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The Politics of Fatherhood

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Fatherhood is rapidly becoming the number one social policy issue in America. President Bill Clinton stated in 1995 that "the single biggest social problem in our society may be the growing absence of fathers from their children's homes, because it contributes to so many other social problems." In 1997, Congress created task forces to promote fatherhood, and in 1998 the governors' and mayors' conferences followed. President George W. Bush recently unveiled a $315 million dollar package for "responsible fatherhood." Nonprofit organizations such as the National Fatherhood Initiative were formed in the mid-1990s. Fatherhood was seen as the most serious social problem by almost 80% of respondents to a 1996 Gallup poll (NFI 1996, 1).

Fatherhood advocates insist that the crisis of fatherless children is "the most destructive trend of our generation" (Blankenhorn 1995, 1). Virtually every major social pathology has been linked to fatherlessness: violent crime, drug and alcohol abuse, truancy, teen pregnancy, suicide—all correlate more strongly to fatherlessness than to any other single factor. The majority of prisoners, juvenile detention inmates, high school dropouts, pregnant teenagers, adolescent murderers, and rapists all come from fatherless homes (Daniels 1998; NFI 1996). The connection is so strong that controlling for fatherlessness erases the relationships between race and crime and between low income and crime (Kamarck and Galston 1990).

Yet despite its salience in public policy debates and within psychology, sociology, and law, fatherhood has received little attention from political scientists.

This neglect is not a minor omission. Arguably it is what has left the phenomenon unexplained. For despite a decade of attention, little attempt has been made to account for where the fatherhood crisis comes from in the first place. While it doubtless has a number of contributing social and economic causes that stretch back decades, there is evidence that the critical dimensions it has assumed in the last decade proceed at least in part from public policy, and that the problem should be seen less as sociological or psychological and more as political.

What is neglected is the large governmental machinery that has arisen at the federal, state, and local levels—and abroad—to address family issues. Extensive executive-branch agencies administer not only welfare but child protection, child-support enforcement, and other quasi-police functions. Yet the linchpin of this machinery is the judiciary: the little-understood system of family courts, which have arisen during the last 40 years. Like the fatherhood problem itself, this apparatus is most highly developed in the Anglophone countries, with the marked political role the common law tradition bestows upon the judiciary and with their more extensive history of divorce (Riley 1991). The organization varies, but virtually every state and democratic country now has special courts and civil service agencies for family issues (DiFonzo 1997). Fatherlessness and the judicial–bureaucratic machinery connected with it have grown up together as increasingly worldwide phenomena.[1]

The conventional wisdom—enunciated by political leaders, media commentators, and scholars on both left and right—assumes the problem stems from paternal abandonment. Clinton said the fathers pursued by his administration "have chosen to abandon their children" (Clinton 1992). David Blankenhorn writes that "the principal cause of fatherlessness is paternal choice…the rising rate of paternal abandonment" (Blankenhorn 1995, 22–23).

The little work by political scientists perpetuates this assumption. "Husbands abandon wives and children with no looking back," writes Cynthia Daniels (1998, 2). "Millions of men walk out on their children," says Robert Griswold (1998, 19).

Conservatives, who have done most to call attention to fatherlessness, also accept this explanation. Lionel Tiger writes that men "are abandoning women. …It supplies much of the 50 percent divorce rate.…Perhaps this helps explain the single-mother rate of over 30% of births across the industrial world" (Tiger 1999, 57–58). Leon Kass blames feminism for "male liberation—from domestication, from civility, from responsible self-command."

All this may seem intuitively correct, but is it true? In fact, no government or academic study has ever shown that large numbers of fathers are voluntarily abandoning their children.

Moreover, those studies that have addressed the question have arrived at a rather different conclusion. In the largest federally funded study ever undertaken on the subject, psychologist Sanford Braver found that the "deadbeat dad" who walks out on his family and evades child support "does not exist in significant numbers." Braver found at least two-thirds of divorces are initiated by women. Moreover, few of these divorces involve legal grounds, such as desertion, adultery, or violence (Braver 1998). Other studies have found much higher proportions, with one concluding that "who gets the children is by far the most important component in deciding who files for divorce" (Brinig and Allen 2000, 126–27, 129, 158).

The importance of this finding cannot be overestimated. Policymakers clearly assume the contrary, imposing punitive measures on allegedly dissolute fathers. "Children should not have to suffer twice for the decisions of their parents to divorce," Republican Senator Mike DeWine stated in June 1998, "once when they decide to divorce, and again when one of the parents evades the financial responsibility to care for them."

