

THE CHANGING LANDSCAPE OF FAMILY POLICY AND LAW

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- Viviana A. Zelizer. *Pricing the Priceless Child: The Changing Social Value of Children*. (New York: Basic Books, 1985). x + 277 pp. Notes, index. \$18.95.
- Kathleen Gerson. *Hard Choices: How Women Decide About Work, Career and Motherhood*. (Berkeley: University of California Press, 1985). xix + 312 pp. Figures, tables, appendices, bibliography, index. \$9.95 (paper).
- Eva R. Rubin. *The Supreme Court and the American Family: Ideology and Issues*. (Westport, CT: Greenwood Press, Contributions in American Studies 85, 1986). 251 pp. Notes, bibliography, index. \$35.00.
- Bob Franklin (ed.). *The Rights of Children*. (Oxford: Blackwell, 1986). x + 237 pp. Notes, index. \$45.00.
- John Eekelaar and Mavis Maclean. *Maintenance After Divorce*. (Oxford: Clarendon Press, Oxford Socio-Legal Studies, 1986). viii + 170 pp. Notes, tables, bibliography, index. \$16.95 (paper).
- Tove Stang Dahl. *Child Welfare and Social Defence*. (Oslo: Norwegian University Press, 1985). 186 pp. Notes, bibliography.

Family structures and public policy toward families are both in a state of flux. The books reviewed here contribute in quite distinct ways to our understanding of these changes.

The altered character of family life in the United States is reflected in many ways. Permanent marriages are no longer the unquestioned norm with almost half of all marriages ending in divorce (Davis, 1985: 43). The proportion of young men and women who have never married has risen sharply since 1950 (*ibid.*, p. 31), cohabitation has increased markedly (*ibid.*, pp. 34–35), and the birth rate is well below the replacement level (*ibid.*, p. 40). The proportion of illegitimate births has almost quintupled from 37.9 per 1,000 live births in 1940 to 184.3 per 1,000 in 1980 (Espenshade, 1985: 65). White women born between 1940 and 1945 could expect to spend almost half of their lives married, with almost all of that time accounted for by a first marriage. White women born thirty-five years later (between 1975 and 1980) could expect to spend only 43.4 percent of their lives in marriage, with only three-quarters of

the time in a first marriage (ibid., p. 57). Consequently, many children experience separation from one of their birth parents during childhood. If their mothers are young when divorcing, the children are likely to become part of a “blended” family with a step-parent and stepsiblings. Moreover, whereas most married women with children stayed at home before 1940, a majority now work at paying jobs full-time or part-time (Bianchi and Spain, 1986: 141). Consequently, preschool child care has shifted from the mother in the home to someone else, who is often outside the home (ibid., pp. 225–230). Many industrialized Western nations have experienced parallel changes in their familial structures during the past several decades (Davis, 1985).

These trends are undisputed and widely recognized as portending fundamental shifts in social arrangements at the most intimate level. The precise implications of these changes, however, are still very much in doubt, because the social reality underlying them is more complex than the numbers themselves suggest. Two of the books I am reviewing examine these complexities.

Viviana Zelizer’s *Pricing the Priceless Child* explores some of the ambivalence that characterizes American attitudes toward children. She traces the social utility of children from useful to useless over the course of the past century. Until child labor laws drove children out of the labor market, many children worked to help support their parents and younger siblings, and their value lay in their ability to command an income; when they died, parents might seek compensation based on their net earnings. Since children stopped working, their value has skyrocketed because they are principally appreciated not for their earning power but for the companionship they provide their parents. Zelizer shows that wrongful death awards in lawsuits are much higher in the late twentieth century than they were a hundred years earlier, which she accounts for by the changing perspective on childhood and its economic and social functions.

Zelizer uses data from legal cases in an exceptionally imaginative manner to document her argument. She examines the changing structure of statutory proscriptions of child labor to illustrate the altered value of children; she analyzes the outcomes of wrongful death suits and the uses of children’s life insurance; and she reinterprets the devices used by Americans to handle “surplus” children as their care shifted from orphanages to black market adoptions.

Zelizer’s argument helps us understand the emotional struggles for custody of children when families break up. Although the cost of raising children has risen to extravagant levels for those endowed with a private college education, parents fight for the privilege of caring for their children because their emotional attachments outweigh their financial calculations. This is particularly true of women who demand custody knowing fully well that

they are likely to get much less than total child support from the father and that they will be limited to less remunerative careers because of their child care responsibilities. Nevertheless, most mothers seem to want full custody of their children, and the prospect of childlessness is a frightening one for many men and women, not because of its economic consequences, but for the loneliness it implies.

