also enhancing other parenting functions in the child's life? Given the changeability of family life during the postdivorce years, is it reasonable to expect that child support awards instituted at the time of divorce will remain valid years afterward, when patterns of child care and visitation, parental employment, and geographical relocation and remarriage will have significantly altered the children's needs and the resources upon which they can rely? Or are avenues for the periodic reworking of child support obligations most desirable as part of the continued relationship shared by former spouses after they divorce? Should the economic arrangements of child support provide significant incentives, or disincentives, for either parent to remarry and have additional children or to work? In light of these diverse considerations, current progress in this area must be regarded as incomplete.

One additional question must also be pondered: with the growing effectiveness of child support enforcement promised by mandatory income withholding, together with strengthened means for locating delinquent fathers and standard award guidelines that reduce judicial discretion, the problem of inadequate child support will increasingly become a matter of the economic impoverishment of fathers themselves.<sup>66</sup> As earlier noted, it makes little sense to prosecute aggressively unemployed or underemployed fathers who do not have the capacity to pay (although doing so may send important signals to other

fathers who are contemplating nonpayment),<sup>67</sup> especially if the needs of children are central to this policy problem. Increasingly, commentators with various perspectives on child support issues have agreed that public responsibility to these children may be the most important future direction for public policy.<sup>66,68</sup> Such a view is reflected in the concept of the assured benefit plan that has, unfortunately, not been adopted as eagerly as mandatory income withholding by states that have pondered divorce reform (see the article by Garfinkel in this journal issue). It is not hard to see why: assured benefits require public expenditures and a public commitment to non-welfare-based child support that many policymakers find difficult to contemplate in an era of shrinking public budgets. Nevertheless, if the interests of children are truly central to future reform of the child support system, further exploration of public obligations—accompanying public enforcement—is needed.

### Other Economic Consequences of Divorce

Divorce requires not only consideration of custody, visitation, and child support concerns, of course, but also property division and, in some instances, negotiations over spousal support (formerly known as alimony). While these economic consequences of divorce are less central to the interests of children than are the former topics, they nevertheless have far-reaching consequences for the quality of life that children and their mothers are likely to experience. Unfortunately, formulating clear public policy on these additional economic concerns is even more difficult than for custody and child support concerns.

One reason for this difficulty is lack of a clear consensual theory to guide public policy concerning spousal support.<sup>69</sup> This may be why relatively few divorces have included alimony provisions, both prior to the no-fault revolution and afterward. The concept of spousal support strikes discordant notes in popular perceptions of divorce and its aftermath: the importance of a continuing support obligation by the (typically) better-earning husband versus efforts to ensure a "clean break" between divorcing spouses; the avoidance of dependent roles for women versus recognition of the disadvantages women face in a sexist society; compensation for one spouse's caretaking commitments

during marriage versus appreciation that each spouse makes significant, although different, contributions to marital life; acknowledgment of the joint contributions of divorcing partners to the human capital they share during marriage versus the inherent indeterminacy of dividing that capital upon divorce; recognizing the shared construction of marital assets versus the notion that one's career, income, and other human assets are one's own after divorce. Furthermore, current conceptualizations of spousal support accord well with neither contract theory nor partnership concepts and sometimes entail controversial notions of marital property (construed in terms of career assets) that make the development of a coherent theory of spousal support an even more challenging task.<sup>2,70</sup>

Added to these difficulties is ambiguity concerning what spousal support is meant to accomplish. Is it to compensate a former spouse for marital commitments that later result in career disadvantages? If so, what is the range of marital responsibilities meriting compensation in divorce negotiations? Is it to ensure that children are adequately supported after divorce? If so, what is the theoretical distinction between spousal support and child support obligations? Is it to provide a marital partner with a period of transitional support to develop educational or job skills preparatory to fully independent living? If so, what are the rules determining when, and for how long, such support is justified? Is it to ensure that spouses have a comparable postdivorce standard of living based on their joint contributions to the marital living standard? If so, how is this affected by the length of the marriage and the premarital resources contributed by each partner? Does it derive from the need to accommodate, in financial terms, the merger of human resources that occurred during marriage? If so, how is this justly translated into monetary support? Because these questions submit to no easy or clear answers, it is difficult to derive a coherent theory of spousal support to guide policy reform.

