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## PARENTING AT AND AFTER DIVORCE: A SEARCH FOR NEW MODELS

*Carol S. Bruch\**

**SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE.** By *Judith S. Wallerstein* and *Joan Berlin Kelly*. New York: Basic Books. 1980. Pp. x, 341. \$18.50.

*Surviving the Breakup*, a report to professional and lay audiences of Wallerstein and Kelly's longitudinal study of divorce, demonstrates both the rewards and the perils of research on the cutting edge. The rewards are indeed notable: Wallerstein and Kelly make important contributions to our understanding of parents and children in the years following divorce. Their work is based upon extensive interviews of sixty divorcing families and the children's teachers at six months, eighteen months, and five years following separation. To it, they bring skills in psychology, child development and social work.<sup>1</sup> Challenging some popular beliefs and giving substance to others, they provide a framework for both current practice and future research by those whose professions touch divorcing families.

Perils, however, are also evident: *Surviving the Breakup* describes exploratory research of a sample that was neither randomly selected nor scientifically controlled; as such, its data and conclusions are suggestive, not conclusive. Wallerstein and Kelly conducted their inquiry in Marin County, an affluent community located across the Golden Gate Bridge from San Francisco, where subjects were referred to them by local agencies and practitioners. Although an effort was made to restrict the study group to "normal" children by excluding families whose children had histories of psychological difficulties or were under psychotherapy at the time of the initial interviews, no similar screening of parents was conducted. It is therefore possible that those families who remained contained a higher proportion of seriously disturbed parents than would a random sample

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1. Judith Wallerstein, M.S.W., a lecturer in the School of Social Welfare at the University of California, Berkeley, is trained in psychiatric social work and child psychoanalysis. Dr. Joan Kelly, former director of child services at the Marin County Community Mental Health Center, is a clinical psychologist trained in child clinical psychology.

of divorcing families with psychologically intact children.<sup>2</sup> The authors acknowledge related difficulties in their research design and caution that further work is needed to test the limits of their findings, particularly in communities that do not share the socioeconomic or racial profiles of upper- and upper-middle class, heavily Caucasian Marin County. Too, because there was no control group of similar children in similar families that did not divorce, the study provides no basis for a comparison between the actual development of these children and what might have been their outcomes had their families remained intact.<sup>3</sup> Finally, “[f]or the purposes of readability [the authors] have opted to report a minimum of statistical data . . . in the text” (p. 325), often hampering a precise understanding of their results.<sup>4</sup> Nevertheless, as the following partial summary<sup>5</sup> and discus-

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2. Elsewhere the authors report that the screening of children “gained in importance as referring agencies, particularly schools, who were reluctant to suggest psychotherapy for troubled children, referred chronically disturbed children to our service if a divorce occurred in the family.” Wallerstein & Kelly, *Divorce Counseling: A Community Service for Families in the Midst of Divorce*, 8 AM. J. ORTHOPSYCHIATRY 4, 8 (1977). The same phenomenon might well have occurred in parent referrals; the authors report that “[h]alf the men and slightly fewer women were in considerable psychological difficulty, with problems such as severe depression, alcoholism, or difficulty in relating to other adults and children. Some 20 percent of the parents . . . were seriously troubled or disturbed.” Wallerstein & Kelly, *California's Children of Divorce*, PSYCH. TODAY, Jan. 1980, at 66, 70. Eight of the 60 mothers in the study had attempted suicide at least one time during the marriage. P. 14. *But see* Bloom, White & Asher, *Marital Disruption as a Stressful Life Event*, in DIVORCE AND SEPARATION 184 (G. Levinger & O. Moles eds. 1979) (reporting a dramatic increase in adult psychological disturbances at separation and divorce).

3. Wallerstein and Kelly have written that they sought to test the theory that “an unhappy couple might well divorce for the good of the children . . . .” Wallerstein & Kelly, PSYCH. TODAY, *supra* note 2, at 67. At pages 9 and 306 of *Surviving the Breakup*, however, they acknowledge that their data do not provide comparative information. The questions posed 25 years ago by sociologist William J. Goode remain largely unanswered:

(1) Are the damaging effects of divorce on the child greater than those of *continued home conflict*? (2) Even if there is a divorce, and we measure some of its effects, which is more important, the divorce itself and its aftermath, or the *conflict* leading to the divorce? (3) What kinds of divorce or marital conflict have *what kinds*, or degrees, of effect on the child?

W. GOODE, WOMEN IN DIVORCE 307 (1956). However, “[r]esearch findings are consistent in showing that children reared in conflict-ridden nuclear families are more poorly adjusted than children in *well-functioning* single-parent homes. In nuclear families, anti-social behavior in children increases as the quality of the marital relationship deteriorates” according to another team of researchers. Hetherington, Cox & Cox, *The Development of Children in Mother-Headed Families*, in THE AMERICAN FAMILY 117, 121 (D. Reiss & H. Hoffman eds. 1979) (emphasis added; citations omitted).

4. Serious students will wish to resort to the authors' more detailed papers in the scholarly literature; a partial bibliography is contained in the book. Pp. 335-36. There, too, however, the frequent use of “some,” “many,” and “few” in reference to this small sample makes it difficult to correlate findings described in one place with those discussed elsewhere in a somewhat different context. For one who has labored to present an accurate yet concise summary of those findings that are of special interest to lawyers, the challenges often seem to have overwhelmed the attempt. For example, the book does not reveal the number of cases in which fathers were custodial parents. *See* note 7 *infra*.

5. This Review contains a summary of those portions of the book that are most directly

sion indicates, within these several constraints, *Surviving the Breakup* has much to say.

