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Promoting Cooperative Parenting: Programs and Prospects

Marsha Garrison*

We know that children profit from the care of two involved and cooperative parents, but can family law effectively promote these conditions? This article briefly describes and evaluates current strategies to promote parental involvement and cooperation.

I. DUAL RESIDENTIAL PARENTING: WHEN IT'S DESIRABLE, AND WHEN IT'S NOT

Most of the time, dual parenting in an intact household is the optimal setting for child rearing. Researcher after researcher has confirmed that children in single-parent households are more likely than their peers in intact families to experience poor health, behavioral problems, delinquency, and low educational attainment.¹ Although lower socioeconomic status explains about half of these differences, the other half appears to result from differences in parental care and investment.² The advantage of being raised with, and by, both biological parents appears to extend into adulthood, and even to the next generation. Researchers have documented a strong link between growing up in a single-parent household and adult income, health, and emotional stability.³ A number of studies have also found that men and women who experience a single-parent household as children are more likely, as adults, to experience marital discord and to divorce or separate.⁴ Researchers have even found that the divorce of grandparents is significantly associated, in the grandchild generation, with less education, more marital discord, more divorce, and greater tension in early parent-child relationships.⁵ The advantages of two-

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¹ See, e.g., SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* 39–63 (1994); Wendy Sigle-Rushton & Sara McLanahan, *Father Absence and Child Well-Being: A Critical Review*, in *THE FUTURE OF THE FAMILY* 116, 120–22 (Daniel P. Moynihan et al. eds., 2004).

² See McLANAHAN & SANDEFUR, *supra* note 1, *passim*.

³ Cf. Sigle-Rushton & McLanahan, *supra* note 1, at 124–26.

⁴ See PAUL R. AMATO & ALAN BOOTH, *A GENERATION AT RISK: GROWING UP IN AN ERA OF FAMILY UPHEAVAL* 106–17 (1997); Paul R. Amato & Jacob Cheadle, *The Long Reach of Divorce: Divorce and Child Well-Being Across Three Generations*, 67 *J. MARRIAGE & FAM.* 191, 192–93 (2005); see also Jay D. Teachman, *The Childhood Living Arrangements of Children and the Characteristics of Their Marriages*, 25 *J. FAM. ISSUES* 86, 104 (2004); Kathleen Kiernan, *European Perspectives on Union Formation*, in *THE TIES THAT BIND: PERSPECTIVES ON MARRIAGE AND COHABITATION* 40, 55, tbl.3.8 (Linda J. Waite et al. eds., 2000).

⁵ Amato & Cheadle, *supra* note 4.

parent care are not confined to one nation or culture. Even in Sweden, where public support ensures a child poverty rate of less than 3%, single parenthood remains a serious risk factor for children. The most compelling study, which analyzed almost a million cases and took account of possibly confounding factors such as socioeconomic status and parental mental health, found that Swedish children in single-parent households showed significantly increased risks of “all adverse outcomes analyzed, including psychiatric disease, suicide or suicide attempt, injury, and addiction.”⁶ However, although the evidence shows that dual parenting in an intact household is generally best for children, there are three exceptions to this principle.

First, researchers have found that the continuation of a high-conflict marriage is negatively associated with children’s health and happiness; indeed, longitudinal surveys show that “parents’ marital unhappiness and discord have a broad negative impact on virtually every dimension of offspring well-being.”⁷ Moreover, although “[p]arental divorce also appears to have negative consequences for offspring, these are not as pervasive as the effects of parents’ marital quality.”⁸ It thus appears that parental divorce actually “benefits children in certain ways if it removes them from a discordant parental household If divorce were limited only to high-conflict marriages, then divorce would generally be in children’s best interest.”⁹

Second, the presence of an unrelated stepparent or cohabitant does not confer the same advantages as living with two biological or adoptive parents. Children living in step-families tend to score lower than children living in intact families on tests of emotional and social well-being.¹⁰ On average, stepparents are less warm, less involved, and less active in children’s lives than

⁶ Gunilla Ringback Weitoft et al., *Mortality, Severe Morbidity, and Injury in Children Living with Single Parents in Sweden: A Population-Based Study*, 361 LANCET 289 (2003); see also Helen Hansagi et al., *Parental Divorce: Psychosocial Well-Being, Mental Health and Mortality During Youth and Young Adulthood: A Longitudinal Study of Swedish Conscripts*, 10 EUR. J. PUB. HEALTH 335 (2000); Jan O. Jonsson & Michael Gahler, *Family Dissolution, Family Reconstitution, and Children’s Educational Careers: Recent Evidence for Sweden*, 34 DEMOGRAPHY 277, 287 (1997).

⁷ AMATO & BOOTH, *supra* note 4, at 219.