Furthermore, a theory of spousal support is ambiguous because the marital accommodations it is intended to reflect are also influenced by broader societal incentives for which neither partner is really responsible but to which each responds. As earlier noted, the differential domestic and wage-earning roles assumed by men

and women during marriage are often responsive to their realistic assessment of relative earning power and other incentives that characterize the culture at large. The roles husbands and wives assume are often constrained by how men and women are treated by society. As a consequence, when it comes to renegotiating marital assets upon divorce, it may be hard to disentangle the relative disadvantages suffered as a result of marital commitments from those suffered as a result of cultural membership. When a woman in a long-term marriage devotes herself exclusively to caretaking, by mutual agreement of husband and wife, it is reasonable to regard spousal support as a means of accommodating her contributions.<sup>71</sup> But in the more typical case of marital partners each approaching divorce with career assets, is spousal support really an appropriate means of equalizing differences in postdivorce living standards that derive, in large measure, from gender-based differences in earning power for which neither is really responsible? As Deborah Rhode and Martha Minow have noted, "Not all the gender disparities associated with divorce can, of course, be addressed through changes in divorce law. Particularly when marriages end after a relatively short period or the couple lacks adequate re-

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*It may be hard to disentangle the relative disadvantages suffered as a result of marital commitments from those suffered as a result of cultural membership.*

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sources, husbands cannot be expected to compensate for all the disadvantages facing their divorced wives. Many of these disadvantages stem from deeper structural inadequacies in employment, welfare, health, pension, and child-care policies, and from the continuing legacy of sex-based stereotypes and socialization patterns."<sup>72</sup> Although divorce faces women, as the authors note, with "the full costs of uncompensated family duties and labor market disadvantages," there is no clear theory to explain why or how spousal support should buffer the impact of these challenges in a manner comparable to the protections offered by marriage.

In the end, it seems likely that there will continue to be ambiguity in discussions of spousal support because of the inherently difficult issues—concerning the gendered acquisition and division of marital assets, the independence or mutual dependency of former marital partners in later life, and the relations between a child's economic well-being and that of the mother—that alimony has traditionally represented in popular thought.

## Conclusion

The dilemma of fathers and divorce centers on the challenges inherent in contemporary paternity: a status whose defining characteristics have become blurred by changes in men's and women's roles in our society and whose redefinition is still to come. As a consequence, paternity has become unfortunately (but perhaps inevitably) defined in popular forums by what is lacking: the assumption of responsibility for children, an equal sharing with women of domestic responsibilities, and a willingness to invest relationally as well as economically. At the same time, contemporary portrayals of fatherhood, including those associated with divorce, continue to emphasize their economic support obligations and their alleged disinterest in—and inadequacy for—child care. It is in this context of conflicting and largely denigrating cultural images that men seek to redefine fatherhood for themselves, both in marriage and in postmarital life.

There are important voices in the law and social sciences arguing that policy reform should begin with the assumption that men will increasingly distance them-

selves from their obligations to offspring, and that child support reform, visitation policies, and other issues in domestic policy should begin from the assumption that fathers will be absent or disinterested.<sup>73</sup> But this is a defeatist attitude and one that may encourage a continuance of the conditions which led to these proposals. Because the law expresses as well as institutionalizes social values, roles, and relationships, divorce policies that treat fathers primarily as economic providers and not as caretakers will tend to reinforce these roles in private life.

As an alternative, public policy could be devoted to creating incentives and roles that make fathers an integral part of the postdivorce lives of offspring: through nontraditional custody and visitation arrangements that ensure fathers a meaningful parenting function; through the availability of nonadversarial modes of assisted dispute resolution to negotiate difficulties in visitation, economic support, and other issues with a former spouse; through child support procedures that assist lower-income fathers with their economic obligations while providing guaranteed assistance to all children; and through divorce procedures that encourage (indeed, require) former spouses to recognize and structure their mutual postdivorce commitments to offspring and to each other. Policy reform that encourages a meaningful parenting role for fathers in postdivorce life provides the best hope of redefining paternity in the twenty-first century.