### *The Divorce Milieu*

Wallerstein and Kelly begin with the assumption that divorce should be available to end unhappy marriages. Accordingly, they ask how, not whether or when, such marriages should be terminated. Readers, however, may initially pose those additional questions in response to Wallerstein and Kelly's report that some marriages which no longer served the needs of both parents (or even badly dis-served them) continued to function until the end as supportive environments for children. Approximately one third of the sample's divorcing parents had not fought about child-rearing matters, even if other strong disagreements existed. Indeed, parent-child relationships were "good enough or exceptionally good" for one third of the study's children and their mothers and one fifth of the children and their fathers. One quarter of the divorcing families were close-knit before the divorce.

At the other extreme, however,

over 40 percent of the children had relationships with their fathers which were exceedingly poor, marked by gross psychopathology or neglect . . . . [A]t least one-quarter of the mother-child relationships were also very poor, marked by serious neglect and threatened abuse.

. . . Physical abuse between the parents, mainly beating of the wife by the husband, was an ongoing expectable part of life for one-quarter of the children in this study and was witnessed on occasion by well over half of the group. [P. 16.]

Fully one third of the wives had been moderately depressed for years, one fifth of them had attempted suicide during their marriages, and life was emotionally bleak in one half of the sample households.

Children who knew (or could be helped to understand) that their parents' marriages were unhappy and were unlikely to change eventually approved of the divorce decision. In approximately two thirds of the families, however, the divorce was prompted by more limited

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relevant to custody law. The book reaches far more widely. Part 1 examines the setting and experience of divorce, concentrating on the child's reactions; Part 2 discusses parent-child relationships after separation; Part 3 describes parents and children at 18 months postseparation; and Part 4 includes chapters on the condition of parents and children after five years, the children's reactions at that time to their parents' divorce, father-child relationships at five years postseparation, the children's experience in school and in step-parent households, and a discussion of the study's implications. The authors append a method and sample description and a bibliography of the Children of Divorce Project that provided the data for the book.

or potentially transitory factors.<sup>6</sup> Here children were rarely able to understand or accept their parents' decision, either initially or years later. And, in five out of six of the Marin County cases, one spouse (most frequently the husband) also strongly opposed the divorce. Yet Wallerstein and Kelly report that divorce decisions were by no means lightly made and that the question "What took you so long?" regularly formed in their own minds as they learned of the events and circumstances that had prompted spouses to terminate their marriages. Readers, too, are likely to conclude that divorce was appropriate for the great majority of the study's families.

### *The Child's Response*

Not surprisingly, a parent who wants to divorce is apt to believe that the solution is also good for the children and that they are handling the situation well, while one who opposes the step may be equally certain that the children are suffering and endangered. In fact, Wallerstein and Kelly report, the initial impact of divorce on children varies widely, reflecting in large measure a child's age at the time of parental separation. Linking the child's reactions to developmental psychology, they offer a convincing explanation for the distinctive responses exhibited by children of different ages. The parameters of normal reactions and coping behavior that they describe will be of broad interest to those who counsel divorcing families. The implications for those who make child custody recommendations and decisions are also considerable: Wallerstein and Kelly report, for example, that a child's anger toward one parent or the other, while closely linked to the child's developmental stage and perceptions of which parent is responsible for the divorce, may be totally unrelated or even inversely related to the parent's nurturing qualities and behavior. As the following summary indicates, this is especially true of tantrums that follow a return home from child care or a visit with the noncustodial parent, the longing of a six-to-eight-year-old for the noncustodial parent, reactions by nine-to-twelve-year-olds to the divorce itself, and behavior that is influenced by an alignment made with one parent against the other.

*Preschoolers.* Three-to-five-year-old children, who typically displayed regressive behavior for a period of weeks or months, were

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6. Wallerstein and Kelly include in this category divorces that were sought by spouses who were responding to external stress (such as a serious illness or the death of a parent), mental illness, or the advice of doctors or therapists who assumed that a divorce that would enhance a parent's self-development would also benefit the children. Here, too, were counted the divorces that were designed to punish unfaithful spouses for their extramarital affairs. Pp. 19-22.

most seriously affected when they received no explanation for their fathers'7 absence. This was the case for eighty percent of these young children, who simply awoke one day to find one parent gone. No one reassured them that they would continue to be cared for or adequately explained what had happened. The age group was subject to fantasies (or denial and reconciliation), self-blame, and decreased enjoyment with play. Many three-to-five-year-olds became especially irritable when their mothers picked them up from child care or school at the end of the workday. This occurred, Wallerstein and Kelly conclude, because the exhausted children were at last free to let go after enduring a day of pent-up anxiety that their mothers, too, would leave them. In these households, the stress "rose as darkness approached, and peaked at bedtime, which soon became a tense and unhappy battle of wills between an exhausted angry parent and a panic-stricken child" (p. 57).

*Young school-age children.* Six-to-eight-year-olds also fantasized that their parents would reconcile but, unlike the younger children, were not apt to blame themselves for their fathers' absence. In contrast to children of other ages, they were intensely saddened by the separation from their fathers and inhibited their angry feelings toward them. Although they were therefore unlikely to criticize their fathers near the time of separation, they did express their anger at their mothers, whether directly, through temper tantrums, or via displaced anger at siblings, friends or teachers. Wallerstein and Kelly found that the degree to which children of this age longed for their fathers was *unrelated* to the closeness of their relationships prior to separation. Divided loyalties were common, even when parents did not encourage the children to take sides (although they were exacerbated for those one quarter whose mothers urged them to reject their fathers). In all cases, loyalties to both parents remained firm, even where they remained hidden from parental view.