⁸ *Id.*

⁹ *Id.* at 220; see also Lisa Strohschein, *Parental Divorce and Child Mental Health Trajectories*, 67 J. MARRIAGE & FAM. 1286 *passim* (2005). Longitudinal research also shows that many of the psychological symptoms that follow divorce predate it, too. See John H. Grych, *Interparental Conflict as a Risk Factor for Child Maladjustment*, 43 FAM. CT. REV. 97 *passim* (2005) (reviewing research); Joan B. Kelly, *Children’s Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research*, 39 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 963 *passim* (2000) (same).

¹⁰ See Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 J. MARRIAGE & FAM. 876, 877–78, 890 (2003); Susan D. Stewart, *How the Birth of a Child Affects Involvement with Stepchildren*, 67 J. MARRIAGE & FAM. 461, 462 (2005).

are biological parents in intact two-parent households.¹¹ Although closeness to a stepfather is significantly associated with better adolescent outcomes, in one recent national survey, only 35% of surveyed adolescents reported that they had close stepfather ties.¹²

Third, the evidence on post-separation contact with a parent is equivocal. Given the advantages associated with intact, two-parent households, one would expect that more contact with an absent parent would be better for children than less contact. However, most studies that utilize large national surveys have found little or no association between nonresident father visitation and child well-being.¹³ On the other hand, there is evidence that the identity of the informant (mother, father, child) may significantly affect research results.¹⁴ And researchers who have examined more intensive types of involvement have reported positive effects; several studies report that high relationship quality and authoritative parenting are linked with child well-being after parental separation.¹⁵ There is also some evidence that parental cooperation fosters both continuing contact and a positive tie with the absent parent.¹⁶

The research thus demonstrates that an intact household is the preferred setting for child-rearing unless the child's parents have a highly conflicted relationship. In such a case, it appears that separation or divorce is preferable to continued residential care by both parents. It also appears that parental conflict continues to be detrimental to the child after parental separation, and that a parent's repartnering does not, on average, convey the same benefits to

¹¹ See Sandra L. Hofferth & Kermyt G. Anderson, *Are All Dads Equal? Biology Versus Marriage as a Basis for Paternal Investment*, 65 J. MARRIAGE & FAM. 213, 213 (2003). Living with an unrelated adult also poses risks to children. Michael N. Stiffman et al., *Household Composition and Risk of Fatal Child Maltreatment*, 109 PEDIATRICS 615, 615 (2002) (finding that children residing in households with an unrelated adult were eight times more likely to die of maltreatment than children in households with two biological parents).

¹² See Valarie King, *The Antecedents and Consequences of Adolescents' Relationships With Stepfathers and Nonresident Fathers*, 68 J. MARRIAGE & FAM. 910, 924 (2006).

¹³ *Id.* at 914–15. See generally Paul R. Amato & Joan G. Gilbreth, *Nonresident Fathers and Children's Well-Being: A Meta-Analysis*, 61 J. MARRIAGE & FAM. 557 (1999) (discussing several surveys on the relationship between child well-being and nonresident-father visitation); Valarie King, *Nonresident Father Involvement and Child Well-Being: Can Dads Make a Difference?*, 15 J. FAM. ISSUES 78 (1994) (discussing several surveys on the relationship between child well-being and nonresident-father visitation).

¹⁴ Juliana M. Sobolewski & Valarie King, *The Importance of the Coparental Relationship for Nonresident Fathers' Ties to Children*, 67 J. MARRIAGE & FAM. 1196, 1203–04 (2005).

¹⁵ See William Marsiglio et al., *Scholarship on Fatherhood in the 1990s and Beyond*, 62 J. MARRIAGE & FAM. 1173, 1173, 1182–86 (2000). See generally Amato & Gilbreth, *supra* note 13.

¹⁶ See Sobolewski & King, *supra* note 14.

children as co-residence with a biological parent. When parents have the capacity to engage in cooperative parenting, the evidence shows that it promotes both contact with the nonresident parent and a positive relationship with that parent.

None of this is terribly surprising; common sense as well as social science suggests that children benefit from caring, involved parenting, and two parents can, of course, offer more care and involvement than one. Nor is it surprising that parental cooperation enhances children's well-being and that parental conflict reduces it.

