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SOCIAL POLICY FOR CHILD CUSTODY: A Multidisciplinary Framework

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The need for collaboration between mental health professionals and those in the legal system in the development of a preventively-oriented social policy for children involved in custody disputes is discussed. Prior efforts toward this end are examined, and systemic influences that may impede the process are highlighted. Suggestions are offered for improving such efforts, and directions for needed empirical work are elaborated.

In recent years, mental health professionals have become increasingly concerned with the prevention of emotional disorders. Recognition of the relative inefficiency of traditional, individually-focused treatment methods has given rise to efforts aimed at reducing the incidence of new disorders, particularly in groups that are identified as being at "high risk" for the development of maladaptation.^{3,7} Such efforts have ranged from those representing an extension of traditional skills, such as parent education or teacher consultation, to those demanding the development of new frameworks for solving problems, such as social system interventions. The

present work focuses on this latter level of intervention. More specifically, we are concerned with efforts by social scientists to collaborate with those in the legal system in the development of a sound social policy for child custody placement in marital dissolution.

Divorce must be considered a prime target for preventive efforts due to its high incidence and its potentially negative impact. Bloom,¹ in his recent review of the literature, pointed out that more than three million individuals experience marital disruption in a given year, and that high levels of stress and maladjustment frequently accompany this process. Other authors^{4, 5, 8, 13} have

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shown divorce to be associated with both general and specific maladaptation in children.

A variety of factors have been pointed to as potentially influencing the ability of family members to cope with divorce. The financial resources of the family, the ages of the children, and the coping skills of individual family members have all been suggested as possible mediating factors.^{3, 4, 5, 8, 11, 18} Another important set of factors that must be considered are those relating to child custody arrangements. The speed with which the custodial decision is reached, the extent of parental involvement, and the role of the child in the decision-making process may all influence the postdivorce adjustment of both children and adults.

This paper will examine the ways in which mental health professionals have collaborated with those in the legal profession in the development of a child custody placement policy. Two of the more widely known efforts will serve as examples: *Beyond the Best Interests of the Child* by Goldstein, Freud and Solnit,⁶ and *The Disposable Parent: The Case for Joint Custody* by Roman and Haddad.¹⁶ Our aim is not to review these books but to use them to illustrate some of the potential pitfalls of multidisciplinary policy efforts. These works were chosen because they both have influenced social policy in child placement while utilizing contrasting data bases and making contrasting recommendations. We shall first provide a brief overview of each book and discuss problems in their data bases. We will then highlight general issues that may influence the success of interdisciplinary collaborations. Finally, ways in which future collaboration may be facilitated

will be discussed and suggestions for future research will be presented.

THE BASIC POSITIONS

*Beyond the Best Interests of the Child*⁶ is perhaps the most widely known and discussed effort to influence the development of social policy in the area of child placement. The value preference stated by the authors, and on which they based their recommendations, is that "the law must make the child's needs paramount in custody cases." Briefly stated, the authors argued for a statute that provides for the assignment of sole custody of the child to the "psychological parent," who would then have the legal right to determine the visitation privileges of the noncustodial parent. They stated,

Once it is determined who will be the custodial parent, it is that parent, not the court, who must decide under what condition he or she wishes to raise the child. Thus, the noncustodial parent should have no legally enforceable right to visit the child, and the custodial parent should have the right to decide whether it is desirable for the child to have such visits. (p. 38)

The authors viewed continuity of relationships as essential to a child's normal development; shared parental decision-making power or further court intervention was seen as disruptive to such continuity. Goldstein *et al*⁶ saw their proposal as setting a new standard that is the "least detrimental alternative for safeguarding the child's growth and development." This standard is based on the authors' contention that the court has only minimal competency to determine what is "best" in the long run for a child. Therefore, the court should be "less pretentious and ambitious" in attempting to serve the child's best inter-

ests; rather, it should solely attempt to avoid harm to the child.

Two other provisions of the authors' proposed custody statute are: 1) The court should act with "all deliberate speed," treating child placement as an emergency situation, given the child's sense of time and need for stability; and 2) the child should be accorded party status and given personal representation by counsel to ensure the recognition of his or her rights and needs.⁶

From the perspective of social scientists, *Beyond the Best Interests of the Child* is a carefully reasoned, well presented proposal based on psychoanalytic theory. It has been a highly influential work both in the practice of law and in the formulation of public policy based on psychological data. However, it is not without some major flaws. As discussed in detail elsewhere,¹⁰ Goldstein *et al*⁶ failed to provide a strong empirical base for their recommendations. Only minimal data were presented in support of their position. In the few instances in which data were provided, the design limitations of the studies were overlooked. Indeed, Katkin *et al*¹⁰ stated that the authors of *Beyond the Best Interests of the Child* have shown an overall tendency to "disregard the limitations on the inferences which can be drawn from the social science evidence they introduce."

*The Disposable Parent: The Case for Joint Custody*¹⁶ differs from the Goldstein *et al* work in its conclusions and the data from which they were drawn. Roman and Haddad argued for a legal presumption of joint custody in all cases of marital dissolution in which custody is in dispute. In support of this position, the authors reviewed two areas of related literature, demonstrating the

potentially devastating impact of divorce on children and adults and highlighting the importance of the father's role in normal child development.

We certainly do not dispute either of these conclusions. Indeed, the senior author of this paper has done extensive research that supports Roman and Haddad's stance on the potentially detrimental impact of divorce on children.^{4, 5} We do, however, question whether this evidence logically leads to the conclusion that joint custody should be the presumption in all cases of divorce. In addition, in their efforts to present their position forcefully, the authors tended to gloss over, reinterpret, or omit pertinent data that do not support their position.