*Older school-age children.* Although the nine-to-twelve-year-olds were strikingly less subject to regressive behavior than younger children, Wallerstein and Kelly's findings signal a need for special caution in basing custody decisions upon their desires as expressed near the time of separation. These children were very angry in approximately equal numbers at their fathers and their mothers. Many were

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7. Mothers were the custodial parents in the great majority of cases; fathers had sole custody of fewer than eight percent of the children. See Wallerstein & Kelly, *PSYCH. TODAY*, *supra* note 2, at 68.

angry at both. The targets of their emotion were not chosen on the basis of inadequate parenting. Rather, anger was expressed at the parent who the child thought was responsible for the divorce, or, in many cases, at a mother who had previously been the object of harsh treatment by the now-absent father.<sup>8</sup> Children of this age group often participated in alignments based on one parent's moral outrage at the other, with daughters somewhat more likely to side with their fathers and sons with their mothers in these intense, yet transitory, alliances.

*Adolescents.* For thirteen-to-eighteen-year-olds, the divorce process either "[drove] adolescent development forward at a greatly accelerated tempo, or [brought] it to a grinding halt" (p. 83). Especially troubling to teenagers, who were grappling with their own uneven progress towards adulthood, was parental behavior that seemed suddenly to parallel their own. Parents concerned with their own appearance and with new, younger sexual partners seemed competitors to their children, who worried about who would now serve the adult, nurturing roles in their lives and would assure their educations after high school. Teenagers were old enough to be troubled about their future prospects for lasting, rewarding sexual and marital relationships. Like the nine-to-twelve-year-olds, however, they were unable to appraise accurately their parents' behavior or relative roles in the divorce. The adolescent tendency to view life in extremes hampered their perceptions, grief and anger typified their responses, and loyalty conflicts were especially severe as parents turned to them for emotional support. Temporary regressions involved new friendships with younger children, withdrawal from normal activities, and lower grades. Those who were seriously disturbed displayed delinquent or sexually promiscuous behavior or severe regression. Successful coping, on the other hand, occurred in some families where children either took on more responsible roles or beat a strategic retreat, spending more time away from home with friends. Those who blossomed in the face of challenge matured rapidly.

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8. The degree to which these boys may have reflected the influence of their fathers rather than age-appropriate responses seems inadequately treated. Wallerstein and Kelly report that "in many of these households the father had been responsible for harsh and frightening discipline" and note that "[h]is departure . . . signaled a new freedom to express impulses that had been carefully held in check during his presence, a freedom to do so with impunity and with pleasure." P. 75. See also pp. 112-13. Yet in their discussion of the possible roots of the "intense" anger that characterized these boys five years later, the authors do not mention their violent fathers. See p. 233.

*The Separated Family*

*Six months postseparation.* Although children's reactions to divorce affected their attitudes toward and relationships with both parents, the custodial parent (nearly always the mother<sup>9</sup>) absorbed the day-to-day strains. Wallerstein and Kelly report that these women were forced to adjust to sharply reduced economic circumstances, full-time employment, the angry behavior of unsettled children, and evenings of housework that often lasted until midnight. As a result, the Marin County mothers displayed severe physical and emotional exhaustion and, in two thirds of the cases, the quality of their parenting was significantly reduced for many months following separation. They and their children were "moving faster than they [were] really able . . ." (p. 109). Yet most fathers refused to help lighten the load by spending additional time with their children, even where they could do so without reducing other commitments. They saw their possible involvement not as an opportunity to maintain contact with their children, but rather as "babysitting" designed to serve the mothers' "convenience."

*Eighteen months postseparation.* By eighteen months after separation, men had moved beyond "the regressive behavior, the angry and sometimes wild outbursts, the vast fluctuations in mood" (p. 154) that had marked their conduct at the time of separation. Forty-five percent no longer felt bitter about the divorce and sixty percent (up from thirty-three percent at the time of divorce) were now generally satisfied with the divorce decision.

The picture was not as favorable for women. They were more seriously depressed than their former husbands, although their overall sense of well-being was more sharply improved. Apparently these mothers had begun nearer the bottom rung of the emotional ladder and therefore had farther to go. Eighteen months after separation less than half of them (contrasted with two thirds of them one year earlier) felt truly good about the divorce. Their considerable depression was fueled by continuing feelings of abandonment or a sense of "being overwhelmed by day to day living and parenting responsibilities, and the failure to achieve the more gratified, happier state they had envisioned . . ." (pp. 155-56). Only one third of the women had left bitterness behind, and half of them continued to make "extremely critical, or disparaging, remarks about their husbands . . . in front of the children" (p. 154).

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9. See note 7 *supra*.



There was, on the other hand, a significant correlation between a woman's initial view of her divorce as representing a new chance and her improved parenting a year later. And, despite the mothers' shared sense of being overwhelmed by the burdens of single-parenthood, a substantial number had already restored their parenting to its original predivorce quality, while another 20% improved so dramatically that they surpassed their earlier performance.<sup>10</sup>

Some fathers had similar successes, but others cut back sharply on their parenting functions. Surprisingly, "[a]t eighteen months postseparation there was *no correlation* whatsoever between the visiting patterns that had emerged by that time and the predivorce father-child relationship" (p. 122) (emphasis supplied). The mothers' attitudes toward visitation did not explain this result. Instead, Wallerstein and Kelly conclude that other factors were decisive. For some men parenting without the structure of family routine and the supportive interventions of the child's mother was foreign and burdensome, for some guilt at having ended the marriage or a fear of rejection by their children played a role, for others new step-children provided substitutes for their own children, while for a final group the pain of renewed contact with their former spouses or the difficulty of repeated partings from their children seemed controlling. Parental friction distressed one third of the children, who witnessed extreme anger at visiting time. It did not, however, necessarily result in fewer visits, although men who used visits as an opportunity to harass their former wives tended to abruptly curtail or totally cease seeing the children at some point. Successful visiting relationships "reflected not the relationships of the predivorce family primarily, but the father's motivation, the child's motivation, and the psychological capacity of fathers, mothers, and children to adapt flexibly to the new conditions of the visiting relationship" (p. 130). Although