II. CAN FAMILY LAW EFFECTIVELY PROMOTE PARENTAL COOPERATION AND FAMILY STABILITY?

While the advantages of parental harmony are clear, the means of producing it—and the appropriate role for family law in that process—are much less obvious. Dramatic increases in nonmarital birth and divorce—the principal sources of parental absence and disengagement—have occurred across most of the industrialized world.¹⁷ Surveys also suggest that very few separated parents actually engage in cooperative parenting. In one recent U.S. survey, 66% of single mothers who lived with their children said that their children's father had “no influence” over child-rearing decisions and 58% said that they received “no help” with child rearing; only 5% of the mothers said that the father had “a great deal” of influence and only 4% reported receiving “a great deal” of help.¹⁸

Can legal and policy initiatives alter the likelihood of parental absence and cooperation? Certainly we have reason to be skeptical. Law has only limited capacity to affect family life. As sociologist William Goode put it:

[T]he family is so intertwined with other social structures that it is not possible to transform it without reversing a multitude of other trends in modern social life I know of no great civilization that at the height of its power and material splendor ever changed its grand onward movement, except by dissolution and military defeat. Certainly none ever did so by conscious social planning.¹⁹

Law and policy do, in Goode's terms, “have an effect at the margins.”²⁰ Thus, “those who are not totally determined to divorce are influenced by restrictive laws and administrative hurdles that make divorce more difficult [and] legal and administrative restrictions create formidable barriers for the poor.”²¹

¹⁷ See Timothy M. Smeeding et al., *The Challenge of Family System Changes for Research and Policy*, in *THE FUTURE OF THE FAMILY*, *supra* note 1, at 1.

¹⁸ Sobolewski & King, *supra* note 14, at 1202–03.

¹⁹ WILLIAM J. GOODE, *WORLD CHANGES IN DIVORCE PATTERNS* 318 (1993).

²⁰ *Id.* at 323.

²¹ *Id.*

Can initiatives designed to enhance the likelihood of harmonious, two-parent care produce marginal effects large enough to significantly alter parental decision making and behavior? More specifically, can family law effectively promote relational stability and quality? When the tie between parents must be severed, can family law effectively promote post-relationship cooperative parenting? If so, what are the means by which it should do so?

A. Custody and Visitation Law

One obvious strategy for inducing cooperative parenting after family separation is to alter the law of custody and visitation so as to promote such behavior. Many of the laws that permit joint parental custody or create a presumption in favor of this custodial arrangement were, in fact, adopted with this goal in mind; and a number of studies have reported that joint physical custody, in which both parents are expected to be more than visiting parents, is significantly associated with greater father involvement and higher levels of child satisfaction than is traditional mother custody.²²

However, joint physical-custody arrangements are associated with high income, education, and past cooperative parenting, and some research suggests that the positive outcomes associated with joint-custody arrangements may result, in part, from preexisting attributes of the parents who make joint-custody arrangements.²³ When joint custody is coupled with high levels of parental conflict, some researchers have reported negative effects on child well-being.²⁴ Others have found that a substantial percentage of high-conflict, joint-custody arrangements simply break down, producing de facto sole custody.²⁵ Still others have found high levels of post-divorce litigation.²⁶ In sum, the evidence shows that a joint-custody arrangement is inadequate to ensure harmonious parenting. It also suggests that joint custody should not be

²² See Robert Bauserman, *Child Adjustment in Joint-Custody versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16 J. FAM. PSYCHOL. 91, 98 (2002) (reviewing research); Joan B. Kelly, *Children's Adjustment in Conflicted Marriage and Divorce: A Decade of Research*, 39 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 963, 969 (2000) (same).

²³ See ELEANOR MACCOBY & ROBERT MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* 93–94 (1992).

²⁴ See Janet R. Johnston, *High Conflict Divorce*, 4 THE FUTURE OF CHILD. 165, 174 (Spring 1994); see also Bauserman, *supra* note 22, at 99 (“Selection bias cannot be ruled out. Parents who have better relationships prior to, or during, the divorce process may self-select into joint custody, such that quality of parental relationship is confounded with custody status.”)

²⁵ See MACCOBY & MNOOKIN, *supra* note 23, at 159–160 (finding that about half of high-conflict joint physical custody cases produced de facto mother custody).

²⁶ See Amy Koel et al., *Patterns of Relitigation in the Postdivorce Family*, 56 J. MARRIAGE & FAM. 265, 273, tbl.4 (1994).

imposed on parents when they have a history of violence or even of significant verbal conflict.

Although joint custody is not appropriate for every family, the evidence does suggest that it is preferable to sole custody in the *typical* case. Recent research shows that a high level of conflict between separated parents is actually quite rare.²⁷ And a meta-analysis of more than thirty studies comparing outcomes in joint- and sole-custody arrangements found that children in joint custody are better adjusted, across multiple types of measures, than children in sole (primarily maternal) custody. “This difference . . . appears robust . . . [and] is consistent with the hypothesis that joint custody can be beneficial to children in a wide range of family, emotional, behavioral, and academic domains.”²⁸ These positive effects did not vary significantly based on the identity of the reporter; on average, “mothers, fathers, children, teachers, and clinicians all rated child adjustment as better in joint-custody settings.”²⁹ Moreover, even joint *legal* custody, in which parents share decision-making responsibility but one parent has sole physical custody, was positively associated with these same benefits.³⁰