Several examples serve to demonstrate this point. A study by Zill,¹⁰ cited by Roman and Haddad as supportive of a joint custody presumption, pointed to the importance of the father for the normal development of the child. This same study, however, also argued that perhaps one of the most detrimental situations for a child's emotional well-being is one in which both parents are living together, involved with the child, but are in conflict with each other. While Roman and Haddad cited this finding, they failed to note that it could be used as an argument against joint custody in situations in which parents are in extreme conflict.

Another series of studies cited as supportive of the authors' position are those by Hetherington, Cox and Cox.⁹ Indeed, these studies demonstrate the potentially negative impact of single-parent custody on the parents and children involved: overburdening the custodial parent, depriving the child of needed attention, and damaging the

noncustodial parent's self image. Again, Roman and Haddad overlooked data in these studies that support counter arguments. Hetherington, Cox and Cox⁹ noted that some single-parent families may adapt quite well following the divorce. Additional literature^{2, 4, 15} also supports the notion that it may be better for a child's development to be in the custody of a single-parent family than in a conflict-ridden dual-parent environment.

Two further comments on Roman and Haddad's use of data are necessary. They often simply dismissed data supporting positions antithetical to their own. For example, in citing potentially contradictory evidence from Hetherington,⁸ they termed the author's conclusions "reactionary" and accused the author of unstated assumptions and values. Finally, the little data that Roman and Haddad did present in direct support of joint custody were primarily anecdotal in nature, based on second-hand reports of joint custody efforts, and suffered from grave problems in their reliability, validity, and generalizability. For example, Roman and Haddad reported statements by parents who, for the most part, chose joint custody rather than had it imposed on them by the court. This certainly does not constitute a representative sample. In addition, the authors relied solely on verbal reports of parents, failing to utilize any data reporting procedures with established reliability and validity.

There can be little doubt that the least detrimental postdivorce arrangement for children would be the continued involvement of both parents where such arrangements are by their mutual consent. However, one must question the wisdom of joint custody

for parents who cannot resolve important issues concerning their children or where such joint custody is imposed by the court. The assertion by Goldstein *et al*⁶ that the court has only minimal competence to predict and influence the postdivorce family relationship is salient here. The ideal circumstances for joint custody do not always exist, and we must be concerned with the question of which "trade-offs" are better for the child. Is it better to have two antagonistic parents involved with the child, or to have a single, overburdened parent who may provide a semblance of consistency? Indeed, a question for Solomon. However, it is by asking and pursuing such questions that we will be able to ascertain the cases in which joint custody is the least detrimental alternative.

In summary, both the theoretically-based position of Goldstein *et al*⁶ and the data-based position of Roman and Haddad¹⁶ are seriously flawed in their assertions and the strength with which these were presented. Our primary purpose, however, is not to take issue with the specific recommendations of the authors, but to use these works as illustrative cases in a general discussion of issues that need to be addressed in the pursuit of a sound social policy for child custody. Before discussing how we may develop a more empirically sound and useful data-base for child custody decisions, we must first turn to an examination of those factors that may influence such investigative efforts. More specifically, in the following section we will attempt to develop a better understanding of the ways in which the disciplinary and social contexts in which individuals work influence their development of data and recommendations.

THE CONTEXTUAL FRAMEWORK

Kuhn¹² has argued that, in the development and utilization of scientific knowledge, each discipline uses its own paradigm. Paradigms in this sense are shared ways of viewing a world of concern. The assumptions and operating rules of a discipline constitute its prevailing paradigms. These, in turn, shape the questions one asks and the interpretations one gives to information gathered in response.

Social scientists concerned with facilitating the emotional well-being of family members, especially children, experiencing divorce must not be so naive as to assume that they share the goals and paradigms of the legal profession. For example, Goldstein *et al*⁶ argued that the child's needs must be made paramount by the law. Problems arise, however, when recommendations based on this child advocacy position cross the disciplinary boundary to the legal system, where custody placements are determined in an adversarial context.

Mnookin and Kornhauser,¹⁴ in their discussion of divorce negotiations that occur outside of the courtroom, pointed out some of the unintended problems that may arise from this process. They argued that the amount of "risk" perceived by each parent in his or her own position greatly influences whether a negotiated settlement can be reached or whether an adjudicated decision will be sought. For example, the visitation proposal advocated by Goldstein *et al* might actually lead to an increase in parental strife and custody battles in court. As Mnookin and Kornhauser stated, under this proposal, even if the mother "were willing to promise the father the visitation rights he wants, she would have no power whatsoever

to bind herself legally to that agreement,"¹⁴ and would retain the right to exclude the father from visitation in the future. As a function of the parties' inability to negotiate a *binding* settlement out of court, there might thus be a corresponding increase in the number of custody disputes brought to court. The father, in this case, might then have some chance of maintaining a legal right to see the child. Thus, one possible unintended consequence of the recommendation of Goldstein *et al*, due to their failure to consider the adversarial nature of the legal system, may be to encourage a situation that increases parental strife, certainly not the "least detrimental alternative" for the child.

Social scientists must also understand those structures and assumptions inherent in the legal profession that interfere with the development of a preventively-oriented social policy for child placement. We should be concerned not only with determining the appropriate "end point" placement of the child, but also with the process by which that decision is reached. In the case of marital dissolution such a question may be particularly appropriate. One must ask if an adversarial process, in which a child's parents are the adversaries and the child is the prize, is best suited to arriving at a placement that truly serves the child's best interests. Even if valid social science criteria were available on which to base child placement decisions, we must not assume that attorneys would adhere to these criteria if they contradicted the perceived best interest of their clients. Here, Goldstein *et al* advanced a "first step" recommendation that might help to mitigate the consequences of the process: that the child