

# Divorced from Reality

*“We’re from the Government, and We’re Here to End Your Marriage.”*

by **Stephen Baskerville**

The decline of the family has now reached critical and truly dangerous proportions. Family breakdown touches virtually every family and every American. It is not only the major source of social instability in the Western world today but also seriously threatens civic freedom and constitutional government.

G. K. Chesterton once observed that the family serves as the principal check on government power, and he suggested that someday the family and the state would confront one another. That day has arrived.

Chesterton was writing about divorce, and despite extensive public attention to almost every other threat to the family, divorce remains the most direct and serious. Michael McManus of Marriage Savers writes that “divorce is a far more grievous blow to marriage than today’s challenge by gays.”

Most Americans would be deeply shocked if they knew what goes on today under the name of divorce. Indeed, many are devastated to discover that they can be forced into divorce by procedures entirely beyond their control. Divorce licenses unprecedented government intrusion into family life, including the power to sunder families, seize children, loot family wealth, and incarcerate parents without trial. Comprised of family courts and vast, federally funded social services bureaucracies that wield what amount to police powers, the divorce machinery has become the most predatory and repressive sector of government ever created in the United States and is today’s greatest threat to constitutional freedom.

## **Unilateral Divorce**

Some four decades ago, while few were paying attention, the Western world embarked on the boldest social experiment in its history. With no public discussion of the possible consequences, laws were enacted in virtually every jurisdiction that effectively ended marriage as a legal contract. Today it is not possible to form a binding agreement to create a family. The government can now, at the request of one spouse, simply dissolve a marriage over the objection of the other. Maggie Gallagher aptly titled her 1996 book *The Abolition of Marriage*.

This startling fact has been ignored by politicians, journalists, academics, and even family advocates. “Opposing gay marriage or gays in the military is for Republicans an easy, juicy, risk-free issue,” wrote Gallagher. “The message [is] that at all costs we should keep divorce off the political agenda.” No American politician of national stature has ever challenged involuntary divorce. “Democrats did not want to anger their large

constituency among women who saw easy divorce as a hard-won freedom and prerogative,” observes Barbara Whitehead in *The Divorce Culture*. “Republicans did not want to alienate their upscale constituents or their libertarian wing, both of whom tended to favor easy divorce, nor did they want to call attention to the divorces among their own leadership.”

In his famous denunciation of single parenthood, Vice President Dan Quayle was careful to make clear, “I am not talking about a situation where there is a divorce.” The exception proves the rule. When Pope John Paul II criticized divorce in 2002, he was roundly attacked from the right as well as the left.

The full implications of the “no-fault” revolution have never been publicly debated. “The divorce laws . . . were reformed by unrepresentative groups with very particular agendas of their own and which were *not* in step with public opinion,” writes Melanie Phillips in *The Sex-Change Society*. “Public attitudes were gradually dragged along behind laws that were generally understood at the time to mean something very different from what they subsequently came to represent.”

Today’s disputes over marriage in fact have their origin in this one. Demands to redefine marriage to include homosexual couples are inconceivable apart from the redefinition of marriage already effected by heterosexuals through divorce. Though gays cite the very desire to marry as evidence that their lifestyle is not inherently promiscuous, activist Andrew Sullivan acknowledges that that desire has arisen only because of the promiscuity permitted in modern marriage. “The world of no-strings heterosexual hookups and 50 percent divorce rates preceded gay marriage,” he points out. “All homosexuals are saying . . . is that, *under the current definition*, there’s no reason to exclude us. If you want to return straight marriage to the 1950s, go ahead. *But until you do*, the exclusion of gays is . . . a denial of basic civil equality” (emphasis added). Gays do not want traditional monogamous marriage, only the version debased by divorce.

Contrary to common assumptions, divorce today seldom involves two people mutually deciding to part ways. According to Frank Furstenberg and Andrew Cherlin in *Divided Families*, 80 percent of divorces are unilateral, that is, over the objection of one spouse. Patricia Morgan of London’s Civitas think tank reports that in over half of divorces, there was no recollection of major conflict before the separation.

Under “no-fault,” or what some call “unilateral,” divorce—a legal regime that expunged all considerations of justice from the procedure—divorce becomes a sudden power grab by one spouse, assisted by an army of judicial hangers-on who reward belligerence and profit from the ensuing litigation: judges, lawyers, psychotherapists, counselors, mediators, custody evaluators, social workers, and more.

If marriage is not wholly a private affair, as today’s marriage advocates insist, involuntary divorce by its nature requires constant government supervision over family life. Far more than marriage, divorce mobilizes and expands government power. Marriage creates a private household, which may or may not necessitate signing some

legal documents. Divorce dissolves a private household, usually against the wishes of one spouse. It inevitably involves state functionaries—including police and jails—to enforce the divorce and the post-marriage order.

