Overwhelmingly it is mothers, not fathers, who are walking away from marriages and thus separating children from their fathers. Other studies have reached similar or more dramatic conclusions.

Braver also found that when they are employed, virtually all divorced fathers pay the child support they owe and that the number of arrearages “estimated” by the government is derived not from any actual statistics but from surveys. The Census Bureau simply asked mothers whether they were receiving payments. No data exists to corroborate the mothers’ claims. As Braver found, “there is no actively maintained national database of child support payments.”

Braver’s research undermines most justifications for the multi-billion-dollar criminal enforcement machinery, as well as the proliferation of government programs to “promote responsible fatherhood.” If Braver is to be believed — and no official or scholar has challenged his research — the government is engaged in a massive witch hunt against innocent citizens.

The system of collecting child support is no longer one of requiring men to take responsibility for their offspring, as most people believe. The combination of “no fault” divorce and the new enforcement law has created a system that pays
mothers to divorce their husbands and remove children from their fathers. "By allowing a faithless wife to keep her children and a sizable portion of her former spouse's income," writes Bryce Christensen, "current child-support laws have combined with no-fault jurisprudence to convert wedlock into snare for many guiltless men."6

Centuries of common-law precedent protected fathers from this possibility. "The duty of a father (now spouse) to support his children is based largely upon his right to their custody and control," ran a ruling typical of the age-old consensus. "A father has the right at Common Law to maintain his children in his own home, and he cannot be compelled against his will to do so elsewhere, unless he has refused or failed to provide for them where he lives."7 While few were paying attention, new laws have completely overturned this principle and created a system, as attorney Jed Abraham writes, whereby "a father is forced to finance the filching of his own children."8

In 1975, President Ford succumbed to pressure from bar associations and feminist groups and created the Office of Child Support Enforcement (OCSE), warning that it constituted an unwarranted federal intrusion into the lives of families and the responsibilities of states. The size of the program increased tenfold from 1978 to 1998.9

This massive growth of law enforcement machinery was federally driven. Welfare legislation promoted by the OCSE and passed by Congress in 1984 required states to adopt child-support guidelines under the claim that it would get single-mother families off welfare by making fathers pay more. "No statistical data available then (or since) indicated that such legislation would have the desired effect," writes Robert Seidenberg. Because most nonpayment of child support results from unemployment, and most noncustodial parents of welfare children are not earning enough to pay as much child support as their children already receive in welfare, higher child-support guidelines cannot help these children.10

Then, in 1988, with no explanation or justification, the guidelines and enforcement machinery that had been created to help children on welfare were extended to include the 80% of child-support orders to children not on welfare.11 Yet both Braver and a pilot study by OCSE itself had already made clear that nonpayment was not a serious problem among this class. A full-scale federal study that was planned to follow up the pilot study was quashed by OCSE when the findings of the pilot threatened the justification for its existence.12

Though child-support enforcement formally falls within the executive branch, the linchpin of the system is the family court, a secretive and little-understood institution. Unlike other courts, family courts usually operate behind closed doors, generally do not record their proceedings, and keep no statistics on their decisions. Yet they reach further into the private lives of individuals and families than any other governmental arm. "The family court is the most powerful branch of the judiciary," writes Robert W. Page of the Family Court of New Jersey, "the power of family court judges is almost unlimited."13

Like other state court judgeships, family court judgeships are political positions, elected or appointed by commissions dominated by lawyers who have an interest in maximizing litigation.14 Family court judges wield extensive powers of patronage, thanks to their power to appoint attorneys and expert witnesses.15 Like most courts, family courts complain of being overburdened. But it is clearly in their interest to be overburdened, since their power and earnings are determined by the demand for their services.

As Judge Page recommends:

Judges and staff work on matters that are emotionally and physically draining due to the quantity and quality of the disputes presented; they should be given every consideration for salary and the other "perks" or other emoluments of their high office.

If the judiciary is viewed in part as a business, as Charles Dickens suggested, the family courts’ customers are divorcing mothers who hope to win custody and windfall settlements. The more satisfied customers an enterprise has, the more it prospers. So it is not surprising that family courts are interested in attracting and satisfying customers. As Page writes:

"Family Court Judge of the Nation" by the National Child Support Enforcement Association in 1983 and as "Judge of the Year of America" by the National Reciprocal Family Support Enforcement Association in 1989. That enforcement groups are bestowing honors upon judges indicates their interest in family court decisions, especially those that remove children from their fathers and award child support to their mothers: Without those decisions, the groups’ services wouldn’t be needed. And that a government Internet page boasts about awards given to its supposedly impartial judges by these interest groups indicates how little ethical scrutiny family court judges receive. The NCSEA Web page lists its members as "state and local agencies, judges, court masters, hearing officers, district attorneys, government and private attorneys, social workers, caseworkers, advocates, and other child support professionals," as well as "corporations that partner with government to enforce child support."17 In other words, it is made up entirely of people who have a financial interest in having