*I am grateful to Michael Lamb and Anne Mitchell for helpful comments and ideas throughout the preparation of this article.*

1. Acrimony between spouses or ex-spouses undermines children's socioemotional well-being; see for example, Emery, R.E. Interparental conflict and the children of discord and divorce. *Psychological Bulletin* (1982) 92:310-30; see also the article by Johnston in this journal issue.
2. For a related argument, consult Sugarman, S.D. Dividing financial interests on divorce. In *Divorce reform at the crossroads*. S.D. Sugarman and H.H. Kay, eds. New Haven, CT: Yale University Press, 1990.
3. See for example, Kelly, J.B. Parent interaction after divorce: Comparison of mediated and adversarial divorce processes. *Behavioral Sciences and the Law* (1991) 9:387-98; Emery, R.E., and Wyer, M.M. Divorce mediation. *American Psychologist* (1987) 42:472-80.
4. See for example, Scott, E.S., and Emery, R. Child custody dispute resolution: The adversarial system and divorce mediation. In *Psychology and child custody determinations*. L.A. Weithorn, ed. Lincoln: University of Nebraska Press, 1987.
5. Family Support Act of 1988 (Public Law 100-485), October 13, 1988.
6. Maccoby, E.E., and Mnookin, R.H. *Dividing the child: Social and legal dilemmas of custody*. Cambridge, MA: Harvard University Press, 1992.

7. Braver, S.L., Fitzpatrick, P.J., and Bay, R.C. Noncustodial parent's report of child support payments. *Family Relations* (1991) 40:180-85; Chambers, D.L. *Making fathers pay: The enforcement of child support*. Chicago: University of Chicago Press, 1979; Haskins, R. Child support: A father's view. In *Child support: From debt collection to social policy*. A.J. Kahn and S.B. Kamerman, eds. Newbury Park, CA: Sage, 1988; Seltzer, J.A., Schaeffer, N.C., and Charnov, H.W. Family ties after divorce: The relationship between visiting and paying child support. *Journal of Marriage and the Family* (1989) 51:1013-32; Teachman, J.D. Who pays? Receipt of child support in the United States. *Journal of Marriage and the Family* (1991) 53:759-72; Wallerstein, J.S., and Huntington, D.S. Bread and roses: Nonfinancial issues related to fathers' economic support of their children following divorce. In *The parental child-support obligation*. J. Cassetty, ed. Lexington, MA: Lexington Books, 1983.
8. See Furstenberg, Jr., F.F., and Cherlin, A.J. *Divided families: What happens to children when parents part*. Cambridge, MA: Harvard University Press, 1991.
9. Lamb, M.E., Pleck, J.H., Charnov, E.L., and Levine, J.A. A biosocial perspective on paternal behavior and involvement. In *Parenting across the lifespan*. J.B. Lancaster, J. Altmann, A. Rossi, and L. Sherrod, eds. Chicago: Aldine, 1987; Parke, R.D., and Stearns, P.N. Fathers and child rearing. In *Children in time and place*. G.H. Elder, Jr., J. Modell, and R.D. Parke, eds. Cambridge: Cambridge University Press, 1993.
10. Mnookin, R.H. Child-custody adjudication: Judicial functions in the face of indeterminacy. *Law and Contemporary Problems* (1975) 39:226-93.
11. Similar results have been reported by Weitzman, L.J. *The divorce revolution: The unexpected social and economic consequences for women and children in America*. New York: Free Press, 1985.
12. See note no. 6, Maccoby and Mnookin, pp. 113-14.
13. There is some evidence for this kind of judicial preference. See Lowery, C.R. Child custody decisions in divorce proceedings: A survey of judges. *Professional Psychology* (1981) 12:492-98. Reliance on this portrayal of parental roles has more recently been called the "motherhood mystique." See Warshak, R.A. *The custody revolution: The father factor and the motherhood mystique*. New York: Poseidon Press, 1992.
14. Mnookin, R.H., and Kornhauser, L. Bargaining in the shadow of the law: The case of divorce. *Yale Law Journal* (1979) 88:950-97.
15. See for example, Elster, J. Solomonic judgments: Against the best interest of the child. *The University of Chicago Law Review* (1987) 54:1-45. For an opposing view, however, see Schneider, C.E. Discretion, rules, and law: Child custody and the UMDA's best-interest standard. *Michigan Law Review* (1991) 89:2215-98.
16. See for example, Chambers, D.L. Rethinking the substantive rules for custody disputes in divorce. *Michigan Law Review* (1984) 83:477-569; Neely, R. The primary caretaker parent rule: Child custody and the dynamics of greed. *Yale Law and Policy Review* (1984) 3:168-86; see also Goldstein, J., Freud, A., and Solnit, A.J. *Beyond the best interests of the child*. New York: Free Press, 1973 (the latter proposing a related presumption favoring the child's "psychological parent").
17. See note no. 16, Neely, p. 180.
18. See for example, *Kennedy v. Kennedy*, 376 N.W.2d 702 (1985); *Garska v. McCoy*, 278 S.E.2d 357 (1981).
19. See Lamb, M.E. Fathers and child development: An integrative overview. In *The role of the father in child development*. Rev. ed. New York: Wiley, 1981.
20. Thompson, R.A. The father's case in child custody disputes. In *Fatherhood and family policy*. M.E. Lamb and A. Sagi, eds. Hillsdale, NJ: Lawrence Erlbaum Associates, 1983. In his own analysis, David Chambers reaches a similar conclusion; see note no. 16, Chambers.
21. See note no. 15, Elster.
22. Fineman, M.A. *The illusion of equality: Rhetoric and reality of divorce reform*. Chicago: University of Chicago Press, 1991.
23. See note no. 22, Fineman, p. 183.
24. Such a view is sometimes advanced by "difference feminists" who, drawing on the seminal work of Carol Gilligan, emphasize the deeply rooted divergence between men and women in values and outlook (particularly with respect to nurturance and emotional connectedness) over the commonalities shared by men and women. See Gilligan, C. *In a different voice*. Cambridge, MA: Harvard University Press, 1982.
25. See Thompson, R.A. Fathers and the child's "best interests": Judicial decision-making in custody disputes. In *The father's role: Applied perspectives*. M.E. Lamb, ed. New York: Wiley, 1986.