Altered custody standards that emphasize each parent’s continuing importance to the child thus appear to be useful in encouraging parents to actively participate in their children’s lives. Changed nomenclature—for example, some states now use the term “parenting plan” instead of “custody and visitation”—may also work to reduce the sense that there are custody “winners” and “losers” and thus to promote parental cooperation.³¹

It is improbable, however, that these measures have the capacity to induce large-scale shifts in parental behavior. In the United States, many jurisdictions have had a joint-custody option in place for more than a decade. Joint custody is now available in all states and, in a few states, there is a presumption in favor of this custody arrangement.³² “Parenting plan” terminology has also been utilized in some states for several years. But survey data continues to show that many parents see their children rarely, if at all, after divorce;³³ post-separation levels of parental cooperation continue to be low.³⁴

²⁷ See MACCOBY & MNOOKIN, *supra* note 23, at 135–36 (“A substantial majority of the [surveyed] families indicated that they experienced little conflict.”); Sobolewski & King, *supra* note 14, at 1202–03 (indicating that only 5% of surveyed custodial-mothers reported a “great deal of conflict” over how the child was raised).

²⁸ Bauserman, *supra* note 22, at 97–98.

²⁹ *Id.* at 98.

³⁰ *Id.*

³¹ See Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 983–1009 (2005) (suggesting that custody law can influence social norms regarding post-separation parental behavior).

³² See HARRY D. KRAUSE ET AL., FAMILY LAW: CASES, COMMENTS, AND QUESTIONS 699 (5th ed. 2003).

³³ See LYNNE M. CASPER & SUZANNE M. BIANCHI, CONTINUITY AND CHANGE IN THE AMERICAN FAMILY 138 (2002). Levels of visitation do vary substantially by

There are a number of reasons why joint-custody rules have not had more impact. First, many parents lack the capacity to create a situation in which the child spends substantial amounts of time with both parents after divorce. Such arrangements are more expensive than traditional, one-parent custody. They also demand geographic proximity, compatible work schedules, and adequate time.³⁵ These practical constraints undoubtedly play a powerful role in reducing the impact of altered custody rules. There is also evidence that some nonresidential parents minimize contact with their children in order to reduce the stress and sense of loss occasioned by separation.³⁶

Legal standards can establish new normative models for post-separation behavior, but they cannot alter the financial, logistical, and emotional constraints that impede parental involvement after separation. Thus, while joint custody and parent-neutral custody nomenclature appear to be positive and undoubtedly have made a difference for some families, these reforms cannot be expected to produce dramatic differences in parents' post-separation behavior.

B. Parental Education

In recent years, many localities have initiated voluntary or mandatory parents education programs aimed at improving parental motivation to maintain strong ties with their children and to minimize conflict with their former partners. These programs cannot by themselves alter the logistical and emotional problems that impede high-quality parent-child relationships, but they might conceivably induce parents to work toward minimizing these constraints.

Positive evaluations of these programs have enhanced their popularity; today, about half of U.S. counties offer or mandate attendance at educational programs for divorcing parents.³⁷ Although long-term evaluations of these programs are not available, short-term evaluations suggest that they are worthwhile. Several studies have reported that attendance at a parent-education

reporter; nonresident fathers report that they visit much more frequently than resident mothers say that they do. *See id.*

³⁴ *See* Sobolewski & King, *supra* note 14.

³⁵ *See* Elizabeth C. Cooksey & Patricia H. Craig, *Parenting from a Distance: The Effects of Paternal Characteristics on Contact Between Nonresidential Fathers and Their Children*, 35 DEMOGRAPHY 187, 188 (1998) (reporting that visiting decreases the farther away fathers live from their children).

³⁶ *See* TERRY ARENDELL, FATHERS & DIVORCE 144 (1995); E. Mavis Hetherington et al., *Divorced Fathers*, 25 FAM. COORDINATOR 417, 422 (Oct. 1976); *Cf.* Edward Kruk, *The Disengaged Noncustodial Father: Implications for Social Work Practice With the Divorced Family*, 39 SOC. WORK 15, 21 (Jan. 1994).

³⁷ *See* Robyn J. Geelhoed et al., *Status of Court-Connected Programs for Children Whose Parents Are Separating or Divorcing*, 39 FAM. CT. REV. 393, 393 (Oct. 2001).

program is positively associated with significantly lower relitigation rates over at least the first couple of years after divorce; some studies have found, in short-term follow-up evaluations, that parents report they are better able to shield their children from conflict and promote a strong relationship with the other parent as a result of participating in the program.³⁸

Existing educational programs tend to be brief interventions designed to educate parents about the desirability of low conflict and high contact, but these programs could be expanded to include individualized conflict assessment, and even to encourage parents in low-conflict relationships to stay together. Public surveys show that most adults are not aware that low-conflict marriage tends to serve children better than a divorce,³⁹ and parents are frequently “unaware that children who grow up with only one parent are more likely to have problems.”⁴⁰ Moreover, the evidence shows that low-conflict divorce is quite common. Amato and Booth, whose research was important in establishing the risks posed by parental conflict, found that less than a third of the parental divorces they studied involve highly conflicted relationships; “only 28% of parents who divorced during the study reported any sort of spousal physical abuse prior to divorce, [only] 30% reported more than two serious quarrels in the last month, and [only] 23% reported that they disagreed ‘often’ or ‘very often’ with their spouses.”⁴¹ Given these data, initiatives targeted at the low-conflict divorce population certainly appear to be warranted.