The choice that must sometimes be made between economic well-being and parenthood is further analyzed by Kathleen Gerson's *Hard Choices*. Gerson interviewed thirty-five California university alumnae and twenty-eight recent women enrollees at a community college in the San Francisco Bay area. All were white and young. The interviews averaged three to four hours and produced a wealth of qualitative as well as quantitative information.

Given her small, unrepresentative sample, Gerson does not pretend to provide authoritative interpretations of the social and psychological dynamics moving women to choose careers, motherhood, or some combination of the two. However, she does use her materials to sketch the forces that motivate women, and her conclusion has important social implications. She argues that early childhood socialization is very much tempered by situational forces confronting women as they choose between career and motherhood. Some of her subjects moved from a predisposition for motherhood to choosing careers because they had not found the right man to marry and father their children, because their husbands did not much want children, or because their jobs made the decision to have children too costly. On the other hand, other women moved in the opposite direction, from an early preference for a career to a later decision to have children because the career proved to be less rewarding than anticipated, because their husbands very much wanted children, or because they feared losing their opportunity for the psychic rewards offered by children. A third group, whom Gerson characterizes as "reluctant mothers," chose to combine children and careers. They had ambivalent attitudes toward either or both choices and were moved to compromise, a decision that was as likely to bring them the worst of both as it was to reward them with the best of both.

Gerson's interpretation suggests how the changes in family structure occur in response to marketplace forces despite the socialization of most women by conventional role models of their mothers, who spent most of their lives at home. It suggests a high degree of elasticity in women's responses to economic inducements. If work situations are structured to preclude maternal options, many women seem ready to forgo motherhood. On the other hand, if child care can be easily arranged so that careers can be combined with motherhood, many women are likely to opt for such a combination. In addition, spouses exert considerable influence on these decisions. The husband desperate to be a father is

likely to become one; the husband who despises children or is indifferent to parenthood is more likely to remain childless.

These are some of the implications of Gerson's very suggestive book. They remain speculations, however, because of the small size and special characteristics of her sample. We must be careful not to generalize from one locale to the nation as a whole, particularly when we know that the site harbors more innovative life styles than are generally found in the United States. Moreover, Gerson's sample does not discuss the dynamics among different ethnic groups, such as Hispanics, blacks, Italians, or Asians, nor the influence of strong religious orientations, such as those experienced by Mormons, southern Baptists, Catholics, or orthodox Jews.

Policy changes toward families have paralleled such changes in social reality, although they have not been as fundamental. The most striking changes have perhaps occurred in divorce law, with the universal acceptance among the American states of "no-fault" divorce, the adoption of new rules governing the distribution of property and assignment of child support and alimony, and the widespread utilization of joint custody. But other important changes have also occurred. State intervention in affairs that were formerly considered entirely private has become broader. For instance, decisions about the care of malformed infants now rests with government officials as well as with parents and doctors; dying has become a consciously performed act in numerous cases, whereas it had previously been something that happened spontaneously. Welfare rules not only constrain the behavior of the poor but also the elderly ill who seek public assistance with their medical bills. Public intervention in familial disputes not only impinges on immigrants with different life styles but also commonly affects middle class and working class families when adults abuse their children or their spouses. Marital rape, which had formerly been a contradiction in terms, has become an acknowledged legal concept.

In *The Supreme Court and the American Family*, Eva Rubin explores some of these legal changes from the prism of Supreme Court cases. She devotes separate chapters to legitimacy of children, abortion, pregnancy leaves at the work place, teen-age pregnancy, education, and familial abuse. Her efforts, however, are obstructed by two fundamental facts about family law and family policy in the United States. The first is that most family law is state rather than federal law, which marginalizes the role of the Supreme Court in setting legal norms. The second is that the United States lacks a coherent public policy toward families, which makes it difficult to write a book on the subject.

The marginality of the Supreme Court's decisions is indicated by the amount of all family law that is omitted in Rubin's account. There is nothing about divorce law and the law of property distri-

bution and the Supreme Court has had little to say about child custody or the regulation of marriages. The most important contribution of Rubin's book (unintentional though it may be) is to show the insignificance of the nation's highest court in determining standards of family life in the United States. Rubin consequently emphasizes other aspects of the Court's contributions. She repeatedly quotes case opinions to demonstrate the conventional nature of the justices' understanding of families in the United States and their confusion about developing trends. She fairly concludes that Supreme Court decisions relating to the family do not form a coherent policy.