26. Pedersen, F.A. Father influences viewed in a family context. In *The father's role: Applied perspectives*. M.E. Lamb, ed. New York: Wiley, 1986; Pleck, J.H. *Working wives and family well-being*. New York: Plenum, 1984. This preference has been attributed to gender socialization, the maintenance of feminine power in domestic affairs, and other factors.
27. Although infants respond somewhat differently to mothers and fathers owing to parental differences in caregiving roles and play behavior (for example, they become more exuberant when playing with fathers but turn to their mothers when distressed), they develop emotional attachments to each parent which provide a comparable basis for the security they experience; see Lamb, M.E., Thompson, R.A., Gardner, W., and Charnov, E.L. *Infant-mother attachment*. Hillsdale, NJ: Lawrence Erlbaum Associates, 1985; see also note no. 20, Thompson, and note no. 9, Lamb, Pleck, Charnov, and Levine.
28. Depner, C.E. Parental role reversal: Mothers as nonresidential parents. In *Nonresidential parenting: New vistas in family living*. C. Depner and J. Bray, eds. Newbury Park, CA: Sage, 1993, pp. 37-57; Warshak, R.A. Father-custody and child development: A review and analysis of psychological research. *Behavioral Sciences and the Law* (1986) 4:185-202; see also note no. 13, Warshak. For an interesting first-person account by a single father, consult Andrews, B. A singular experience. *Newsweek*, May 10, 1993, p. 8.
29. Peterson, J.L., and Zill, N. Marital disruption, parent-child relationships, and behavior problems in children. *Journal of Marriage and the Family* (1986) 48:295-307; see also note no. 13, Warshak. This remains a controversial conclusion, however; for a different view, consult Downey, D.B., and Powell, B. Do children in single-parent households fare better living with same-sex parents? *Journal of Marriage and the Family* (1993) 55:55-71.
30. Furstenberg, Jr., F.F., and Nord, C.W. Parenting apart: Patterns of childrearing after marital disruption. *Journal of Marriage and the Family* (1985) 47:893-904; Furstenberg, Jr., F.F., Nord, C.W., Peterson, J.L., and Zill, N. The life course of children of divorce: Marital disruption and parental contact. *American Sociological Review* (1983) 48:656-68; see note no. 29, Peterson and Zill. The more frequent visitation of many noncustodial mothers probably has diverse origins, including support from the former spouse and a strong commitment to a continuing parental role.
31. See note no. 9, Parke and Stearns.
32. I am grateful to Frank Furstenberg for this provocative characterization; see Furstenberg, Jr., F.F. Good dads—bad dads: Two faces of fatherhood. In *The changing American family and public policy*. A.J. Cherlin, ed. Washington, DC: Urban Institute Press, 1988.
33. I focus on joint *physical* custody over joint *legal* custody because the former ensures fathers the more significant postdivorce role in the lives of children. Although I shall argue later that a presumption in favor of joint legal custody to both parents may help to guarantee fathers a role in the care and guidance of offspring after divorce, the perfunctory award of joint legal custody may do little to accomplish this goal. By contrast, joint physical custody helps to advance the goal of continued shared parenting in a way that has meaningful benefits to fathers and children.
34. As Amato's article in this issue indicates, children's postdivorce well-being depends on many things, including continued contact with both parents, the extent to which parents remain conflictual (and enlist the child into their conflicts), and other factors relevant to children's experience of joint custody.
35. See for example, Scott, E., and Derdeyn, A. Rethinking joint custody. *Ohio State Law Journal* (1984) 45:455-98.
36. See note no. 30, Furstenberg and Nord.
37. Kay, H.H. Beyond no-fault: New directions in divorce reform. In *Divorce reform at the crossroads*. S.D. Sugarman and H.H. Kay, eds. New Haven, CT: Yale University Press, 1990, p. 35.
38. Scott, E.S. Pluralism, parental preference, and child custody. *California Law Review* (1992) 80:615-72.
39. See for example, Kelly, J.B. Developing and implementing post-divorce parenting plans. In *Nonresidential parenting: New vistas in family living*. C. Depner and J. Bray, eds. Newbury Park, CA: Sage, 1993, pp. 136-55. For a somewhat different but complementary view, see Bruch, C.S. Making visitation work: Dual parenting orders. *Family Advocate* (Summer 1978) :22-26, 41-42.
40. Wallerstein, J.S., and Corbin, S.B. Father-child relationships after divorce: Child support and educational opportunity. *Family Law Quarterly* (1986) 20:109-28. For another insightful portrayal of the experience of noncustodial fathers after divorce, consult Hetherington, E.M., and Hagan, M.S. Divorced fathers: Stress, coping, and adjustment. In *The father's role: Applied perspectives*. M.E. Lamb, ed. New York: Wiley, 1986.

