

Taken Into Custody by Divorce

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Most Americans have made their peace with no-fault divorce, believing easy divorce to be an enhancement of individual liberty.

But a new book by Stephen Baskerville argues that permitting unilateral divorce allows an unprecedented scope for government intrusion into ordinary people's lives. *Taken Into Custody* has several breakthrough insights.

First, no-fault divorce frequently means unilateral divorce: One party wants a divorce against the wishes of the other, who wants to stay married. This fact means that the divorce has to be enforced. The coercive machinery of the state is wheeled into action to separate the reluctantly divorced party from the joint assets of the marriage, typically the home and the children. Involving the family court in the minutiae of family life amounts to an unprecedented blurring of the boundaries between public and private life.

People under the jurisdiction of the family courts can have virtually all of their private lives subject to its scrutiny. If the courts are influenced by feminist ideology, that ideology can extend its reach into every bedroom and kitchen in America.

Thus, the social experiment of no-fault divorce, which was supposed to increase personal liberty has had the unintended consequence of empowering the state.

I had an unusual opportunity to see this first-hand last summer when I did a Continuing Legal Education workshop for judges. Most of the judges had significant experience with family courts, so they were unusually well-informed. My audiences are usually amazed when I point out that family courts perpetrate greater invasions of personal privacy than any other governmental agency. Not the judges. I had expected some resistance from them on this point. After all, they are the ones doing the intruding.

When I ran through my usual litany of courts telling fathers how much money they have to spend, how little time they get to spend with their kids and who gets to spend Christmas Day with the kids, the judges were all shaking their heads. I asked: "So, do you enjoy that part of your jobs?" The audible moaning said it all: They hate that part of their jobs.

Audiences are sometimes surprised to learn that women initiate most divorces. They are even more surprised when I tell them that women aren't necessarily worse off economically after divorce. After all, "the most quoted demographic statistic of the 1980s" was the claim that women's standard of living falls by 73% after divorce, while men's rises by 42%.

I usually have to take some time to refute that claim. But the judges already knew that. They all started shaking their heads when I flashed those statistics on the screen for the purpose of refuting them.

One of the judges got exasperated. He stood up and said, with obvious disgust in his voice, "These women want me to throw their husbands out of the house, make him pay child support, while she keeps the kids to raise



herself without interference from him.”

General nods of agreement all around the room.

No fathers’ rights advocate could have said it better.

But fathers’ rights advocate Stephen Baskerville has harsh words to say about the entire no-fault industry, including the judges. The court-appointed therapists, the domestic violence experts, the visitation supervisors, the teachers of parenting classes, all these experts seem to be there to help divorcing families. But on Baskerville’s telling, they simply extract additional payments from the family, and do nothing to save the marriage.

He reports that even mediators find that they are not allowed to try to preserve the marriage. Their role is simply to talk the reluctant party into acquiescing. Baskerville represents all these professionals, including the lawyers and judges, as having a self-interested motive in stoking the flames of personal resentments and maintaining the divorce industry.

What then, of my judges, who were obviously disgusted with the system and their role in it?

I have also talked to many family law attorneys who are fed up with narcissistic and myopic clients. How can it be that all these people are keeping the system going out of their own self-interest, and yet profess disdain for that same system?

I think the answer lies in what economists call perverse incentives.

No one likes the actual outcome of the system, but no one has an incentive or the ability to change it. So people go along, following the rules as laid down, trying to make marginal improvements to the best of their ability, and still being sickened by the whole sight. The incentives are so perverse that it is as if everyone were motivated by a desire to create as many divorces as possible.

Baskerville has done a great service in laying out these twisted incentives in detail. I hope that family law practitioners will read this book with an open mind, and not take it personally when Baskerville accuses them of bad faith. He may be over the top about people’s motivations. But his analysis is essentially correct.

The public is getting past the “happy talk” about “good divorces,” because the children of divorce are finally telling their stories. We desperately need to get past our fatalism about the inevitability of divorce.

Taken Into Custody makes it crystal clear that the law has created incentives to divorce. Therefore, the law can be changed to reduce those incentives. The publication of *Taken Into Custody* could be the turning point in restoring some balance to family law. If you care about the condition of marriage in America, read this book.

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