Almost invariably, the involuntarily divorced spouse will want and expect to continue enjoying the protections and prerogatives of private life: the right to live in the common home, to possess the common property, or—most vexing of all—to parent the common children. These claims must be terminated, using the penal system if necessary.

### **Onerous Implications**

Few stopped to consider the implications of laws that shifted the breakup of private households from a voluntary to an involuntary process. Unilateral divorce inescapably involves government agents forcibly removing legally innocent people from their homes, seizing their property, and separating them from their children. It inherently abrogates not only the inviolability of marriage but the very concept of private life.

By far the most serious consequences involve children, who have become the principal weapons of the divorce machinery. Invariably the first action of a divorce court, once a divorce is filed, is to separate the children from one of their parents, usually the father. Until this happens, no one in the machinery acquires any power or earnings. The first principle and first action of divorce court therefore: Remove the father.

This happens even if the father is innocent of any legal wrongdoing and is simply sitting in his own home minding his own business. The state seizes control of his children with no burden of proof to justify why. The burden of proof (and the financial burden) falls on the father to demonstrate why they should be returned.

Though obfuscated with legal jargon (losing “custody”), what this means is that a legally unimpeachable parent can suddenly be arrested for seeing his own children without government authorization. Following from this, he can be arrested for failure or inability to conform to a variety of additional judicial directives that apply to no one but him. He can be arrested for domestic violence or child abuse, even if no evidence is presented that he has committed any. He can be arrested for not paying child support, even if the amount exceeds his means (and which may amount to most of his salary). He can even be arrested for not paying an attorney or a psychotherapist he has not hired.

The *New York Times* has reported on how easily “the divorce court leads to a jail cell.” Take the case of Marvin Singer, who was jailed without trial for not paying an attorney he never hired \$100,000—only half of what the court claimed he “owes.” In Virginia, one father was ordered to pay two years’ worth of his salary to a lawyer he also did not hire for a divorce he did not request. Once arrested, the father is summarily jailed. There is no formal charge, no jury, and no trial.

Family court judges’ contempt for both fathers and constitutional rights was openly expressed by New Jersey municipal court judge Richard Russell: “Your job is not to

become concerned about the constitutional rights of the man that you're violating," he told his colleagues at a judges' training seminar in 1994. "Throw him out on the street. . . . We don't have to worry about the rights."

### **Generated Hysteria**

Why do we hear almost nothing about this? Aside from media that sympathize with the divorce revolution, the multi-billion-dollar divorce industry also commands a huge government-funded propaganda machine that has distorted our view of what is happening.

The growth of the divorce machinery during the 1970s and 1980s did not follow but *preceded* (in other words, it generated) a series of hysterias against parents—especially fathers—so hideous and inflammatory that no one, left or right, dared question them or defend those accused: child abuse and molestation, wife-beating, and nonpayment of "child support." Each of these hysterias has been propagated largely by feminists, bar associations, and social work bureaucracies, whose federal funding is generously shared with state and local law-enforcement officials.

The parent on the receiving end of such accusations—even in the absence of any formal charge, evidence, or conviction—not only loses his children summarily and often permanently; he also finds himself abandoned by friends and family members, parishioners and pastors, co-workers and employers (and he may well lose his job)—all terrified to be associated with an accused "pedophile," "batterer," or "deadbeat dad."

It is not clear that these nefarious figures are other than bogeymen created by divorce interests, well aware that not only the public generally but conservatives and family advocates in particular are a soft touch when it comes to anything concerning irresponsible behavior or sexual perversion.

Christians are especially vulnerable to credulity about such accusations, because they are disposed to see moral breakdown behind social ills. Moral breakdown certainly does lie behind the divorce epidemic (of which more shortly), but it is far deeper than anything addressed by cheap witch-hunts against government-designated malefactors.

It is also largely credulity and fear that leads Congress by overwhelming majorities to appropriate billions for anti-family programs in response to these hysterias. The massive federal funds devoted to domestic violence, child abuse, and child-support enforcement are little more than what Phyllis Schlafly calls "feminist pork," taxpayer subsidies on family dissolution that also trample due process protections. Family law may technically be the purview of states, but it is driven by federal policies and funded by a Congress fearful of accusations that it is not doing enough against pedophiles, batterers, and deadbeats.

In fact, each of these figures is largely a hoax, a creation of feminist ideology disseminated at taxpayers' expense and unchallenged by journalists, academics, civil

libertarians, and family advocates who are either unaware of the reality or cowed into silence. Indeed, so diabolical are these hysterias that some family advocates simply accept them as additional evidence of the family crisis.