41. See note no. 40, Wallerstein and Corbin, p. 114.
42. Hetherington, E.M., Cox, M., and Cox, R. The aftermath of divorce. In *Mother-child, father-child relations*. J.H. Stevens, Jr., and M. Matthews, eds. Washington, DC: National Association for the Education of Young Children, 1978; see also note no. 40, Hetherington and Hagan. See note no. 30, Furstenberg and Nord; and Furstenberg, Nord, Peterson, and Zill. See also Seltzer, J.A. Relationships between fathers and children who live apart: The father's role after separation. *Journal of Marriage and the Family* (1991) 53:79-101; Seltzer, J.A., and Bianchi, S.M. Children's contact with absent parents. *Journal of Marriage and the Family* (1988) 50:663-77; Wallerstein, J.S., and Kelly, J.B. Effects of divorce on the visiting father-child relationship. *American Journal of Psychiatry* (1980) 137:1534-39.  

It is important to note that most reports of fathers' postdivorce visitation are obtained from mothers, who have been found to underestimate—compared to fathers' own reports—the frequency and reliability of the father's visits with children; see Braver, S.H., Wolchik, S.A., Sandler, I.N., et al. Frequency of visitation by divorced fathers: Differences in reports by fathers and mothers. *American Journal of Orthopsychiatry* (1991) 61:448-54. Nevertheless, although the absolute levels of postdivorce contact with noncustodial fathers may therefore be questioned, the consistent report that visitation typically declines during the years following divorce is probably valid.
43. See note no. 30, Furstenberg and Nord.
44. See note no. 30, Furstenberg and Nord, p. 902.
45. Furstenberg, Jr., F.F., Morgan, S.P., and Allison, P.D. Paternal participation and children's well-being after marital dissolution. *American Sociological Review* (1987) 52:695-701.
46. Hetherington, E.M., Stanley-Hagan, M., and Anderson, E.R. Marital transitions: A child's perspective. *American Psychologist* (1989) 44:303-12; Wallerstein, J.S., and Kelly, J.B. *Surviving the breakup: How children and parents cope with divorce*. New York: Basic Books, 1980; see also the article by Kelly in this journal issue.
47. Warshak, R.A., and Santrock, J.W. The impact of divorce in father-custody and mother-custody homes: The child's perspective. In *Children and divorce*. L.A. Kurdek, ed. San Francisco: Jossey-Bass, 1983.
48. Another important problem of the widely cited study by Furstenberg, Morgan, and Allison (see note no. 45) is that it does not examine any of the factors (such as degree of marital conflict) that might determine the ways in which postdivorce paternal involvement affects children's well-being, including those discussed extensively by Amato in this issue (see also Amato, P.R., and Rezac, S.J. Contact with nonresident parents, interparental conflict, and children's behavior. Paper presented at the Annual Meeting of the Midwest Sociological Society. Chicago, 1993). The study by Furstenberg and colleagues is noteworthy also for the fairly low levels of postdivorce paternal contact characterizing the sample they studied, such that the effects of genuinely high levels of paternal postdivorce involvement could not be carefully examined. This is important if, as some have suggested (see note no. 9), levels of paternal postdivorce involvement are generally increasing.