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28 Liberty
Setting child support levels is a political process conducted largely by groups that benefit from divorce. Parents are largely excluded. In about half the states, the guidelines used to set child-support levels are devised not by the legislature but by courts and enforcement agencies, and in all states the courts and enforcement agencies play a dominant role in setting the guidelines.\textsuperscript{18} Under the separation of powers we do not normally permit police and courts to make the laws they enforce and interpret, since this would create an obvious conflict of interest.

Provisions for citizen input are mostly perfunctory. In Virginia, of twelve members serving on the review commission in 1999, one member represented fathers. The rest were full-time lawyers, judges, enforcement agents, and feminists. When the fathers’ representative in 2001 pointed out this fact in a Washington Times Op-Ed column, he was dismissed from the panel for his “opinions.”\textsuperscript{19} “The commissions appointed to review the guidelines have been composed . . . of individuals who are unqualified to assess the economic validity of the guidelines, or who arguably have an interest in maintaining the status quo, or both,” writes a Georgia district attorney. “In 1998, for example, of the 11 members of that Commission, two were members of the judiciary, two represented custodial parent advocacy groups, four were either present or former child support enforcement personnel, and two were state legislators.”\textsuperscript{20}

The conflicts of interest extend to the private sector, where privatization has created a class of government-subsidized bounty hunters with an interest in creating “delinquents.” In 1998, Florida taxpayers paid $4.5 million to Lockheed Martin IMS and Maximus, Inc. to collect $162,000 in back child support.\textsuperscript{21} Supportkids of Austin, Tex. describes itself as “the private-sector leader” in what it calls the “child support industry.” The company is confident of rich investment opportunities, optimistic that delinquencies will only increase. “The market served totals $57 billion and is growing at an annual rate of $6 billion to $8 billion,” reports its founder and CEO.

Some firms, like Policy Studies Inc. (PSI), also set the levels of what they collect. From 1983 to 1990, PSI president Robert Williams was a paid consultant with the Department of Health and Human Services (HHS), where he helped establish uniform state guidelines in the Child Support Guidelines Project under a grant from the National Center for State Courts. The guidelines he helped create significantly increased child-support obligations and Congress required states to implement the presumptive guidelines, giving them only a few months of legislative time to do so.\textsuperscript{22} Virtually all states met the deadline, many by quickly adopting Williams’ model. “The guidelines were enacted in 1989 to insure Georgia’s receipt of an estimated $25 million in federal funds,” writes William Akins. “They were hastily adopted . . . to beat the federal deadline.”\textsuperscript{23}

One year after joining HHS, and the same year the federal guidelines were implemented, Williams started PSI. “With his inside knowledge [Williams] has developed a consulting business and collection agency targeting privatization opportunities with those he has consulted,” explains James Johnston of the Kansas Child Support Guidelines Advisory Committee. “In 1996, his company had the greatest number of child support enforcement contracts . . . of any of the private companies that held state contracts.”\textsuperscript{24} PSI grew “by leaps and bounds because of the national crackdown on ‘deadbeat dads.’” From three employees in 1984, PSI grew to over 500 in 1996, before welfare reform legislation took effect, from which the company “stands to profit even more.”\textsuperscript{25}

The profitability of these enterprises is a function of the size of obligations put on fathers. A collection agency only operates if there are arrearages and “delinquents.” Williams therefore not only has a vested interest in making the child-support levels as high as possible, but to make them so high that they create arrearages. Williams’ model has been widely and severely criticized for its methodology. He himself has admitted that “there is no consensus among economists on the most valid theoretical model to use in deriving estimates of child-rearing expenditures” and that “use of alternative models yields widely divergent estimates.”\textsuperscript{26}

State governments also profit from child support, according to the House Ways and Means Committee, which notes that “States are free to spend this profit in any manner the State sees fit.” States profit through federal incentive payments of 6–10% on each dollar collected, as well as receiving two-thirds of operating costs and 90% of computer costs. Federal outlays of over $2 billion in 1996 allowed California to collect $144 million and New York to receive $49.1 million.\textsuperscript{27}

Most people assume that collections made through enforcement agencies involve arrearages or target those people who would not otherwise pay.

\begin{center}
\textbf{Family courts usually operate behind closed doors, generally do not record their proceedings, and keep no statistics on their decisions. Yet they reach further into the private lives of individuals and families than any other governmental arm.}
\end{center}
But this is not the case. To collect these federal funds states must channel all child-support payments, including those not in arrears, through their criminal enforcement machinery. This both further criminalizes the fathers and enables the government to inflate the amount of collections it makes, which helps divert attention from fact that the program operates at a consistent loss.