Amato and Booth have urged that counselors “have an obligation to make sure that parents have a full understanding of the consequences of divorce for

³⁸ See Jack Arbuthnot et al., *Patterns of Relitigation Following Divorce Education*, 35 FAM. & CONCILIATION CTS. REV. 269, 274 (July 1997) (finding that 2.25 years after divorce, parents who attended a parent-education program had significantly lower rates of relitigation than a control group); Center for Divorce Education, *Overview of Children in the Middle Outcome Studies*, <http://www.divorce-education.com/research.htm> (last visited March 13, 2007) (summarizing the conclusions of several studies reporting positive effects of parent-education programs).

³⁹ For example, in a survey by *Time*, when asked “In general, do you think children are better off in an unhappy marriage in which parents stay together mainly for the kids or a divorce in which the parents are more happy,” 66% of those surveyed said children were better off with a divorce; 23% said an unhappy marriage; and 11% said they were not sure. Walter Kim, *Should You Stay Together for the Kids?*, TIME, Sept. 25, 2000, at 74.

⁴⁰ MCLANAHAN & SANDEFUR, *supra* note 1, at 144.

⁴¹ AMATO & BOOTH, *supra* note 4, at 220; see also E. MAVIS HETHERINGTON & JOHN KELLY, FOR BETTER OR FOR WORSE: DIVORCE RECONSIDERED 34 (2002) (noting that about a third of a sample of divorced wives cited lack of shared interests and unfair division of domestic labor as major sources of marital dissatisfaction, while a quarter cited alcoholism, physical abuse, or extramarital sex).

offspring, including the fact that low-conflict marriages that end in divorce are particularly stressful for children⁴²”.

Although maintaining an unhappy but low conflict marriage entails a degree of sacrifice from spouses, this situation may not be as onerous as some might think. Most adults live more than two-thirds of their lives without children in the household. Spending one-third of one's life living in a marriage that is less than satisfactory in order to benefit children—children that parents elected to bring into the world—is not an unreasonable expectation. This idea is especially compelling, given that many people who divorce and remarry find that their second marriage is no happier than their first. Furthermore, such an arrangement provides an important benefit for parents that helps to balance the cost: parents—especially fathers—are able to maintain continuous relations with coresident children. Given the pain experienced by most noncustodial parents following separation from their children, this should be an incentive to invest extra effort in the marital relationship.⁴³

An educational initiative of the type Amato and Booth envision would not be costly; existing parent-education programs could easily be expanded to provide conflict assessment, information on the harms associated low-conflict divorce, and encouragement to preserve low-conflict relationships when possible. We do not know how many parents would act on what they learned, but parents often do make sacrifices in their children's interests, and existing divorce-education programs, despite their typically short duration, have shown considerable promise in increasing parents' reported capacity to minimize their children's exposure to conflict.

We cannot expect miracles from enhanced parental education programs, but their low cost and lack of obvious negative side effects suggests that such programs are well worth trying, testing, and refining.

C. Initiatives Aimed at Increasing Family Stability and Harmony

The difficulty of effectively promoting dual parenting after the parental relationship has broken down suggests that family law and policy should do as much as possible to channel childbearing into relationships that have good prospects of long-term stability and harmony. Several new policy initiatives aim at this goal.

1. Reducing Parental Conflict

As data on the divide between high- and low-conflict relationships has mounted, advocates have called for government programs aimed at improving

⁴²AMATO & BOOTH, *supra* note 4, at 238.

⁴³*Id.* (citations omitted).

relational conflict-management skills. Heeding this call, the Bush administration has undertaken a “Healthy Marriage Initiative” that provides federal funds for demonstration projects involving relationship skills training and mentoring;⁴⁴ a number of states have taken similar steps. Given the evidence showing that children profit from low-conflict parental relationships, there is no question that these programs have appropriate aims.⁴⁵ But there are large—and thus far unanswered—questions about whether they are capable of producing significant results.

There are relationship-skills programs that have shown promise. A recent meta-analysis of all program reviews that met rigorous experimental-design criteria found that “marriage and relationship programs provide benefits for the couples they serve”; the couples that received treatment made statistically “significant gains in satisfaction when compared to couples that did not receive the treatment.”⁴⁶

However, the researchers who conducted the evaluation caution that all but seven of the studies included in the analysis assessed outcomes *only* at the beginning and end of the studied intervention, without any follow-up. Among the handful of studies that did conduct later assessments, the median follow-up period was only two and a half months.⁴⁷ We thus lack evidence that these programs have the capacity to effect long-term relationship improvements.