49. See note no. 30, Furstenberg and Nord; and Furstenberg, Nord, Peterson, and Zill. See note no. 40, Hetherington and Hagan. See note no. 42, Seltzer; and Seltzer and Bianchi. See note no. 46, Wallerstein and Kelly.
50. See note no. 42, Braver, Wolchik, Sandler, et al.; Furstenberg, Jr., F.F. Marital disruptions, child custody, and visitation. In *Child support: From debt collection to social policy*. A.J. Kahn and S.B. Kamerman, eds. Newbury Park, CA: Sage, 1988; see note no. 30, Furstenberg, Nord, Peterson, and Zill; see note no. 7, Haskins. Pearson, J., and Thoennes, N. The denial of visitation rights: A preliminary look at its incidence, correlates, antecedents and consequences. *Law and Policy* (1988) 10:363-80.
51. See note no. 50, Furstenberg.
52. See note no. 30, Furstenberg, Nord, Peterson, and Zill; see note no. 42, Seltzer; and Seltzer and Bianchi.
53. Such a view has also been formalized in the "social exchange" model of nonresidential parent involvement proposed by Sanford Braver and his colleagues. In their formulation, many noncustodial fathers implicitly balance the emotional and interpersonal costs against the rewards of regular involvement with offspring, such that the regularity of visitation, fidelity of child support, and other contributions to the child's life depend, in part, on the ease of visitation, relations with the ex-spouse, perceived benefits (and costs) to the child, reactions of significant new partners, and the father's personal commitment to this parenting role in a complex calculus. It is important to note that this implicit cost-benefit analysis may change over time, with significant implications for the father's long-term involvement with offspring. See Braver, S.I., Wolchik, S.A., Sandler, I.N., and Sheets,

V.I. A social exchange model of nonresidential parent involvement. In *Nonresidential parenting: New vistas in family living*. C. Depner and J. Bray, eds. Newbury Park, CA: Sage, 1993, pp. 87-108.

54. See note no. 39, Bruch.
55. For research on the association between postdivorce visitation and child support, see note no. 7, Chambers; Seltzer, Schaeffer, and Charng; Teachman; and Wallerstein and Huntington. Czapanskiy, K. Child support and visitation: Rethinking the connections. *Rutgers Law Journal* (1989) 20:619-65. See note no. 50, Furstenberg; and Pearson and Thoennes. See note no. 30, Furstenberg, Nord, Peterson, and Zill. See note no. 42, Seltzer.
56. This problem is not limited to noncustodial fathers. Despite the fact that mothers are more likely to maintain visitation with offspring in the care of custodial fathers, a high proportion (nearly 50%) of custodial fathers with child support awards from their former spouses fail to receive child support. See Meyer, D.R., and Garasky, S. Custodial fathers: Myths, realities, and child support policy. *Journal of Marriage and the Family* (1993) 55:73-89.
57. U.S. Bureau of the Census. *Child support and alimony: 1989*. Current Population Reports, Series P-60, No. 173. Washington, DC: U.S. Government Printing Office, 1991. U.S. General Accounting Office. *Interstate child support: Mothers report receiving less support from out-of-state fathers*. HRD-92-39FS. Washington, DC: U.S. Government Printing Office, 1992.  