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10. This finding appears consistent with those of Hetherington, Cox and Cox, whose detailed study of parent-child interaction in intact and divorced families reports:

The lack of control that divorced parents have over their children, particularly one year following divorce, was apparent in home and laboratory observations. . . . Some divorced mothers described their relationship with their child one year after divorce as "declared war" a "struggle for survival," "the old Chinese water torture" or "like getting bitten to death by ducks." [The data reveal] that boys comply less to parental demands than do girls and that children are more compliant to their fathers' than their mothers' commands in spite of, or because of, the fact that mothers usually give about twice as many commands as fathers.

Hetherington, Cox & Cox, *Divorced Fathers*, 25 FAM. COORDINATOR 417, 424-25 (1976). Mothers (also the custodial parents in this study) became more effective in dealing with their children during the second postdivorce year, as they altered their disciplinary practices. "When support [as to child rearing matters] and agreement occurred between divorced couples, the disruption in family functioning appeared to be less extreme and the re-stabilizing of family functioning occurred earlier, by the end of the first year." *Id.* at 425.

Wallerstein and Kelly note uneven success in their counselling of visiting parents, they conclude that it is possible to encourage fathers to visit more frequently, and that the most opportune time for such intervention occurs during the immediate postseparation period.

At the same eighteen-month mark, half of the children had made appropriate developmental progress during the prior year, a remarkable recovery from the earlier serious difficulties that had accompanied separation. An additional one quarter had made dramatic improvement. This bounce back for three quarters of the children was greater than could be accounted for by improved parent-child relationships. The final one quarter, however, had suffered a moderate to severe setback. Although anxiety, fear of abandonment, loneliness, and many of the symptoms that had appeared at separation had lessened or disappeared for most children, intense anger at one or both parents persisted for one quarter of them, and moderate or severe depression was diagnosed in a similar number. Most of these depressed children were *not* those who were depressed one year earlier. In large part they were children who were not visited by their fathers or who felt rejected or unsupported by their mothers. A vicious circle seems to have ensnared some young boys, whose angry behavior discouraged their fathers from visiting; these boys became even more angry and lonely because of the decreased contact with their fathers. In general, although children's assessments of their fathers had not improved, most mothers were more trusted and respected than they had been a year earlier.

*Five years postseparation.* Five years after separation, there was clear financial disparity between the former spouses.<sup>11</sup> Almost without exception the mothers were in reduced circumstances, and one-third of them were "enmeshed in a daily struggle for financial survival" (p. 185). Where there was a striking disparity between the living standards of the former spouses, continuing bitterness marked interparental relationships, and children shared in their mothers' anger and sense of deprivation. "Overall, a relatively good standard of living and the positive effects of economic stability were very evident in the mother-child relationship, and reflected in the child's good

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11. Economic changes were especially severe and permanent for the study's middle- and lower-class families, where there was little or no community property to divide. Pp. 22-23. Support awards were apparently inadequate to provide roughly comparable postdivorce living standards for these families since enforcement was not a serious problem for many of them: ". . . 85 percent of the men were still paying child support [eighteen months after separation], although not always regularly or in full amount." P. 150. As the authors note, this payment rate far exceeds those found in other studies. P. 150 n.\*. For those who receive awards that are both inadequate and poorly enforced, the problem is exacerbated.

adjustment” (p. 231). Unfortunately, Wallerstein and Kelly report that even in affluent Marin County only one fifth of the divorced mothers were in financially stable circumstances five years after separation.

Yet two thirds of the women showed notable gains in their self-esteem and general satisfaction with life, compared to one half of the men. And fewer women than men (one fifth versus one third) were unhappy, although only one half of the women (in contrast to two thirds of the men) thought that divorce had improved their lives. Wallerstein and Kelly conclude that “[t]here is considerable evidence in this study that divorce was highly beneficial for many of the adults” (p. 306).

Many parents had remarried (thirty-three percent of the mothers and forty-three percent of the fathers); the women were generally happier than the men with these new unions. For the children, a parent’s remarriage brought major readjustments as children expanded their definitions of family to include step-parents and, often, step- or half-siblings. Step-fathers took their own places in children’s affections without displacing their natural fathers, who continued to visit as before in the great majority of cases.

The importance of good relationships with both natural parents stood out at the time of the five year follow-up. “For all the children and adolescents a good relationship *with the custodial parent* was the key to good functioning in the postdivorce family” (p. 217) (emphasis supplied). Sixty percent of the Marin County children benefited from such good mother-child relationships and some of them were able to function well even though they had limited contact with their fathers. Sadly, however, forty percent of the mothers were inadequately meeting their children’s needs five years after separation. One third of all of the women in the study remained under serious stress due to the pressures of the single-parent household, and their distress usually had negative effects on their relationships with their children. This burden may have been the straw that broke the camel’s back for a significant proportion of the mothers whose parenting had slipped into the inadequate category after separation. The children of those additional mothers whose consistently poor parenting reflected psychological disturbances were left after divorce without the stabilizing influence of their fathers and were in serious psychological difficulty five years later.

Even in those households where good custodial parenting was provided, however, *children did not perform well if they felt rejected by their fathers*. Thus, although the mother’s parenting was of primary

importance, the noncustodial parent's role was also vital in supporting a child's sound psychological functioning. The best news came when relationships with both parents were sound: the children displayed "[s]uccessful outcome[s] at all ages, [that is,] good ego functioning, adequate or high self-esteem and no depression . . ." (p. 215).