In January 2000, HHS Secretary Donna E. Shalala announced that “the federal and state child support enforcement program broke new records in nationwide collections in fiscal year 1999, reaching $15.5 billion, nearly twice the amount collected in 1992.” Yet the method of arriving at these figures is questionable. Figures from the OCSE show that collections in welfare-related cases (in which collection is problematic) have remained steady since 1994, while collections in non-welfare cases (in which compliance has always been high) continue a steady increase. Thus the “increase” in collections was achieved not by collecting the arrearages built up by poor fathers but by bringing more employed, middle-class fathers, into the collection system.

Between the incentive payments, the court patronage, and the bureaucratic conflicts of interest, the systematic bullying by courts and enforcement agencies is becoming difficult to ignore. Several recent cases have attracted wide attention. In Milwaukee, a father was hauled into court and threatened with jail when penalties turned a 4-cent arrearage into hundreds of dollars. Another father was arrested for failing to pay child support during the five months he was held hostage in Iraq. In Texas, a janitor was exonerated after ten years on death row, only to be presented with a bill for $50,000 in child support not paid while in prison. In Virginia, child support is being sought for 45-year-old “children.” In Kansas and California, teenage boys have been ordered to pay child support to grown women criminally convicted of statutory rape and forcibly raping them, and an 85-year-old invalid sexually assaulted by his housekeeper has had his pension garnished for child support while being denied access to the child on the grounds it was not in the “best interest of the child.” In Indiana, a father has been shackled with an electronic ankle bracelet and forced to turn over three-fourths of his salary for the college expenses of a 21-year-old “child” while his 12-year-old goes without medical treatment. The list is endless.

Perhaps most disturbing is the case of Brian Armstrong of Milford, N.H., whom many believe to have received a summary “death sentence” for losing his job. Armstrong was jailed without trial on Jan. 11, 2000 for failing to appear at a hearing of which his family claims he was not notified, and was apparently beaten to death by correctional officials. Another inmate saw Armstrong being led into a room from which he then heard screaming before he was dragged away.

Fatal beatings of fathers are probably not widespread in American jails, but the Massachusetts News has reported on many suicides. Charles London stabbed himself with a kitchen knife in August 1999 after being cut off from all contact with his two children and ordered to pay more than 75% of his salary in child support, leaving him with $78 a week. The National Association for Child Support Action has published a “Book of the Dead” chronicling 55 cases which they claim the official court coroner concluded fathers were driven to suicide because of judgments from divorce courts.

The suicide rate of divorced fathers has skyrocketed, according to Augustine Kposowa, who attributes his finding directly to judgments from family courts. Reports by CBS, CNN, and Reuters ignored this conclusion in favor of therapeutic explanations emphasizing fathers’ lack of friends and “support networks.” One reporter told Kposowa his finding was not “politically correct.”

Advocates of “unilateral” divorce have portrayed it as a “citizen’s right” and even a “civil liberty.” Yet in practice, “unilateral” divorce entails highly authoritarian measures. To preserve these perks, especially child support,” writes attorney Abraham, “the government commands an extensive enforcement apparatus, a veritable gulag, complete with sophisticated surveillance and compliance capabilities such as computer-based targeting, license revocation, asset confiscation, and incarceration. The face of this regime is decidedly Orwellian.”

Several state governments have even voiced dissent, including skepticism over the reality of “deadbeats.” “Under the guise of cracking down on so-called deadbeat dads, the Congress has required the states to carry out a massive and intrusive federal regulatory scheme by which personal data on all state citizens” is collected, the Kansas Attorney General’s office charged in a federal suit challenging the constitutionality of the mandate.

The distinction between the guilty and the innocent becomes almost meaningless, since officials are monitoring citizens who owe, those whose obligations are paid up, and those who are not under any order at all. The presumption of
guilt against those who are obeying the law was revealed by one official who boasted to the Post that “we don’t give them an opportunity to become deadbeats.” The presumption that not only are all parents under child support orders already quasi-criminals but that all citizens are potential criminals against whom pre-emptive enforcement measures must be initiated is revealed by Teresa Myers of the National Conference of State Legislatures (NCSL). “Some people have argued that the state should only collect the names of child support obligors, not the general population,” she suggests. But “this argument ignores the primary reason” for collecting the names: “At one point or another, many people will either be obligated to pay or eligible to receive child support.”