Rubin, however, does not acknowledge (at least explicitly) that much of this confusion arises from the lack of coherent policies from state legislatures or Congress. Indeed, Congress, like the Court, has been involved only at the margins of family policy by legislating rules about the access of publicly funded abortions, establishing rules about the distribution of pensions, passing legislation on the handling of the care for severely malformed infants, mandating new procedures for the collection of child support from divorced parents, and the like. None of this legislation, however, follows a coherent pattern or even a broadly accepted model of family life. Rather, each piece of congressional action has been a response to a particular crisis or complaint and has been passed with little or no thought about how it fits into the pattern of family law in the United States. Such policy incoherence has occasionally led to blatantly inconsistent acts, such as the imperative to save the life of severely malformed infants regardless of cost but the provision of public medical assistance only after all private assets have been exhausted. The birth of such a child may be the prologue for the impoverishment (and often the destruction) of the family, even if the child has little or no chance to reach adulthood. Likewise, while the Court has helped undermine the stigmatization of out-of-wedlock children, welfare programs are not always insensitive to the distinction between legitimate and illegitimate children. And while the Court has been relatively consistent in eliminating gender distinctions in the law, it has been less consistent about the consequences of gender neutrality.

The same inconsistency and incoherence of policy are also true at the state level, where most family law and policy have been enacted. For instance, child custody legislation is not considered in the context of school law and policy, and few schools have procedures to mediate disputes between joint custodial parents about the schooling of their children. Child custody decisions are to be made "in the best interests of the child," but when a child is abused by a parent, it is usually the child who is removed from the home rather than the offending parent. Child support standards take no account of an adult's obligations to a second family even though the stress of those payments, if diligently enforced, may

break the second family apart. Almost at every turn, family policy in the United States is riddled with such inconsistencies.

The situation is not much different in England, as both Bob Franklin's *The Rights of Children* and John Eekelaar and Mavis Maclean's *Maintenance After Divorce* demonstrate. Franklin's book is an edited volume, most of which does not report research but rather issues radically individualistic statements in favor of children's rights. Richard Ives's chapter, for instance, argues for greater freedom for children to express their sexuality in the context of more readily available advice about contraception and a right to more meaningful sex education. Parents' concerns are given little consideration in this argument because children are considered as free individuals rather than in the context of their family. Franklin, in perhaps the most provocatively radical statement, urges that children be given the right to vote as soon as they can mark a ballot. His justification is that young children are no less competent or pliable than many adults. Gerry Lavery rails against "certain legal and administrative procedures which serve to deny children coming into care [welfare], and those already there, an effective voice in decision-making processes of direct relevance to their affairs" (p. 73).

Throughout this volume, the authors reveal the confusion that exists among many who deal with fragments of families, whether it be women, men, parents, or children. While they often seek to take into account the larger social context, such as social mores or social structure, they neglect the immediate familial context in which these individuals live. Thus there is little concern for how children interact with their families or whether changes in children's rights would have disintegrative effects on family structure. The authors also find many contradictions in public policy dealing with children. For instance, Emma MacLennan reports that the protective regulations for working children are rarely enforced because, although children are presumably not allowed to work, many do so illegally and consequently are exploited by low wages.

Franklin's coauthors also fall into the trap of painting with too wide a brush when they describe family life or prescribe for it. They show little concern for variations between younger or older families with children, between the working and the unemployed, between households headed by the mother and those with two parents. The only recognition of variation in family structure is a chapter on black children and another on the Scots. Yet the chapter on blacks concerns itself more with racism in British society than with differences in cultural norms among blacks in England. The chapter on Scotland deals with peculiarities of Scottish law rather than with evidence that Scottish families have a different tradition of family life.

Eekelaar and Maclean's book is quite different. It is a research report of a large survey of British men and women who

were divorced in the preceding ten years. Although they began with a sample of more than 7,000, only 276 persons were both divorced and willing to be interviewed about their finances, which the authors examined to ascertain the effects of divorce upon people in various circumstances.

Eekelaar and Maclean report findings that often parallel those in the United States. They indicate that divorce is often followed by reduced financial resources, but that adults with children suffer particularly severe declines. This is more true of women than men, although men are not exempt. Remarriage reduces these effects for women more often than for men.

