

Human Events

Undermining the American Family

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Today the marriage rate is at its lowest point ever, the divorce rate is near its highest, and more children are living without their fathers than at any time in American history. Yet the prestigious American Law Institute (ALI), which exercises great influence on American jurisprudence, has just released a series of family law recommendations that would exacerbate these problems by trivializing the importance of marriage, encouraging divorce and accelerating fatherlessness.

The marriage rate has dipped 40% over the last four decades and over a million couples divorce each year. A record 1.3 million babies were born out of wedlock in 1999, marking the first time in American history that a full third of all U.S. births were to unwed mothers.

Sociologists, economists, and child-welfare advocates agree that too many children are living without a father in the home, and the public echoes these sentiments. According to a 1996 Gallup poll, 79% of Americans believe that "the most significant family or social problem facing America is the physical absence of the father from the home."

Where have all the fathers gone? Maybe we should ask the family court system. Millions of decent fathers who have faithfully loved and supported their children have been downgraded to noncustodial parent status by courts that have stripped them of their natural right to the custody, care, and nurture of their own children. These fathers and the children who love them are victims of the greatest and least recognized problem in American family life today—the epidemic of access and visitation denial which family courts often permit.

Rather than addressing these issues, the ALI's just released report, *The Principles of the Law of Family Dissolution*, instead proposes weakening marriage and families by giving incentives to spouses to leave their marriages and replace their children's biological parents.

Courts would reward this behavior by granting "de facto parent" status to the cohabiting partner of a legal parent who has lived with that legal parent's children for two years and has performed caretaking functions. Thus noncustodial parents—usually fathers—could be forced to share legal custody of their own children with their ex-spouses' new boyfriends or girlfriends.

Under this proposal a parent could cohabit with several partners over a period of years and each of these partners could be granted shared custody and visitation rights. At every step the noncustodial biological parent's relationship with his or her children would be diluted in favor of a "de facto parent" who never made the marital commitment the biological parent did.

Beyond the damage to children caused by this merry-go-round, one cringes at the emotional toll on parents and children (not to mention the legal costs) involved when custody is contested not simply between biological parents but also between biological parents and "de facto" parents.

The ALI notes that it is "increasingly implausible to attribute special significance" to a couple's decision

to marry and equates "domestic partners" ("two persons of the same or opposite sex, not married to one another, who for a significant period of time share a primary residence and a life together as a couple") with married couples in many aspects of family law. This trivializes the serious, lifelong commitment which marriage demands and the stability for children which it provides.

Research establishes that children fare best in a married, two parent home, and that the largest single predictor of whether a student will graduate high school, attend college, become involved in crime or drugs, or get pregnant is a fathers' presence in that home.

Family researcher Judith Wallerstein, co-author of *The Unexpected Legacy of Divorce: a 25 Year Landmark Study*, found that the effects of family breakdown stay with children long after their childhoods, as they are less likely to marry, have successful marriages, and have children than adults who grew up in intact families.

Family courts have hurt children and families by failing to recognize the importance of ensuring that both biological parents remain integral parts of their children's lives following a divorce. The solution is to replace the sole physical custody norm with shared parenting—the presumption of joint legal and physical custody.

Judges could deviate from this egalitarian arrangement only if there is clear and convincing evidence that one of the parents has committed acts that render that parent unfit, such as child abuse or neglect. If divorcing parents are unable to agree on a shared parenting plan, the courts would develop a plan that would afford both parents equitable custody and parenting time.

Shared parenting may also help keep families together. In a study examining people's motives for filing for divorce, economists Margaret Brinig and Douglas Allen analyzed 46,000 divorcing couples and found that most divorce petitions are filed by women, and that they do so in part because they know they can expect to obtain sole custody of their children.

This expectation sometimes leads them to conclude that giving up on a struggling marriage is more appealing than attempting to save it. Brinig and Allen's research indicates that a shared custody norm may be the best way to reduce divorce rates.

There is also evidence that many struggling couples can resuscitate their marriages and find happiness if they are committed to doing so. In *The Case for Marriage*, Maggie Gallagher explains that in a broad survey of what married couples described as "very unhappy marriages," five years later, six out of seven couples who stayed together described their marriages as "happier," with a majority claiming that they were currently "very happy."

The ALI claims that its proposals are "innovative" and "responsive to the enormous changes in society that have taken place over the last century." Yet their proposals ignore fundamental principles that will never change: children need, want and deserve the emotional, physical and financial support of both biological parents; the best place for children is in an intact, married family; and men and women are happiest when they are in a loving, committed marriage.

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