Overall, the relative numbers of children who demonstrated healthy or impaired functioning, or who received seriously deficient fathering, were similar five years after separation to those in evidence at the time of the initial assessment. The membership in the various groups, however, had shifted dramatically, although visiting patterns that had been established by the time of the eighteen-month follow-up "held the potential for remaining remarkably constant" (p. 236). And

[b]y and large, [children's] gratification within the present governed their feelings about the divorce and affected their view of the past.

. . . .

[F]ive years after the separation, 28 percent of the group strongly approved of the divorce, slightly more disapproved strongly, and the remaining 42 percent were somewhere in the middle, accepting the changed family but not taking a strong position for or against the divorce. . . . [T]his represents a major shift from the initial count when three-quarters of the children strongly disapproved . . . [Pp. 197-98.]

Wallerstein and Kelly conclude that at the time of divorce it is impossible to predict the outcome for individual children five years later, although two thirds of those who functioned well during the marriage had regained their equilibrium by five years postseparation and a striking seventy-five percent of the unhappiest children were now similarly well-adjusted. The end result was most uncertain for those fifty percent who fell in the middle at six months after separation. While half of these children improved and were doing very well indeed, the other half (one quarter of the total sample) were in serious difficulty at the five-year mark. Wallerstein and Kelly do not directly speculate on the degree to which therapy (which was present in two thirds of the cases where normal functioning was restored to children who were seriously disturbed shortly after separation) might be expected to shore up the long-range outcome for this central group. Concerned parents will surely wish to maximize their children's future chances, however, by enhancing the factors that *Surviving the Breakup* identifies as beneficial to a child's postdivorce development:

- (1) the resolution and setting aside of divorce-related conflict and anger by parents;

- (2) restoration or improvement of parenting by the custodial parent after the initial postseparation adjustment period;
- (3) regular, continuing, age-appropriate, nonrejecting visitation by the noncustodial parent;
- (4) a supportive human network for the child;<sup>12</sup> and
- (5) psychotherapy for those children in recognizable distress.

### *Summary*

Three major themes appear and reappear in Wallerstein and Kelly's book. First, no divorce (however appropriate and beneficial it may be for one or several family members) occurs without an extended and painful period of transition. Second, children's initial responses to parental separation reflect their developmental stages. Third, a father's psychological importance to his children after divorce is not a function of the parenting role that he played during marriage; it is his role in the postdivorce family that is of deep and continuing significance to their happiness and successful development. Each of these general points seems persuasively argued on the basis of the data collected in Marin County. As the following discussion indicates, however, many of Wallerstein and Kelly's more narrow findings require some qualification.

### *Implications*

*Surviving the Breakup* deserves to be widely read and thoughtfully considered by the legal profession. Some of its messages are relatively straightforward and capable of ready implementation. For example, Wallerstein and Kelly note that divorcing parents often welcome specific suggestions to improve their parenting and their children's welfare. The book provides a basis for such counsel, ranging from simple yet important bits of advice (tell your children that you are divorcing, show them where the noncustodial parent now lives, reassure them often that they will always be cared for and that both parents will continue to love them) and explanations of what behavior to expect and how to interpret it (if the children fight when you come home at the end of the day, they are expressing their general distress and not a criticism of you; disorganization will peak during the first eighteen months after separation but then recede), to a more significant challenge to adults to separate parenting functions

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12. Portions of the book not summarized here deal with the significance of schools, friends, extended family members, and new step-parents and step-siblings to these children. Only the schools and step-parents seem to have played a major role in aiding them, and even schools served more as a constant (and therefore stabilizing) factor than as a resource for special support.

from interspousal fighting (do not criticize the other parent in front of the children, ask children to take sides or use them as messengers or spies; do maintain their contact with both parents).

Simply expressed yet more difficult to implement is the book's recommendation that children's attitudes be cautiously appraised when custody is at issue:

Although the wishes of children always merit careful consideration, our work suggests that children below adolescence are not reliable judges of their own best interests and that their attitudes at the time of the divorce crisis may be very much at odds with their usual feelings and inclinations. [P. 314.]

The child's behavior, as an expression of those feelings, should be similarly scrutinized. Yet there is danger that an advocate may either mistakenly or deliberately misconstrue many of Wallerstein and Kelly's insights. For example, a negative inference of the conclusion just quoted is that adolescents are reliable judges of their own best interests in custody matters. Elsewhere in their book, however, Wallerstein and Kelly describe teenagers as having commonly "perceived some flaw or frailty in one parent [that let them] to deidealize that parent and to regard him or her as sinful, cruel, or self-seeking, and the other parent as aggrieved, mistreated, or even martyred" (p. 88). Although the alignments of these children were more transient than those of their younger brothers and sisters, "the struggle at its height was often bitter and long remembered" (p. 88). Even so, sound legal reasons exist for giving teenagers a loud voice in custody determinations, since they are quite capable of "voting with their feet" or making life unbearable for the custodial parent should they dislike the decision. Yet one is left wondering why Wallerstein and Kelly's summation did not suggest that angry teenagers, too, might be incapable of readily identifying their own best interests.