The presumption of guilt extends into the courtroom, where a father charged with “civil contempt” need not receive due process and may legally be presumed guilty until proven innocent. “The burden of proof may be shifted to the defendant in some circumstances,” according to a legal analysis by NCSL, which promotes aggressive prosecutions. The father can also be charged with criminal contempt. “The lines between civil and criminal contempt are often blurred in failure to pay child support cases,” NCSL continues. “Not all child support contempt proceedings classified as criminal are entitled to a jury trial.” Moreover, “even indigent obligors are not necessarily entitled to a lawyer.” The bottom line is that a father who has lost his children through literally “no fault” of his own faces a daunting burden: He must prove his innocence without a formal charge, without counsel, and without facing a jury of his peers.

Within the world of child-support enforcement a father becomes a “deadbeat” if he fails or refuses to surrender control of his family to the hegemony of the state. “Child support is ‘paid’ only when it’s paid in a bureaucratically acceptable form,” says Bruce Walker, of the District Attorney’s Council in Oklahoma City, who claims to have jailed hundreds of fathers. A father is “supporting” his family if he pays by government-approved procedures to government-approved people and has “abandoned” it if he pays in any other way. “Men who provide non-monetary support are deadbeat dads according to the child-support system,” says Walker. “Even men who are raising in their homes the very children for whom child support is sought are deadbeat dads.”

Though ostensibly limited by guidelines, a judge is free to order virtually any amount in child support. A judge who decides that a father could be earning more than he does can “impute” potential income to the father and assess child support and extract attorneys’ fees based on that imputed income. The result, as Darrin White found, is that child support can exceed earnings. If a father works extra hours (perhaps to pay legal fees) or receives any other temporary income, he is then locked into that income and those hours, and the child-support level based on them, until his children are grown. If a relative or benefactor pays the child support on his behalf, that payment is considered a “gift” and does not offset the obligation, which the father himself still owes.

A Rutgers/University of Texas study found that “many of the absent fathers who state leaders want to track down and force to pay child support are so destitute that their lives focus on finding the next job, next meal or next night’s shelter.” Why so many divorced fathers seem to be unemployed or penurious may be accounted for in part by the strains legal proceedings put on work schedules. Fathers are summoned to court so often they lose their jobs. The Ohio Psychological Association found that employers report losing more productive time to divorce and custody proceedings than to alcohol and drug use combined. Many divorced fathers are either ordered out of their homes or must move out for financial reasons. They may also lose their cars, often their only means of transportation to their jobs and children. Those who fall behind in child support, regardless of the reason, now have their cars booted and their driver’s licenses and professional licenses revoked, which in turn prevents them from getting and keeping employment. An odd myopia is demonstrated in the controversy over whether to give child support priority over other debts in bankruptcy proceedings. Curiously, no one stops to ask the obvious question of why so many allegedly well-heeled deadbeats are going through bankruptcy in the first place. In what some have termed a policy of “starvation,” a proposed federal regulation will render these rich playboys ineligible for food stamps.

It is hardly surprising that some fathers who have been worked over eventually do disappear. Anyone who has been plundered, harassed, vilified, and incarcerated — all on the pretext of supporting children taken from him by force and whom he is not permitted even to see — will eventually reach the limits of his endurance.

There is nothing mutually exclusive about protecting the rights of parents and their children not to be separated without cause and enforcing child-support collection on those men who truly abandon the offspring they have sired. Requiring men to accept financial responsibility for their progeny has been a matter of public policy for centuries. But taking away people’s children and forcing them to pay for it, as one scholar warns, is moving us “a dangerous step closer to a police state.” The “deadbeat dad,” whom Braver and others diplomatically call a myth, is really more like a hoax, the creation of groups with an interest in separating children from their fathers and criminalizing the fathers.

A father is “supporting” his family if he pays by government-approved procedures to government-approved people and has “abandoned” it if he pays in any other way.

Notes
3. Sanford L. Braver, Divorced Dads: Shattering the Myths (New York:


11. FY 1998 *Preliminary Data Report* (Washington: Office of Child Support Enforcement, May 1999), Figure 2, p. 35.


29. FY 1998 *Preliminary Data Report*.


33. Augustine J. Kposowa, “Marital Status and Suicide in the National Longitudinal Mortality Study,” *Journal of Epidemiology and Community Health* 54 (March 15, 2000); Univ. of California at Riverside press release, no date (http://www.ucr.edu/SubPages/2CurtNewsFold/UnivRelat/suicide.html); and reports by Reuters, CBS News, and CNN, all on March 15, 2000.


45. Federal Register, Dec. 17, 1999 (64 FR 70919).