

No Fault of Their Own: The Truth About Divorce & Children

By Ruth Bettelhei

This is an excellent must-read article worthy of your serious consideration.

As we have just passed the 40th anniversary of that much vilified institution, the no-fault divorce, it is an appropriate moment to re-evaluate how divorce affects families, and particularly children. The California law took effect on Jan. 1, 1970, and was followed by a wave of marital separations that continues to this day -- and also a wave of rhetoric condemning divorce for harming children and undermining the fabric of society.

As divorce is clearly here to stay, it may be more productive to instead ask how the process of dissolving a marriage might be changed to avoid, as much as possible, damaging children. This challenge is not as great as widespread preconceptions would suggest. Studies conducted in the past 20 years have shown that on all meaningful measures of success -- social, economic, intellectual and psychological -- most adult children from divorced families are no worse off than their peers whose parents remained married.

Researchers have found two explanations for this. Children who have to cope with their parents' separation and post-divorce lives often grow resilient, self-reliant, adaptable and independent. And children benefit from escaping the high-conflict environment of a rocky marriage. After their parents' separation, as conflicts fade, children recover.

Sustained family conflict can cause children to experience the kinds of problems that are usually attributed to divorce: low self-esteem, depression, high anxiety, difficulty forming relationships, delinquency and withdrawal from the world.

Given that reducing family conflict is good for children, the best way to protect them during divorce would be to minimize the acrimony of the proceedings. No-fault divorce, now practiced in every state except New York, has been one step toward this goal. But issues relating to children in divorce cases are still very often decided by long, heated contests between the parents. Custody disagreements are settled by a judge's determination of what is in "the best interests of the child." In practical terms, this

means that both parents do their utmost to demonstrate that they are the better parent -- and that the other one is worse, unfit or even abusive.

At stake are not only the participants' self-esteem and their relationships with their children but also their financial security. As child support is often linked to the proportion of time the children spend with each parent, the days and hours of their future lives become tools for one parent to extract payment from the other. This is a recipe for warfare, with the children's well-being both the disputed turf and the likely casualty

What children need instead are no-fault custody proceedings -- which could be accomplished with two changes to state family law. First, take the money out of the picture by establishing fixed formulas for child support that ensure the children are well taken care of in both homes, regardless of the number of days they spend in each. Second, defuse tension by requiring parents to enter mediation to find a custody solution that best meets the needs of all concerned.

Agreements reached through mediation would need to be binding (subject to the approval of a judge), so that they could not be discarded or contested later if new disagreements were to arise. Although some parents might worry that this would diminish their opportunities for recourse, mediation would actually give them greater control over the outcome than a judge's unilateral verdict does.

In an adversarial custody battle, no one wins, but children are the biggest losers of all. Intelligent legislation could promote the one thing that children of divorce need most: peace between their parents

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