Of greater concern are the possibilities for misunderstanding through improper, selective use of their data. The behavior of children who are pleasant during visits with the noncustodial parent but cranky once they return home often prompts a request by the noncustodial parent to change custody or by the custodial parent to curtail visitation. The noncustodial parent argues that the children are angels with him and demons at home, indicating that they would be happier and better off in his full-time care. His attorney might cite pages 275-76 of *Surviving the Breakup*: "Mondays were often observed to be bad days [at school]: 'There are readjustment problems . . . [and] sometimes . . . feelings are really close to the edge'" (p. 275). "Ben . . . was particularly irritable and disruptive [according

to his third grade teacher] for brief periods following visits to his father. . . . Ben wanted to see more of his father, but fearing his mother's anger, was unable to express his wishes to her" (p. 276). The custodial parent, however, argues that the children are fine except after visits, and that it is the visits which are detrimental and should be curtailed or discontinued. Her attorney might refer to page 57 of the book, which describes children whose unhappiness at home expressed pent-up distress caused by a temporary separation from the custodial parent. The more complex truth that Wallerstein and Kelly identify is found not at either of these places, but rather at page 126:

Sometimes the child's anxiety at crossing the no-child's-land between father and mother spilled into the child's behavior. Exhausted by the ordeal of the crossing or saddened anew at the farewell to the father, children were cranky or poorly behaved after the visit . . . .

The custodial parent's continued presence alone made her an available target for the child's unhappiness and resentment around the visit. Thus, for example, since she was available, whereas the visiting parent was present only intermittently, it was not unusual for children to behave splendidly with the visiting father and to return home cranky and petulant with their mothers. Their behavior often reflected their greater concern that their father might abandon them and their judgment that the custodial mother was more reliable.

The message is clear: *Surviving the Breakup* should not and cannot function as a cookbook or hornbook. Its language has frequently not been qualified, and it contains no cross-referencing footnotes to alert the reader to all its relevant material on a given topic. It will be of the greatest value to those who read it from cover to cover and use it to suggest conduct that will benefit the family's postseparation welfare and to identify promising areas for future research.

Two of the many profound legal and social issues thus raised deserve comment, however brief. First, accepting that visitation is central to children's postdivorce welfare, what legal structure would best promote continuing contact between children and noncustodial parents? Wallerstein and Kelly shed light on both failure and success in visitation. Their report attributes irregular, infrequent, or discontinued visits to the noncustodial parent's guilt, fear of rejection, lack of child care skills, new family, or discomfort with repeated partings from the children or continued contact with the former spouse. It credits continuing visits, on the other hand, to a father's motivation and to the greater success of some men with parenting in relatively small doses. Of special interest are their observations on the relevance of parental interactions. Visits motivated by an effort to continue interspousal conflict, or to preserve the noncustodial par-

ent's dominance and control over the other spouse, tended to fall away precipitously during their study. In contrast, the thirty percent of noncustodial fathers who had good relationships with their children five years after divorce "tried their best not to interfere with the routine of the mother's household or to question her discipline or her decisions" (p. 259).

Lacking the full authority of the parent *in situ*, these men by dint of sustained effort and commitment had succeeded in winning, or maintaining, a respected place in their children's lives. As a consequence, they exercised continuing influence over the children's psychological development, moral values, and life choices. . . . Lacking both daily contact and direct authority to intervene, their role was circumscribed; in no way could their contribution be comparable to that of the custodial parent. But they maintained a presence which could be used by their children as needed as an additional and separate resource which lent another dimension to their children's lives. [P. 257.]

Given the evident need for delicate role balancing, what might best encourage parents to remain actively involved with their children yet recognize the constraints imposed by the divorced household? Wallerstein and Kelly, in a surprising conclusion, suggest that for twenty-five percent of their families, joint custody might be appropriate (p. 310). They identify only one finding, however, to support joint custody as a possible vehicle for enhanced parent-child contact after divorce:

[T]here is evidence in our findings that lacking legal rights to share in decisions about major aspects of their children's lives . . . many non-custodial parents withdrew from their children in grief and frustration. Their withdrawal was experienced by the children as a rejection and was detrimental in its impact. [P. 310.]

*Surviving the Breakup* indicates neither the frequency of this phenomenon nor the degree to which it occurred in families not otherwise caught up in interspousal battles for control.

Both logic and data from another preliminary source suggest, however, that joint custody — whatever its virtues in other cases — would not have solved this problem. Either these parents did not agree about child-rearing matters, giving rise to the fathers' profound distress with the mothers' postseparation decisions, or the men were not upset by the merits of these decisions but rather by the fact that their former spouses *and not they* made them. In either case joint custody might well produce a running series of disagreements rather than the cooperative parenting that Wallerstein and Kelly seek. The authors' conclusion therefore seems more a statement of displeasure with visiting patterns under current law than a reasoned endorsement of joint custody.



Caution is in order. An as yet unpublished study of Marin County custody modification requests indicates that couples who agree on joint custody as a compromise rather than as an expression of shared conviction are greatly overrepresented in later custody litigation.<sup>13</sup> Although the study's sample is small, it reveals a pattern in which joint custody had been encouraged as the resolution of custody contests in cases where the mothers had clearly been the nurturing parents prior to divorce.<sup>14</sup> To avoid court battles, these women agreed to joint custody with their former husbands.<sup>15</sup> The upshot, however, was a serious deprivation of their access to their children. In fact, these mothers had far less contact with their children thereafter than did noncustodial parents whose access was protected only by "reasonable visitation" orders.

*Surviving the Breakup* suggests an explanation for these findings. In their sample, Wallerstein and Kelly noted that fathers who fought for custody were *not* men who had been nurturing parents (the nur-

13. Grossman & Diamond, Custody Modification Requests Filed in Marin County Superior Court Between January and May 1979 (May 23, 1980) (unpublished manuscript on file with the *Michigan Law Review*). *Accord*, Committee on the Family, *Divorce, Child Custody and the Family*, 10 GROUP FOR THE ADVANCEMENT OF PSYCHIATRY 785, 932 (1980) ("[Joint custody] definitely should not be imposed on a fighting couple as a way of compromising or resolving the dispute. Experience has shown that such an arrangement simply cannot work.").