Two findings are particularly notable. The first is that equity in housing is especially important even in England, where a substantial proportion of the population lives in public housing. Wives who kept their private residences were much better off than those who lost them. While divorced women in public housing usually remained there, keeping the home did not help them as much as it did the private home owners. This discovery is consistent with our knowledge of the importance of housing equity for American families. The second finding is from a longitudinal survey of children originally polled in 1946. Those data show that divorce has a marked effect on dampening the educational level attained by children and that remarriage does not ameliorate this effect.

The confusion of public policy is most evident with respect to spousal and child support, an area in which the social welfare system plays a much larger role in Britain than in the United States. British judges appear to be as confused as their American counterparts about how much to require ex-husbands to pay either their former spouses or their children. Since it is impossible to separate the mother's cost of living from her children's when she is custodian, the distinction between the two kinds of support is often meaningless. The authors, however, make it clear that the historical basis for spousal support is rather different in England than in the United States. Whereas in the United States it was long related to the normative permanence of the marriage contract in a society in which divorce was relatively common and easy to obtain, in England, where divorces were much less common and more difficult to obtain until the 1970s, the support obligation was generally related to relieving public welfare burdens.

Eekelaar and Maclean thus come to terms with many of the issues confronting those concerned with families in postindustrial societies. The breakup of families has long-range consequences for both the divorcing parents and their children by reducing the life chances of both. While divorce has largely become a no-fault process, it has by no means become cost free. Moreover, the dilemmas of spousal and child support are at least exposed, even if solutions are not readily available. Public policy remains ambiguous about

whether second families should suffer because of remaining obligations to first families. Considerable ambivalence also remains over the development of policy guidelines that take into account public contributions through welfare programs, the extent to which parents should share child rearing costs, and the responsibility for paying the administrative costs of various ways of collecting support payments. Likewise, it is unclear what goals public policy should foster in deciding issues of spousal support, particularly for the varying conditions that confront the rich as contrasted to the poor, the young as compared to the middle-aged or elderly, those leaving short rather than long marriages, childless marriages as compared to marriages with children, and spouses with independent careers as contrasted to spouses with little prospect of remunerative employment. British (and American) societies lack a vision of reasonable policy goals as well as an understanding of how one might attain such goals if and when a consensus was reached about their desirability.

Tove Stang Dahl's *Child Welfare And Social Defence* brings us considerably closer to understanding the political processes that lead to changes in such policies. Dahl examines the origins of the Norwegian Child Welfare Act of 1896 which created state institutions for wayward children and a decisional process for committing them there. The story she tells in this thin book is a remarkable one. She attributes the success of this "reform" to the coincidence of several forces. First, there was the rise of "scientific" criminology, which gave credibility to the claim that "incorrigible" children could be saved through well-designed treatment. Second, a policy entrepreneur in the person of a law professor with ties to many leading criminologists in Europe appeared and won a leading role in forming the new legislation. Finally, an opportunity to adopt the new policy arose when Norwegian liberals proposed a system of universal education but needed a mechanism for undercutting the opposition of the upper classes who did not wish their children to be contaminated by contact with unruly (mostly lower class) youngsters. The new reformatories would solve this problem because such children would be sent there rather than to the public school.

By examining the political processes that lead to policy change rather than the consequences of the change, Dahl emphasizes elements that the other books noted here ignore. In Eekelaar and Maclean, for instance, new laws such as the Matrimonial and Family Proceedings Act of 1984 simply appear without any hint of the political forces leading to their adoption (see, for example, pp. 49–50). In Rubin's book, little effort is made to discover the constellation of interest groups underwriting the litigation that she describes or the consequences of that interest group activity (or inactivity).

Such an examination might lead to a much better understand-

ing of the policy inconsistency that almost all authors note. There is a great temptation to assume that because family structures are changing so rapidly, law and policy are inevitably inconsistent, or to blame the lack of consensus about the ideal family. On the other hand, one might take Dahl's tack and focus on the process by which a policy is adopted. This might lead us to examine how contemporary political forces affect the formulation of policies touching family life. Policy incoherence might be accounted for by the lack of an integrative social movement or public bureaucracy that takes family life as its principal concern. As long as the politics of law on divorce, procreation, public welfare programs, education, and employment benefits remain separate in terms of bureaucratic concern and interest group involvement, it seems likely that few policy makers will concern themselves with developing consistent family policies.

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