Nor have any of the “successful” programs been tested in the disadvantaged populations that are most at risk of poor quality relationships,⁴⁸ and disadvantaged couples pose a number of special challenges for conflict-reduction programs. Researchers have found that economic hardship is associated with relationship conflict⁴⁹ and, in addition to economic stress,

⁴⁴ See U.S. Dept. of Health & Human Services, *The Healthy Marriage Initiative*, <http://www.acf.hhs.gov/healthymarriage/about/mission.html> (last visited March 14, 2007).

⁴⁵ See Rick Lyman, *Trying to Strengthen an “I Do” With a More Binding Legal Tie*, N.Y. TIMES, Feb. 15, 2005, at A1, A16 (reporting that forty states provide some money to provide marriage-related services to couples, nine more offer financial incentives to welfare recipients to marry, six other states train county extension agents to offer marriage-related services, and five states have reduced fees for marriage licenses for those couples who obtain premarital counseling).

⁴⁶ JANE REARDON-ANDERSON ET AL., URBAN INSTITUTE, SYSTEMATIC REVIEW OF THE IMPACT OF MARRIAGE AND RELATIONSHIP PROGRAMS 23 (2005), available at http://www.urban.org/UploadedPDF/411142_impact_marriage.pdf; see also M. Robin Dion, *Healthy Marriage Programs: Learning What Works*, 15 FUTURE OF CHILDREN 139, 141 (2005).

⁴⁷ See REARDON-ANDERSON ET AL., *supra* note 46, at 15, 23.

⁴⁸ See *id.* at 23–24; Dion, *supra* note 46, at 142, 144.

⁴⁹ See Patricia Clark-Nicolas & Bernadette Gray-Little, *Effect of Economic Resources on Marital Quality in Black Married Couples*, 53 J. MARRIAGE & FAM. 645, 645 (1991); Rand D. Conger et al., *Linking Economic Hardship to Marital Quality and Instability*, 52 J. MARRIAGE & FAM. 643, 643 (1990).

[t]he prevalence of traumatic experiences such as childhood sexual abuse may be higher among disadvantaged individuals and may make it harder to form healthy adult relationships . . . [L]ow-income couples often struggle with issues related to having children by multiple partners . . . Experts who work with low-income families [also] tend to find conventional teaching methods, such as lectures and didactic instruction, inappropriate for the literacy levels and learning styles prevalent among lower-income populations.⁵⁰

The administration's Healthy Marriage Initiative is funding pilot programs with low-income couples but, until program evaluations have been completed, we cannot determine whether the relationship-skills programs that have shown promise in middle-class populations can achieve equivalent results in disadvantaged groups.⁵¹

There is also some evidence that marriage counseling can produce harm as well as good. Some studies have found that a significant percentage of couples who enter marital therapy, perhaps as many as a quarter, are actually worse off afterward than they were when they started; post-therapy divorce rates also remain very high.⁵²

In sum, relationship-skills programs, like post-divorce education programs, are worth trying, testing, and refining. But we do not yet know how well, if at all, they will work.

2. *Promoting Marital Child-Bearing and Rearing*

U.S. lawmakers, at both the state and federal level, have also undertaken a variety of initiatives aimed at promoting marital child-bearing and rearing. These efforts rest, at least in part, on evidence showing that marriage is a far more enduring family form than either cohabitation or a "visiting" parental relationship. Indeed, cross-national research shows that, in most countries, children born to cohabiting parents are two to four times more likely to see their parents separate than are children of parents married at the time of birth.⁵³ There is also evidence showing that the parenting advantages conferred by marital child-bearing and rearing transcend the specific benefits associated with residential stability. For example, married fathers appear to be more involved and spend more time with their children than unmarried fathers; if

⁵⁰ See Dion, *supra* note 46, at 144–45.

⁵¹ See *id.* at 147–50.

⁵² See Susan Gilbert, *Married With Problems? Therapy May Not Help*, N.Y. TIMES, Apr. 19, 2005, at F1 (reporting research findings showing that two years after ending marriage counseling 25% of couples were worse off and four years after counseling up to 38% were divorced).

⁵³ See Marsha Garrison, *Is Consent Necessary? An Evaluation of the Emerging Law of Cohabitant Obligation*, 52 UCLA L. REV. 815, 861–62, n.186 (2005) (summarizing research from several studies).

parental separation occurs, they see their children more often⁵⁴ and pay child support more regularly.⁵⁵ These marriage-specific advantages seem to apply at all income and education levels;⁵⁶ they also seem to hold across national and cultural boundaries.⁵⁷

However, we know from the marital-conflict research described in Part I that all marriages are not equally beneficial to children. Because only low-conflict marriage is associated with significant child benefits, marriage-promotion initiatives must effectively promote harmonious marriage and child rearing within these relationships without also encouraging high-conflict marriage and child rearing within those relationships.