14. There were six joint custody cases in the study population of forty-five families. Five of these six custody agreements were reached as the result of compromise, rather than being the first preference of the parents. In each of these five cases the father had filed for sole custody prior to the agreement.  
*Id.* at 32. "In four of the five families these mothers had been the psychological parents of the child(ren) prior to the final separation." *Id.* at 34.

15. Unfortunately, such compromises are becoming increasingly common under the pressures imposed by new state laws such as that of California, which states that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

. . . . .  
(b) Custody should be awarded in the following order of preference according to the best interests of the child:  
(1) To both parents jointly . . . or to either parent. In making an order . . . to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent . . . .  
CAL. CIV. CODE § 4600 (West Supp. 1981). Although the Code directs attention to factors in addition to access, attorneys and conciliation court personnel have indicated to the author that primary nurturing parents are often told that their refusal to request joint custody will be taken as a refusal to encourage frequent and continuing contact that may result in an award of sole custody to the other spouse. *See, e.g.*, Letter from James A. Cook to the Editor of *Time Magazine* (Feb. 4, 1980), reprinted in Newsletter, Sacramento Chapter of Equal Rights for Fathers (April 1980) (copy on file with the *Michigan Law Review*). The letter comments:  
California's statute sends a message . . . that a . . . sole custody [claim], to the detriment of the child's relationship with the alternate parent, is likely to result in an opposite decision.  
Arguments that focus on parental control rather than frequent contact misinterpret the statute. *See also* text at note 17 *infra*.

turing fathers either did not want custody or obtained it by agreement).<sup>16</sup> Instead, they were bitter men who sought to prolong interspousal conflict or to force their wives to return to them by holding the children hostage. Such men, were they to receive joint custody decrees, could be expected to provide their former wives with few opportunities to see the children.

Joint custody cannot operate in this environment. Although a legitimate custody form, it has a fair chance of succeeding only where it is chosen by parents who are genuinely committed to cooperative parenting and are far more capable than most of setting aside interspousal bitterness. It is indeed unfortunate that current interest in joint custody has prompted renewed concern for parental power rather than greater attention to the needs of children. Recent legislation and case law has emphasized fathers' rights over their children and former wives, even when this interferes with a custodial parent's right to travel and cannot be shown to serve a child's best interests. Courts that are willing to remove custody from a long-time caretaker rather than permit her to leave the state for legitimate personal or professional reasons have been unwilling similarly to restrict the travel options or even to enforce the visitation responsibilities of fathers.<sup>17</sup> This enhancement of paternal prerogatives in the postdivorce period without evidence that children's needs are thereby served should be recognized as gender-based and challenged on right to travel grounds.<sup>18</sup> Wallerstein and Kelly's finding that a child's relationship with the primary custodian is the key to sound postdivorce development and their conclusion that at least 75% of

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16. This finding is consistent with those reported by the California Divorce Law Research Project, based upon studies of divorce in San Francisco County in 1968 and 1972, and in Los Angeles County in 1968, 1972 and 1977. See Weitzman & Dixon, *Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation After Divorce*, 12 U. CAL. D. L. REV. 473, 502-05, 515-21 (1979).

17. Compare *Weiss v. Weiss*, N.Y. Times, Feb. 25, 1981, at 1, col. 1 (N.Y. Ct. App. Feb. 24, 1981) (mother's move restrained because it would interfere with father's visitation), with *Wasko v. Wasko*, Suffolk County Ct. No. 74-4558 (May 30, 1974) (enforcement of father's agreement to visit denied; child resided nearby), *affd. mem.* 47 A.D.2d 602, 364 N.Y.S.2d 1007 (App. Div. 1975), discussed in Bruch, *Making Visitation Work; Dual Parenting Orders*, FAM. ADVOCATE, Summer 1978, at 22, 22, and compare *Fritschler v. Fritschler*, 60 Wis. 2d 283, 208 N.W.2d 336 (1973) (mother's out-of-state move punished by custody transfer to father), with *Bennett v. Bennett*, 228 Wis. 401, 280 N.W. 363 (1938) (custodial father permitted to leave state with children). See generally Bodenheimer, *Equal Rights, Visitation, and the Right to Move*, FAM. ADVOCATE, Summer 1978, at 19. Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 1003-09 (1977). No court has yet suggested that a child's need for parental contact should impede a noncustodial parent's move. Concern for fathers, not children, explains the inconsistencies.

18. The analysis and arguments are set forth in the articles by Professor Bodenheimer cited in note 17 *supra*.

their sample would not have been realistic candidates for joint custody bring into serious question both the recent fad in joint custody legislation<sup>19</sup> and the willingness of courts to penalize a custodial parent's relocation with loss of custody.