Cases of unmarried fathers, usually younger and poorer, are more difficult to document. Yet here too the evidence contrasts with the stereotype. One study of low-income fathers ages 16–25 found that 63% had only one child; 82% had children by only one mother; 50% had been in a serious relationship with the mother at the time of pregnancy; only

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3% knew the mother of their child "only a little"; 75% visited their child in the hospital; 70% saw their children at least once a week; 50% took their child to the doctor and large percentages reported bathing, feeding, dressing, and playing with their children; and 85% provided informal child support in the form of cash or purchased goods such as diapers, clothing, and toys (Wilson 1997). A study of low-income fathers in England found that "the most common reason given by the fathers for not having more contact with their children was the mothers' reluctance to let them.... Most of the men were proud to be seen as competent carers and displayed a knowledge of child-care issues" (Speak et al. 1999).

Also challenging the deadbeat stereotype, a Rutgers-Texas study found that many fathers state governments want to track down for child support are so destitute that their lives focus on finding the next job, the next meal, or next night's shelter. "They struggle with irregular, low-wage employment," the authors write. "But economically and emotionally marginal as many of these fathers were, they…continue to make contributions to their children's households and to maintain at least a relationship with those children" (Edin and Lein 1998).

So if fathers are not abandoning their children in record numbers, why are so many children without fathers? Some 40% of the nation's children and 60% of African-American children live in homes where their fathers are not present (Popenoe 1993).

Part of the answer may be found by examining the governmental institutions that regulate the relationships between parents and their children. The first point of contact between most parents and the state is again the family court and the bureaucratic machinery that surrounds it.

Family courts are a little-studied institution, yet they possess powers unlike any other governmental body. Unlike other courts, they are usually closed to the public, generally leave no record of their proceedings, and keep few statistics on their decisions, so information is difficult to obtain. In some ways they are closer to administrative agencies than courts; one prominent judge describes them as a "social service delivery system." Uniquely, their mandate is not even to administer justice as such but to determine "the best interest of the child." Because this may involve no transgression by litigants, family courts would appear to be the only courts that can summon and impose their orders on citizens accused of no legal infraction.

Thus while family courts sit lowest in the judicial hierarchy, paradoxically they are regarded as the most powerful. "The family court is the most powerful branch of the judiciary," according to Robert Page, presiding judge of the family part of the Superior Court of New Jersey. By their own assessment, "The power of family court judges is almost unlimited" (Page 1993, 11).

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Perhaps most startling is that by some accounts they claim to be exempt from the U.S. Constitution. Family courts describe themselves as courts of "equity" or "chancery" rather than "law," implying they are not necessarily bound by due process, and the rules of evidence are not as stringent as in criminal courts. As one father reports being told by the chief investigator for the administrator of the courts in New Jersey, investigating a complaint in 1998: "The provisions of the U.S. Constitution do not apply in domestic relations cases since they are determined in a court of equity rather than court of law." A connected rule, known as the "domestic relations exception," prevents federal courts exercising constitutional review over family law cases.

Family courts handle matters such as divorce, custody, child support, child protection, domestic violence, and juvenile crime. Their workload is determined by the existence of these problems, all of which are directly connected with fatherless homes. Recalling Dickens' observation that "the one great principle of the law is to make business for itself," it may not be overly cynical to suggest that family courts and their entourage have developed a vested interest in separating children from their parents. Though mothers and parents in intact families can also find their children confiscated (a trend that seems to be increasing), the process most often begins with the removal of the father, the weakest link in the family chain (Mead 1969, 198). The children then become effectively wards of the state, where they can be seized from their mothers as well, often on accusations of child abuse (Hewlett and West 1998; Wexler 1990).

Like other state court judges, family court judges are elected or appointed and promoted by commissions dominated by lawyers and other professionals (Jacob 1964; Tarr 1999, 61–70). They are political positions, in other words, answerable to the bar associations who effectively appoint them or finance their election campaigns and who naturally have an interest in maximizing the volume of litigation (Corsi 1984, 107–14; Watson and Downing 1969, 98, 336). While family courts, like all courts, complain of being overburdened, it is clearly in their interest to be overburdened, since judicial powers and salaries, like any other, are determined by demand. "Judges and staff work on matters that are emotionally and physically draining due to the quantity and quality of the disputes presented," Judge Page explains. "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, then the more satisfied the customers—in this case, the bar associations and divorcing parents who expect custody—the more customers will be attracted. "With improved services more persons will come before the court seeking their availability," writes Judge Page. "As the court does a better job more persons will be attracted to it as a method of dispute resolution" (Page 1993, 19–20). The more attractive the courts make divorce settlements, the more their business and the more children will be removed from, in most cases, their fathers.