Marriage incentive programs are unlikely to achieve this balance, particularly if they are directed at disadvantaged populations, as are most of the current U.S. initiatives. Incentive programs offer no means of separating high- and low-conflict relationships. There is also evidence that many unmarried parents failed to marry because of violence, infidelity, and relational conflict.⁵⁸ A marriage certificate cannot cure these problems. Thus marriage-incentive programs—to the extent that they work at all—seem likely to accomplish little more than substituting formal divorce for informal separation. This likelihood is enhanced by the fact that, at least in the United States, those who are young,

⁵⁴ See CASPER & BIANCHI, *supra* note 33, at 46 (reporting that children whose parents never married see their fathers less frequently after parental separation). Parents' relationship status at the time of the child's birth is a key predictor of subsequent involvement: fathers who were in cohabiting unions at the time of the birth of a child were much more likely to be involved in that child's life three years later than fathers who were not in cohabiting unions. Marcia Carlson et al., *Unmarried But Not Absent: Fathers' Involvement With Children After a Nonmarital Birth* 15 (Ctr. for Research on Child Wellbeing, working paper, no. 05-07-FF, 2005). Parents' relationship quality was also linked to greater father involvement, and domestic violence, a history of incarceration, and having children by other partners were significantly associated with lower involvement. *Id.* at 16–22.

⁵⁵ Cf. Lingxin Hao, *Family Structure, Private Transfers, and the Economic Well-Being of Families with Children*, 75 SOC. FORCES 269, 273–74 (1996) (finding that marriage enhances family wealth).

⁵⁶ See Cynthia Osborne et al., *Instability in Fragile Families: The Role of Race-Ethnicity, Economics, and Relationship Quality* 12–13 (Ctr. for Research on Child Wellbeing, working paper, no. 2004-17-FF, 2004); Sigle-Rushton & McLanahan, *supra* note 1, at 126–30.

⁵⁷ See Garrison, *supra* note 53, at 863–64.

⁵⁸ See KATHRYN EDIN & MARIA KEFALAS, *PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE* 81 (2005). About a third of unmarried mothers interviewed blamed crime for the break-up of their relationship and “[m]ore than a third blamed their partner’s alcoholism or drug addiction.” *Id.* Forty percent blame the father’s unfaithfulness, and nearly half say that “they could no longer take the chronic abuse they suffered at his hands.” *Id.* Taken together, two-thirds say their relationship “disintegrate[d] for one or more of these reasons, and about half have encountered these problems with more than one man.” *Id.*

poor, and ill-educated have very high divorce rates,⁵⁹ just as they have very high rates of nonmarital birth.

3. *Reducing Youthful Nonmarital Births*

Policies aimed at reducing youthful nonmarital births hold more promise. Teen mothers are particularly prone to unstable relationships, and birth to a teen mother is associated with a vast array of elevated risks to child well-being.⁶⁰

However, although there is strong support for initiatives to discourage early nonmarital childbearing, we know very little about how to effectively design such programs. Although the U.S. teen pregnancy rate did decline markedly during the 1990s,⁶¹ it is unclear why this shift occurred.

In the United States, the fact that nonmarital birth is highly correlated with virtually every form of disadvantage also complicates the design of effective strategies to reduce the nonmarital birth rate. Many young unmarried mothers “are so deeply engaged in a high-risk lifestyle that they simply aren’t thinking about where their actions might lead. Depression and despondency spawned by difficult life situations sometimes stop them from caring whether

⁵⁹ See BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, STUDIES IN HOUSEHOLD AND FAMILY FORMATION: WHEN HOUSEHOLDS CONTINUE, DISCONTINUE, AND FORM 18–21 (1992) (couples living below the poverty line have a divorce rate twice that of the general population); M.D. BRAMLETT & W.D. MOSHER, NAT’L CENTER FOR HEALTH STATISTICS, COHABITATION, MARRIAGE, DIVORCE, AND REMARRIAGE IN THE UNITED STATES 17 (2002) (finding that the ten-year dissolution risk for U.S. brides under eighteen was 48%, while for U.S. brides over age 25 the dissolution risk was only 24%); HETHERINGTON & KELLY, *supra* note 41, at 34–35 (explaining that one quarter of sample of divorced wives cited alcoholism, physical abuse, or extramarital sex and one-third cited financial problems as factors contributing to the decision to divorce); R. Kelly Raley & Larry Bumpass, *The Topography of the Divorce Plateau: Levels and Trends in Union Stability in the United States after 1980*, 8 DEMOGRAPHIC RES. 245, 256 (2003) (finding that roughly 60% of marriages among women without high-school degrees end in separation or divorce as compared to about 33% for among women with college degrees).

