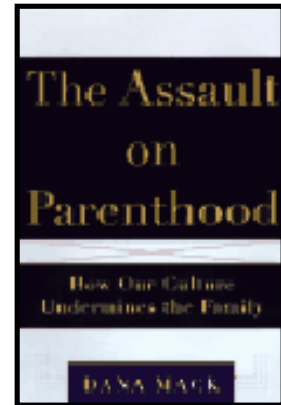


Undomesticated Law

The Assault on Parenthood by Dana Mack (1997)

In her travels (the survey), Dana was frequently presented with the impulsive reply that reform involved shooting the lawyers and judges. Though expressed in a moment of less than serious candor, some “palpable bitterness” lay in the repeated comments of parents. Why? **Because of the general sense that the courts have undermined the authority of parents, while still holding them responsible for the children’s conduct.**



Author of the book, *From Father’s Property to Children’s Rights: The History of Child Custody in the United States*, Mary Ann Mason writes:

American judges have always enjoyed considerable discretion to interpret English common law rules and their own state’s legislative mandates when deciding cases of child neglect and abuse.

She continues however by suggesting that “**increasingly they are ignoring the law entirely**”. Indeed, the emergence of the social service bureaucrats who advise the courts in these matters has contributed to the situation: judges have come to depend on “expert” testimony in rendering decisions...

Dana continues with the outcome or consequences of this change described as “disastrous” for families. The background and driver of this transition is described as the growing preoccupation by theorists of family law “with the needs of the children and with the function of the state as a kind of “super-parent” that ministers to those needs perceived to be unmet by parents.

She continues with more consequences:

The courts have become more concerned with upholding abstract standards for raising children, they have become less inclined to view the family as a sacrosanct unit, **and less respectful of the emotional ties that bind families together.**

In the course of her survey and contact with parents, Dana notes that the parents who speak with the most disdain about the legal system are “often those who have had a negative experience negotiating and living with a divorce settlement.” In her experience, **Dana discovered that many divorces are unilateral**; therefore, one of the two parents does not have any say so in the decision of divorce. Of more concrete evidence of this one-sided decision, she cites the research of Maggie Gallagher, author of *The Abolition of Marriage*, where up to 80% of divorces are the “idea of one party alone”.

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She concludes (on unilateral divorce):

Thus, a substantial minority of previously married parents are simply victims of a legal system that rewards marital desertion with impunity.

Adding to the legal system's treatment of families is the strong possibility that child custody has become "something of a bargaining chip" in divorce. Dana notes the book, *The Litigation Explosion* by Walter Olson:

Custody bargaining is a major factor in the post-divorce...where many lawyers shamelessly use the threat of a custody trial as a way of reducing men's post-divorce financial obligations.

As the "trials" of child custody has been noted as a cash-cow for the legal system, the fact remains that children's lives are adversely affected; where children are tossed back and forth as the literal go-between of two adults who cannot resolve their differences let alone maintain their promises to each other and, in effect, their children. It is *crying shame* – this legal proceeding called unilateral divorce. **What may be dressed-up as irreconcilable differences or some other innocuous term** is nothing less that one person's desire to end the marriage regardless of the consequences to their children or others still...

The ever increasing encroachment of the courts into the American family is further described in other aspects such as "the state-sponsored child rearing ethos"; or basically, the state's increasing influence in the lives of the children through public schools, children's rights, and other programs pertaining that draw some connection of families. Citing numerous books or other research, Dana brings to light the essence of the matter that concerns many parents:

Among the books and other resources is *The Transformation of Family Law* by Mary Ann Glendon; where she warns of the legal system's "increasing blindness" to the importance of strong family ties as a prerequisite to a healthy society. She continues on this theme in that, by encouraging state and bureaucratic intervention in family life, **"the law treats the family as if it were an antisocial force – a force engage in fostering dependency and isolating individuals from the larger social environment."**

More could be added; but I'll close this chapter...