One tool at their disposal is restraining orders, which exclude fathers (or mothers) from their children for months, years, and even life. These orders are routinely issued during divorce proceedings, usually without any evidence of wrongdoing. Elaine Epstein, former president of the Massachusetts Women's Bar Association, has written that restraining orders are doled out "like candy." "Restraining orders and orders to vacate are granted to virtually all who apply," and "the facts have become irrelevant," she found. "In virtually all cases, no notice, meaningful hearing, or impartial weighing of evidence is to be had" (Epstein 1993, 1). The rationale was revealed during a judges' training

seminar, when municipal court judge Richard Russell told his colleagues:

> Your job is not to become concerned about the constitutional rights of the man that you're violating as you grant a restraining order. Throw him out on the street, give him the clothes on his back, and tell him, see ya around.... We don't have to worry about the rights. (Bleemer 1995, 1)

Professional associations and "revolving doors" connect family courts to executive branch agencies that handle child protection and child support enforcement. These agencies likewise can be said to have a interest in removing children from their fathers. Judges also wield substantial powers of patronage, whereby lucrative positions "are generally passed out to the judge's political cronies or to persons who can help his private practice" (Jacob 1984, 112).

The links connecting these professionals and agencies with the courts can be glimpsed from those documented cases that cross the line into illegality. One investigation uncovered a "slush fund" operated by Los Angeles family court judges into which attorneys and other "court-appointed professionals" contributed. The professionals included court monitors, who received up to $240 a day to watch fathers accused of spousal or child abuse while they are with their children, raising the question of whether the payments resulted not simply in certain individuals receiving appointments in preference to others but in the function itself being created in the first place (O'Meara 1999). What appears to be involved is not simply individual bribery to favor particular individuals or cases but a kind of systemic, institutional bribery leading to innocent fathers being monitored. This fund may be exceptional, in that it was exposed. But it may be exceptional only in degree, given that court officials have more subtle methods of rewarding judges who send business their way.

Such connections extend to the legislative branch, where the available documentation relates mostly to criminal cases, which may nevertheless constitute the tip of a larger, quasi-legal iceberg. In March 2000 four Arkansas legislators, including the most powerful member of the Arkansas Senate, were convicted on federal charges of racketeering for taking kickbacks and arranging government contracts for personal benefit, mostly connected with child custody and child support. One scheme ostensibly provided legal counsel to children, a practice that extends the patronage of judges by bringing in additional attorneys, often at litigants' expense though in this case with state funds voted for by lawmakers. Columnist John Brummett of the *Arkansas Democrat-Gazette* wrote on April 29, 1999, that "no child was served by that

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$3 million scam to set up a program ostensibly providing legal representation to children in custody cases, but actually providing a gravy train to selected legislators and pals who were rushing around to set up corporations and send big checks to each other." The program "not only sailed through the legislature without extended comment or eligibility restriction," as is often the case with legislation promoted for children, "but got its insider contracts expeditiously approved at the Arkansas Supreme Court." The offense for which the senators were indicted was not the diverting of contracts to their own firms—which is apparently considered legal—but receiving personal kickbacks and the cover-up. The underlying point here is that such opportunities only become available once children are removed from their parents.

The largest component of government fatherhood policies is child-support enforcement. Here too the courts, civil services agencies, and private firms have a stake in separating children from their fathers.

Nearly 60,000 agents now enforce child support throughout the United States, about 13 times the number in the Drug Enforcement Administration worldwide. This does not include the rapidly growing number of private enforcement companies. Though theoretically part of the executive branch, public agencies maintain close relationships with family courts. David Gray Ross, head of the federal Office of Child Support Enforcement (OCSE) in the Clinton administration, began his career as a family court judge before moving on to higher courts and a stint in a state legislature. "He was honored as 'Judge of the Year of America' by the National Reciprocal Family Support Enforcement Association in 1983 and as 'Family Court Judge of the Nation' by the National Child Support Enforcement Association [NCSEA] in 1989" <www.acf.dhhs.gov/programs/cse/davidros.htm>. That these groups bestow honors upon judges (and a federal government web site would boast about it) indicates their financial interest in family court decisions, primarily the one removing children from their fathers that sets the process in motion and then the punitive child-support award that necessitates their services. NCSEA's Internet site 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" <www.ncsea.org/about/>. In other words, it includes officials from at least two branches of government plus the private sector, who all have a financial interest in having children separated from their fathers.

Setting child support levels is likewise a political process dominated largely by collection personnel. About half the states use guidelines devised by courts and executive-branch enforcement agencies that interpret and enforce them (Morgan 1998, Table 1–2). Such legislating by courts and enforcement agencies raises questions about the separation of powers and thus the constitutionality of the process. The method of formulating child support guidelines, according to a Georgia district attorney, "violates both substantive due process and equal protection guarantees of the Constitutions of the United States and the State of Georgia" (Akins 2000).