⁶⁰ See SAUL D. HOFFMAN, NAT’L CAMPAIGN TO PREVENT TEEN PREGNANCY, BY THE NUMBERS: THE PUBLIC COSTS OF TEEN CHILDBEARING 7–8 (2006), available at http://www.teenpregnancy.org/costs/pdf/report/BTN_National_Report.pdf.

⁶¹ The decline reflects more abstinence and greater use of contraceptives, but it is not clear why these shifts occurred. Cf. DOUGLAS KIRBY, EMERGING ANSWERS: RESEARCH FINDINGS ON PROGRAMS TO REDUCE TEEN PREGNANCY 2 (2001), available at <http://www.teenpregnancy.org/resources/data/pdf/emersum.pdf>; Planned Parenthood Federation of America, Reducing Teenage Pregnancy, <http://www.plannedparenthood.org/news-articles-press/politics-policy-issues/teen-pregnancy-sex-education/teenage-pregnancy-6240.htm>.

they become pregnant or not.”⁶² A sizable minority of unmarried teen mothers thus report that they actually sought pregnancy, and many others report that they did not care about avoiding it.⁶³ Many young unmarried fathers also seem to be motivated toward or indifferent about parenthood. In one survey, fully half of the young women interviewed reported that their baby’s father had wanted them to conceive, and women who reported that their partners had wanted them to get pregnant were nearly fifteen times as likely as others to have intended the pregnancy.⁶⁴ Surveys of the fathers themselves report somewhat less enthusiasm for paternity, but a sizable number report that they were happy upon learning of the mother’s pregnancy, and many pregnancies seem to represent an event that is “unplanned but not accidental.”⁶⁵

Because many, if not the majority, of nonmarital pregnancies appear to result from intention or indifference, it seems unlikely that sex-education programs are capable, on their own, of achieving a major reduction in youthful nonmarital births. Sex education cannot alter the attitudes and high-risk lifestyle that are so frequently associated with early nonmarital pregnancy. Moreover, both young unmarried fathers and mothers typically have access to contraceptives, but fail to use them.⁶⁶

Teen pregnancy-prevention programs thus are certainly worth trying, testing, and refining. Further research is warranted and desirable. However, we

⁶² EDIN & KEFALAS, *supra* note 58, at 39; *see also* Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Abuse, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 J. AM. MED. ASS’N 572, 572 (2001) (reporting that physical and sexual dating violence against adolescent girls is associated with increased risk of substance use, unhealthy weight control behaviors, sexual risk behaviors, suicidality, and pregnancy).

⁶³ *See* EDIN & KEFALAS, *supra* note 58, at 37–38, 237, tbl.5 (reporting that 17.2% of respondents intended to become pregnant, 38% did not intend to become pregnant, and 45.7% were “in between”); JENNIFER J. FROST & SELENE OSLAK, THE ALAN GUTTMACHER INST., *TEENAGERS’ PREGNANCY INTENTIONS AND DECISIONS: A STUDY OF YOUNG WOMEN IN CALIFORNIA CHOOSING TO GIVE BIRTH 9* (1999) (reporting that 32% of respondents had intended to become pregnant, 25% had not cared and 43% had not intended to become pregnant); Wendy D. Manning, *Childbearing in Cohabiting Unions: Racial and Ethnic Differences*, 33 FAM. PLANNING PERSP. 217, 221, tbl.5 (2001) (reporting that 44% of cohabiting and 61% of single, noncohabiting women said that their first birth was unintended).

⁶⁴ FROST & OSLAK, *supra* note 63, at 12–13; *see also* EDIN & KEFALAS, *supra* note 58, at 30–37 (describing cases in which father encouraged mother to become pregnant).

⁶⁵ Timothy J. Nelson, *Low-Income Fathers*, 30 ANN. REV. SOC. 427, 432–33 (2004).

⁶⁶ *See* EDIN & KEFALAS, *supra* note 58, at 37–46; FROST & OSLAK, *supra* note 63, at 14, tbl.5 (reporting that 80% of respondents had used contraceptives at some point and 66.5% had received contraceptive services from a clinic or doctor, but 63% reported that they had used no contraceptive method during the month in which pregnancy occurred).

do not yet know whether such programs will prove capable of producing significant results.

III. CONCLUSION

In order to effectively promote stable, cooperative parenting, lawmakers will need to pursue many different strategies. The evidence suggests that no single strategy has the capacity to effectively promote cooperative, involved parenting after parents have separated; the evidence similarly suggests that no single strategy can channel child-bearing and rearing into relationships with optimal prospects of stability and low conflict. Even a multi-strategy initiative will confront many obstacles—demographic, logistical, emotional—that will impede its effectiveness. The magnitude of the behavioral shifts that a coordinated multi-strategy initiative might produce thus remains unclear.