But while sensational examples can be found of anything, there is simply no evidence that the family and fatherhood crisis is caused primarily or even significantly by fathers abandoning their families, beating their wives, and molesting their children. Irrefutable evidence indicates that it is driven almost entirely by divorce courts forcibly separating parents from their children and using these false accusations as a rationalization.

### **Divorce Gamesmanship**

During the 1980s and 1990s, waves of child abuse hysteria swept America and other countries. Sensational cases in Washington state, California, Massachusetts, North Carolina, Ontario, Saskatchewan, the north of England, and more recently France resulted in torn-apart families, blatantly unjust prison sentences, and ruined lives, while the media and civil libertarians looked the other way.

Today it is not clear that we have learned anything from these miscarriages of justice. If anything, the hysteria has been institutionalized in the divorce courts, where false allegations have become routine.

What is ironic about these witch-hunts is the fact that it is easily demonstrable that the child abuse epidemic—which is very real—is almost entirely the creation of feminism and the welfare bureaucracies themselves. It is well established by scholars that an intact family is the safest place for women and children and that very little abuse takes place in married families. Child abuse overwhelmingly occurs in single-parent homes, homes from which the father has been removed. Domestic violence, too, is far more likely during or after the breakup of a marriage than among married couples.

Yet patently false accusations of both child abuse and domestic violence are rampant in divorce courts, almost always for purposes of breaking up families, securing child custody, and eliminating fathers. “With child abuse and spouse abuse you don’t have to prove anything,” the leader of a legal seminar tells divorcing mothers, according to the *Chicago Tribune*. “You just have to accuse.”

Among scholars and legal practitioners it is common knowledge that patently trumped-up accusations are routinely used, and virtually never punished, in divorce and custody proceedings. Elaine Epstein, president of the Massachusetts Women’s Bar Association, writes that “allegations of abuse are now used for tactical advantage” in custody cases. The *Illinois Bar Journal* describes how abuse accusations readily “become part of the gamesmanship of divorce.” The *UMKC Law Review* reports on a survey of judges and attorneys revealing that disregard for due process and allegations of domestic violence are used as a “litigation strategy.” In the *Yale Law Review*, Jeannie Suk calls domestic violence accusations a system of “state-imposed *de facto* divorce” and documents how

courts use unsupported accusations to justify evicting Americans from their homes and children.

The multi-billion dollar abuse industry has become “an area of law mired in intellectual dishonesty and injustice” writes David Heleniak in the *Rutgers Law Review*. Domestic violence has become “a backwater of tautological pseudo-theory,” write Donald Dutton and Kenneth Corvo in the scholarly journal *Aggression and Violent Behavior*. “No other area of established social welfare, criminal justice, public health, or behavioral intervention has such weak evidence in support of mandated practice.”

Feminists confess as much in their vociferous opposition to divorce reform. A special issue of the feminist magazine *Mother Jones* in 2005 ostensibly devoted to domestic violence focuses largely on securing child custody.

Both child abuse and domestic violence have no precise definitions. Legally they are not adjudicated as violent assault, and accused parents do not enjoy the constitutional protections of criminal defendants. Allegations are “confirmed” not by jury trials but by judges or social workers. Domestic violence is any conflict within an “intimate relationship” and need not be actually violent or even physical. Official definitions include “extreme jealousy and possessiveness,” “name calling and constant criticizing,” and “ignoring, dismissing, or ridiculing the victim’s needs.”

For such “crimes” fathers lose their children and can be jailed. “Protective orders” separating parents from their children are readily issued during divorce proceedings, usually without any evidence of wrongdoing. “Restraining orders and orders to vacate are granted to virtually all who apply,” and “the facts have become irrelevant,” writes Epstein. “In virtually all cases, no notice, meaningful hearing, or impartial weighing of evidence is to be had.”

### **Cycle of Abuse**

Trumped-up accusations are thus used to create precisely the single-parent homes in which actual abuse is most likely to occur. According to the Department of Health and Human Services (HHS), “Children of single parents had a 77% greater risk of being harmed by physical abuse, an 87% greater risk of being harmed by physical neglect, and an 80% greater risk of suffering serious injury or harm from abuse or neglect than children living with both parents.” Britain’s Family Education Trust reports that children are up to 33 times more likely to be abused in a single-parent home than in an intact family.