It is important to note that accounts of child support payments, as with visitation, rely primarily on reports from the mothers themselves. Several studies have noted that custodial and noncustodial parents differ significantly in their reports of child support payments—with the latter reporting higher payments and greater regularity in child support obligations than the former—that probably derives from bias in each source. See note no. 7, Braver, Fitzpatrick, and Bay. See also Wright, D.W., and Price, S.L. Court-ordered child support payment: The effect of the former-spouse relationship on compliance. *Journal of Marriage and the Family* (1986) 48:869-74.
58. National Center for Children in Poverty (NCCP), Columbia University, New York. *Five million children: A statistical profile of our poorest young citizens*. New York: NCCP, 1990; see note no. 57, U.S. Bureau of the Census. For example, according to the U.S. Bureau of the Census, the poverty rate in 1989 for never-married women was 53.9%, compared with a poverty rate of 23.1% for ever-married women. What is even more pertinent, in 1989 never-married women received only an average of \$1,888 in child support payments, compared with an average of \$3,322 for divorced women.
59. Many observers are concerned that, as a result of unfair bargaining, mothers may agree to reduced child support or no support at all in exchange for ensuring the custody of children. However, the only study in which this problem was systematically explored found no evidence that mothers achieved custody of offspring at a price of reduced child support. (For this study, see note no. 6, Maccoby and Mnookin.)
60. Teachman, J.D. Contributions to children by divorced fathers. *Social Problems* (1991) 38:358-71.
61. See note no. 42, Seltzer; note no. 7, Seltzer, Schaeffer, and Charng. See also Arditti, J.A. Child support noncompliance and divorced fathers: Rethinking the role of paternal involvement. *Journal of Divorce and Remarriage* (1991) 14:107-19.
62. See note no. 7, Teachman.
63. Pearson, J., and Thoennes, N. Child custody, child support arrangements and child support payment patterns. *Juvenile and Family Court Journal* (1985) 36:49-56; Seltzer, J.A. Legal custody arrangements and children's economic welfare. *American Journal of Sociology* (1991) 96:895-929; see note no. 57, U.S. Bureau of the Census.
64. See note no. 7, Haskins, p. 325.
65. Giampetro, A. Mathematical approaches to calculating child support payments: Stated objectives, practical results, and hidden policies. *Family Law Quarterly* (1986) 20:373-91. Takas, M. Improving child support guidelines: Can simple formulas address complex families? *Family Law Quarterly* (1992) 26:171-94.
66. Krause, H.D. Child support reassessed: Limits of private responsibility and the public interest. In *Divorce reform at the crossroads*. S.D. Sugarman and H.H. Kay, eds. New Haven, CT: Yale University Press, 1990.
67. See note no. 7, Chambers.
68. Chambers, D.L. The coming curtailment of compulsory child support. *Michigan Law Review* (1982) 80:1614-34. See note no. 7, Chambers. Rhode, D.L., and Minow, M. Reforming

- the questions, questioning the reforms: Feminist perspectives on divorce law. In *Divorce reform at the crossroads*. S.D. Sugarman and H.H. Kay, eds. New Haven, CT: Yale University Press, 1990.
69. Similar considerations apply to marital property distributions, especially under proposals to expand significantly conventional definitions of marital property (for example, including "career assets" and other nontangible assets). However, because most divorcing couples have relatively little property to allocate between them, most of the focus of divorce reform in this area has been on spousal support, and this is the area on which I will focus as well.
  70. Ellman, I.M. The theory of alimony. *California Law Review* (1989) 77:1-81; Schneider, C.E. Rethinking alimony: Marital decisions and moral discourse. *Brigham Young University Law Review* (1991) 197-257.
  71. Current demographics indicate, however, that these circumstances are likely to characterize a markedly declining proportion of divorcing couples as many more couples begin, or resume, dual-earner status shortly after the birth of children. Thus, most couples will approach divorce negotiations in the future with each having career assets resulting from the marriage.
  72. See note no. 68, Rhode and Minow, p. 204.
  73. See note no. 68, Chambers; see note no. 32, Furstenberg.