An alternative legal model is needed that recognizes and enhances the parenting roles of both spouses without requiring a high degree of agreement or cooperation. The goal should be twofold: to promote contact between children and noncustodial parents and to enhance relationships within single-parent households by reducing the burdens that impair the functioning of custodial parents. Elsewhere I have proposed dual parenting orders as a means to these ends.<sup>20</sup>

Dual parenting, unlike joint *legal* custody, requires that both parents spend time with their children but does not authorize the parent with a more limited time involvement to influence those major decisions that are within the province of a sole custodian. Children's needs (not parental power) are central. There is no expectation that the children's time with their parents will be divided equally, as typically occurs under a joint *physical* custody order. Instead, by replacing *visitation rights* with *parenting responsibilities*, dual parenting orders emphasize continuing parent-child interaction. Attempts to hurt the primary custodian by failing to visit are discouraged: the parent who chooses not to meet his or her responsibilities must compensate the other parent for the additional caretaking responsibilities that are shifted to that parent by a failure to follow the court's order. Parents are motivated to honor the order, either to avoid the monetary consequences of noncompliance or — more admirably — to comply with the court's reasoned judgment that continued dual parenting will benefit the children.<sup>21</sup>

Wallerstein and Kelly's study suggests that visits which become a habit during the initial postseparation period are maintained during the less tumultuous years that follow. To the extent that noncustodial parents are encouraged to work through postseparation ad-

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19. Some legislation would establish a presumption that joint custody is in the child's best interests or authorize a joint custody award over the objection of one parent. See, e.g., Alaska H.B. 210, 12th Leg., 1st Sess., § 4 (Feb. 23, 1981) (Rogers & Gardiner); CAL. CIV. CODE § 4600.5(b) (West Supp. 1981). Such schemes should be distinguished from legislation that appropriately adds joint custody to the list of permissible custody awards without favoring one form over another or authorizing a joint custody order over the objection of one parent.

20. See Bruch, *supra* note 17. See generally *In re Marriage of Braia*, S.F. Chronicle, Nov. 22, 1979, at 3, col. 1 (San Mateo County Super. Ct., Cal. Nov. 20, 1979) (ordering noncustodial parent to pay custodial parent minimum wage for periods of missed visits).

21. This system, as any other, will operate best if visiting patterns are adjusted over time, as is appropriate to the child's changing needs.

justment difficulties within a framework of continuing visits and custodial parents are given relief from their own tribulations, children will benefit. Mutual respect will enhance any custody system, but reliance on it, as is demanded by joint custody, may often be both unwarranted and detrimental.<sup>22</sup>

*Surviving the Breakup* also highlights a second important legal and social issue: the harsh financial consequences that divorce in this country entails for women and children.<sup>23</sup> Important studies reveal that the living standard of former husbands, in contrast, is generally less seriously affected and is often enhanced by divorce.<sup>24</sup> These findings call into question writings and practices which assume that support payments cannot appropriately exceed more than thirty or forty percent of a wage-earner's salary.<sup>25</sup> Realistic support orders must take into account the demonstrable costs of rearing children, the depressed earning capacities of women, and accurate appraisals of noncustodial parents' disposable incomes. Poverty and bitterness will otherwise unnecessarily mar the early years of far too many children, and their mothers will be needlessly burdened with

22. Wallerstein and Kelly have documented the stress experienced by children when their parents continue to disagree. Joint custody may also produce conflicting orders to schools, physicians and others who interact with the child. Most significantly, should one parent move away, that parent may resort to child stealing rather than risk a modification proceeding in which a judge is more inclined to keep the child in its accustomed surroundings than struggle with the question of whether the departing parent provided more significant nurturing than the other parent under their theoretically joint custody agreement. Frequently, splitting the child in half, in either time or control, is more consonant with parents' rights than with the child's best interest. See Bodenheimer, *Progress, supra* note 17, at 1003-12.

23. See, e.g., 4 SURVEY RESEARCH CENTER, INSTITUTE FOR SOCIAL RESEARCH, UNIVERSITY OF MICHIGAN, FIVE THOUSAND AMERICAN FAMILIES — PATTERNS OF ECONOMIC PROGRESS (G. Duncan & J. Morgan eds. 1976); U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, DIVORCE, CHILD CUSTODY, AND CHILD SUPPORT, Series P-23, No. 84 (June 1979); Carrad, *A Modest Proposal to End our National Disgrace*, FAM. ADVOCATE, Fall 1979, at 30; Seal, *A Decade of No-Fault Divorce: What It Has Meant Financially For Women In California*, FAM. ADVOCATE, Spring 1979, at 10; Weitzman & Dixon, *supra* note 16, at 494-501; Weitzman & Dixon, *The Alimony Myth: Does No-Fault Divorce Make A Difference?*, 14 FAM. L.Q. 141 (1980).

24. SURVEY RESEARCH CENTER, *supra* note 23, at ch. 2; Weitzman & Dixon, *The Alimony Myth, supra* note 23, at 172-79.

25. Compare, for example,

Although the private activities of remarriage and employment are clearly the most attractive ways to restore the divorced mother's standard of living, two public policies could ameliorate her plight. The first would be to encourage higher awards against divorced fathers. Chambers gives this possibility only summary consideration, apparently because of the strong consensus that divorced fathers should be required to pay no more than 30% to 40% of their net income.

Baldus, Book Review, 78 MICH. L. REV. 750, 751 (1980) (reviewing D. CHAMBERS, MAKING FATHERS PAY: THE ENFORCEMENT OF CHILD SUPPORT (1979)) (footnote omitted). Surely women, children, and economists were not consulted in the process of building this "consensus." See, e.g., note 17 *supra* and accompanying text; Bruch, *Neuere Entwicklungen des Ehescheidungsrechts: Das Beispiel Kalifornien*, 33 DAS STANDESAMT 9, 10-13 (1980); Espenshade, *The Value and Cost of Children*, 32 POPULATION BULL. 1, 23-44 (April 1977).

unrelenting exhaustion and impoverishment. More must be done to insure that the costs of marital breakdown do not continue to fall so disproportionately.

### *Conclusion*

*Surviving the Breakup* provides important glimpses into the uncertain and painful, yet frequently rewarding consequences of contemporary divorce. Wallerstein and Kelly's report and analysis of sixty families' experiences pose challenges for divorcing parents, the professionals who work with them, and scholars of the family. It should prove an important catalyst for greater understanding and support of men, women, and children in the postdivorce years.