The principal impediment to child abuse is thus precisely the figure whom the welfare and divorce bureaucracies are intent on removing: the father. “The presence of the father . . . placed the child at lesser risk for child sexual abuse,” concludes a 2000 study published in *Adolescent and Family Health*. “The protective effect from the father’s presence in most households was sufficiently strong to offset the risk incurred by the few paternal perpetrators.” In fact, the risk of “paternal perpetrators” is miniscule, since a tiny

proportion of sexual abuse (which is far less common than physical abuse) is committed by natural fathers, though government statistics lump them in with boyfriends and stepfathers to make it appear that incest is widespread.

Despite the innuendos of child abuse advocates, it is not married fathers but single mothers who are most likely to injure or kill their children. “Contrary to public perception,” write Patrick Fagan and Dorothy Hanks of the Heritage Foundation, “research shows that the most likely physical abuser of a young child will be that child’s mother, not a male in the household.” Mothers accounted for 55 percent of all child murders according to a Justice Department report. HHS itself found that women aged 20 to 49 are almost twice as likely as men to be perpetrators of child maltreatment: “almost two-thirds were females.” Given that “male” perpetrators are not usually fathers but boyfriends or stepfathers, fathers emerge as by far the least likely child abusers.

Yet government logic is marvelously self-justifying and self-perpetuating, since by eliminating the father, officials can present themselves as the solution to the problem they have created. The more child abuse there is—whether by single mothers, boyfriends, or even (as is often the case) by social workers and bureaucrats themselves—the more the proffered solution is to further expand the child abuse bureaucracy.

Waxing indignant about a string of child deaths at the hands of social workers in the District of Columbia, federal judges and the *Washington Post* found solace in the D.C. government’s solution: to hire more social workers (and lawyers too, for some unspecified reason). “Olivia Golden, the Child and Family Services’ latest director . . . will use her increased budget to recruit more social workers and double the number of lawyers.” Children die at the hands of social workers, so we must hire more social workers.

Likewise, it is difficult to believe that judges are not aware that the most dangerous environment for children is precisely the single-parent homes they themselves create when they remove fathers in custody proceedings. Yet they have no hesitation in removing them, secure in the knowledge that they will never be held accountable for any harm that may come to the children. On the contrary, if they do not remove the fathers, they may be punished by the bar associations and social work bureaucracies whose funding depends on a constant supply of abused children.

A commonplace of political science is that bureaucracies relentlessly expand, often by creating the very problem they exist to address. Appalling as it sounds, the conclusion is inescapable that we have created a massive army of officials with a vested interest in child abuse.

### **Trafficking in Children**

The child abuse industry also demonstrates how one threat to the family creates another. Just as the divorce revolution eventually led to the demand for same-sex “marriage,” the child abuse deception has led to demands for parenting by same-sex couples.

Most discussion of homosexual parenting has centered on questions of children's welfare versus the rights of homosexuals. Few have questioned the politics whereby prospective homosexual parents obtain the children they wish to parent. Granting same-sex couples the right to raise children means, by definition, giving at least one of the partners the right to raise someone else's children, and the question arises whether the original parent or parents ever agreed to part with them or did something to warrant losing them.

Current laws governing divorce, domestic violence, and child abuse render this question open. The explosion in foster care based on the assumed but unexamined need to find permanent homes for allegedly abused children has provided perhaps the strongest argument in favor of same-sex "marriage" and homosexual parenting. Yet the politics of child abuse and divorce indicate that this assumption is not necessarily valid.

The government-generated child abuse epidemic and the mushrooming foster care business that it feeds have allowed government agencies to operate what amounts to trafficking in children. A San Diego grand jury reports "a widely held perception within the community and even within some areas of the Department [of Social Services] that the Department is in the 'baby brokering' business."

Introducing same-sex "marriage" and adoption into this political dynamic could dramatically increase the demand for children to adopt, thus intensifying pressure on social service agencies and biological parents to supply such children. While sperm donors and surrogate mothers supply some children for homosexual parents, most have been taken from their natural parents because of divorce, unwed parenting, child abuse accusations, or connected reasons.

Massachusetts Senator Therese Murray, claiming that 40 percent of the state's adoptions have gone to gay and lesbian couples, rationalizes the practice by invoking "children who have been neglected, abandoned, abused by their own families." But it is far from evident that these children are in fact victims of their own parents. What seems inescapable is that homosexual parenting has arisen as the direct and perhaps inevitable consequence of government officials getting into the business—which began largely with divorce—of distributing other people's children.

### **Child-Support Racket**

The "deadbeat dad" is another figure largely manufactured by the divorce machinery. He is far less likely to have deliberately abandoned offspring he callously sired than to be an involuntarily divorced father who has been, as attorney Jed Abraham writes in *From Courtship to Courtroom*, "forced to finance the filching of his own children."