The review process is likewise controlled largely by enforcement personnel. Virginia completed its review in 1999 with a commission consisting of one part-time member representing fathers and 11 full-time lawyers, judges, child-support enforcement agents, and representatives of other organizations who have a vested interest in both removing children from their fathers and making the fathers' support obligations as burdensome as possible (Koplen 1999). Georgia commissions have comprised "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," Williams Akins writes. Of the 11 members in 1998, "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" (Akins 2000).

These ethical conflicts extend to the private sector, where an obvious financial interest exists in creating fatherless children. Child-support enforcement is now a multi-billion dollar enterprise, with claimed arrearages of up to $68 billion and growing (HHS 2001). Privatization has created a large industry of firms with a stake in pursuing parents, such as Policy Studies Incorporated (PSI), Support-Kids, and Lockheed Martin IMS.

These firms are also involved in setting the levels of what they collect and so can create the very delinquents on which their business depends. From 1983 to 1990, Robert Williams, now president of PSI, was a paid consultant with the Department of Health and Human Services (HHS), where he helped establish uniform guidelines for the states with a grant from the National Center for State Courts. During this time, a federally driven approach led to significantly increased obligations. When the Family Support Act of 1988 required states to implement child-support guidelines (and gave them only a few months of legislative time to do so or lose millions in federal funds), most opted for Williams' guidelines, the model being devised by the agency overlooking the program (Akins 2000; Rogers and Bieniewicz 2000).

One year after joining HHS, and the same year the federal guidelines were created, Williams started PSI, which targeted privatization opportunities with those he had consulted. In 1996, his company had the greatest number of child-support-enforcement contracts of any of the private companies that held state contracts (Johnston 1999). Company promotional literature reports that PSI operates 31 privatized service locations in 15 states. *The Denver Business Journal* reported on 27 June 1997, that PSI had grown "by leaps and bounds because of the national crackdown on 'deadbeat dads,'" even before welfare reform legislation took effect, by which the company "stands to profit even more."

More significant than the profiteering is the level of obligation. PSI has a vested interest not only in making the child-support levels as high as possible to increase its absolute collection, but also in making them so high that they create arrearages and "delinquents." Only by creating a level of obligation high enough to create hardship, can the guidelines create a large enough pool of defaulters to ensure demand for collection services. Like his public sector counterparts, Williams's business depends on creating as many deadbeat dads as possible.

Williams's model sharply raised obligations and has been widely criticized. Economist Mark Rogers has charged that it resulted in "excessive burdens" based on a "flawed economic foundation." Williams himself has stated, "There is no consensus among economists on the most valid theoretical model to use in deriving estimates of child-rearing expenditures," and, "Use of alternative models yields widely divergent estimates of the percentages of parental income or consumption allocated to the children." Donald Bieniewicz, member of an advisory panel to OCSE, comments: "This is a shocking vote of 'no confidence' in the… guideline by its author" (Bieniewicz 1999, 2; Rogers 1999; Williams 1994, 104–105). Yet on the basis of this guideline, parents are being arrested and jailed, usually without trial.

The politics of fatherhood is difficult to classify according to existing political vocabularies. It possesses similarities to a patronage machine, wherein judgeships themselves are distributed (Glick 1978, 510). The judge in turn sits at the center of a distribution system where he or she is in a position to reward friends and punish enemies. Yet the patronage wielded in family court appears to be less partisan and more pecuniary (cp. Ashman 1973, 242; Jacob 1984, 112; Stumpf and Culver 1992, 49). The judge who sits at the center of the machine is not necessarily in command of it, and a judge who fails to see to the interests of the attorneys and other professionals can be punished when the time comes for reappointment and promotion.

What is unprecedented is the commodity in contention. Children serve as the tool or even weapon in disputes among contending parties, not only parents but government officials. Control of children brings control over adults and confers power and financial rewards on those who can successfully claim to be acting in the children's interest (Brinig and Allen 2000, 133, 156). The politics of fatherhood may thus be seen as part of a larger politics of children which is only beginning to receive scrutiny (Hewlett and West 1998; Mack 1997; MacLeod 1997). An extensive literature already examines family politics and lays the groundwork for political scientists to go further in understanding the developing role of the state in family relationships (Binion 1991; Dewar 2000; Elshtain 1989; Houlgate 1998; Okin 1991). What must now be explored is what happens when specific state institutions step in to assume control over children and, in the name of their well-being or that of the larger society, regulate their relationships with their parents.

Note

1. Government fatherhood programs exist in Canada, Britain, Australia, and New Zealand. In June 1997 the German magazine *Der Spiegel* ran a cover story on "The Fatherless Society." The problem is increasing in countries with such traditional family morality as Japan and India (*e.g.*, Bhadra Sinha, "No Time For Each Other," *The Times of India*, 3 December 2000).

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