Child support is plagued by the same contradictions as child custody. Like custody, it is awarded ostensibly without reference to "fault," and yet nonpayment brings swift and severe punishments. Contrary to popular belief, child support today has nothing to do with fathers abandoning their children, renegeing on their marital vows, or even agreeing

to divorce. It is automatically assessed on all non-custodial parents, even those divorced against their will who lose their children through no legal fault or agreement of their own. It is an entitlement for all single mothers, in other words, regardless of their behavior.

Originally justified as a method of recovering welfare costs, child support has been transformed into a massive federal subsidy on middle-class divorce. No-fault divorce allowed a mother to divorce her husband for any reason or no reason and to take the children with her. Child support took the process a step further by allowing the divorcing mother to use the now-fatherless children to claim her husband's income—also regardless of any fault on her part (or lack of fault on his) in abrogating the marriage agreement.

By glancing at a child-support schedule, a mother can determine exactly how large a tax-free windfall she can force her husband to pay her simply by divorcing, money she may spend however she wishes with no accounting requirement. It is collected at gunpoint if necessary, and nonpayment means incarceration without trial.

Like the welfare it was supposed to replace, child support finances family dissolution by paying mothers to divorce. Economist Robert Willis calculates that child-support levels vastly exceeding the cost of raising children create “an incentive for divorce by the custodial mother.” His analysis indicates that only one-fifth to one-third of child-support payments are actually used for the children; the rest is profit for the custodial parent. Kimberly Folse and Hugo Varela-Alvarez write in the *Journal of Socio-Economics* that child support serves as an “economic incentive for middle-class women to seek divorce.”

Mothers are not the only ones who can profit by creating fatherless children. Governments also generate revenue from child support. State governments receive federal funds for every child-support dollar collected—money they can add to their general funds and use for any purpose they choose. This gives states a financial incentive to create as many single-parent households as possible by encouraging middle-class divorce. While very little child support—or government revenue—is generated from the impecunious young unmarried fathers for whom the program was ostensibly created, involuntarily divorced middle-class fathers have deeper pockets to loot.

This is why state governments set child support at onerous levels. Not only does it immediately maximize their own revenues; by encouraging middle-class women to divorce, governments increase the number of fathers sending dollars through their systems, thus generating more revenue. Federal taxpayers (who were supposed to save money) subsidize this family destruction scheme with about \$3 billion annually. “Child support guidelines currently in use typically generate awards that are much higher than would be the case if based on economically sound cost concepts,” writes Mark Rogers, an economist who served on the Georgia Commission on Child Support. Rogers charges that guidelines result in “excessive burdens” based on a “flawed economic foundation.” The Urban Institute reports that arrearages accrue because “orders are set too high relative to ability to pay.” Federal officials have admitted that the more than \$90 billion in

arrearrages they claimed as of 2004 were based on awards that were beyond the parents' ability to pay.

All this marks a new stage in the evolution of the welfare state: from distributing largesse to raising revenue and, from there, to law enforcement. The result is a self-financing machine, generating profits and expanding the size and scope of government—all by generating single-parent homes and fatherless children. Government has created a perpetual growth machine for destroying families, seizing children from legally blameless parents, and incarcerating parents without trial.

### **Responsibility of Churches**

While many factors have contributed to this truly diabolical, bureaucratic onslaught against the family, we might begin by looking within. The churches' failure or refusal to intervene in the marriages they consecrated and to exert moral pressure on misbehaving spouses (perhaps out of fear of appearing "judgmental") left a vacuum that has been filled by the state. Clergy, parishioners, and extended families have been replaced by lawyers, judges, forensic psychotherapists, social workers, and plainclothes police.

Family integrity will be restored only when families are de-politicized and protected from government invasion. This will demand morally vigorous congregations that are willing to take marriage out of the hands of the state by intervening in the marriages they are called upon to witness and consecrate and by resisting the power of the state to move in. This is the logic behind the group Marriage Savers, and it can restore the churches' authority even among those who previously viewed a church's role in their marriage as largely ceremonial.

No greater challenge confronts the churches—nor any greater opportunity to reverse the mass exodus—than to defend their own marriage ordinance against this attack from the government. Churches readily and rightly mobilize politically against moral evils like abortion and same-sex "marriage," in which they are not required to participate. Even more are they primary stakeholders in involuntary divorce, which allows the state to desecrate and nullify their own ministry.

As an Anglican, I am acutely aware of how far modernity was ushered in not only through divorce, but through divorce processes that served the all-encompassing claims of the emerging state leviathan. Politically, this might be seen as the "original sin" of modern man. We all need to atone.

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