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## Introduction

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# Introduction

Divorce has become a fact of life. A practice that was once an exception to the rule of the two parent family has become more common over time. From a moral taboo, it has become socially acceptable for couples who have made a lifetime commitment to sever it. In the process, the divorcing couple's "... failure to set boundaries is one of the major sources of conflict and stress between the parents,"<sup>1</sup> and the children of the marriage are sometimes lost in the shuffle.

As divorce has become more prevalent in American society, focus by social scientists has shifted from the couple to the children because as one court noted, "Divorcing parents seek, or decide not to seek custody of their children for many different reasons, many of which have little correlation with the best interest of the child."<sup>2</sup> In one study of parent-child communications about the family's divorce, nearly one in four children (twenty-three percent) reported that no one had talked to them about it, and forty-five percent reported having received only short-shrift bulletins, such as "your dad is leaving."<sup>3</sup> These failures to communicate may have long-term effects, as interviews with grown-up children, even decades after a parental divorce, suggest that many have persistent anger about having no role in the divorce proceedings, at being ignored, and at not being consulted about custodial arrangements.<sup>4</sup>

Divorce is rarely a pleasant experience under the systems in place in most states today.

In the current adversarial model, the impact of provoking parents to dredge up old failures, to prove cruelties in exquisite detail, to exaggerate if not to lie, to plot for the downfall of the other surely exacerbates woundedness and hostility. . . . In child custody disputes, the child's whole self and well-being are at stake and the decision-making process itself can compound the child's trauma. Most importantly, the adversarial adjudicatory process is unequal to the task of retrofitting parents for their new roles as parents living in what will be a binuclear family.<sup>5</sup>

As a result, many seek reform to the current adversarial system. "Custody controversies, unlike other types of litigation, involve parties who will have some sort of continuing future interaction with each

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1. Lucy S. McGough, *Protecting Children in Divorce: Lessons from Caroline Norton*, 57 Me. L. Rev. 1, 22 (2005).

2. Veazey v. Veazey, 560 P. 2d 382 (Alaska 1977).

3. Judy Dun et. al, *Family Lives and Friendships: The Perspective of Children in Step-Single-Parent and Nonstep Families*, 15 J. Fam. Psychol. 272, 272-87 (2001).

4. Judith S. Wallerstein et al., *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* (2000).

5. McGough, *supra* note 1, at 28-29.

other. Recognizing the significance of that characteristic, reformers envision a process for unraveling the current dispute that provides some means for reconstructing and improving the parties' relationship."<sup>6</sup> Professor Lucy McGough suggests,

Perhaps the greatest important systematic change in redesigning a better child custody decision-making process is to redefine the public goal. Parental separation and divorce puts children at grave risk. A hostile, rancorous relationship between parents greatly increases that risk and thus, justifies reforms tailored to reduce conflict and optimize the possibilities that both parents can remain engaged in relationship with the child.<sup>7</sup>

This Symposium addresses a series of progressive reforms more protective of children of divorce. This Symposium puts forth a common goal, the protection of children of divorce, and offers diverse means of achieving it. Varying perspectives, illustrated by articles from both the legal community and social science world, written by authors from within and outside the United States, are contemplated within the Symposium.

Some of the issues discussed in the following pages include the following: How exactly should the term "parenthood" be legally defined, in order to ascertain custody and child support obligations? How have state laws regarding divorce evolved over the years and what sort of impact have such changes had on the family? Should a child of divorce be involved and/or represented in the divorce process and if so, what is the most favorable way to do this? How do family law mediation and other Alternative Dispute Resolution formats compare to litigation and trial? Because types of family violence differ widely, should there be different responses by counselors and the legal system? Should the United States attempt to emulate the efforts of other countries, in particular, England's Children Act of 1989 and Family Law Act of 1996?

The questions raised in this Issue of the *Louisiana Law Review* highlight the intricacies of divorce and its impact on children; additionally, the issue blends social science with law in order to assess problems in a more progressive, interdisciplinary light. Access to social science's empirical evidence provides legal analysts with steadying tools with which to build a strong family law system. This interdisciplinary approach provides a fresh perspective on a serious problem that has plagued children of divorce for years and supplies new solutions.

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6. *Id.* at 29.

7. *Id.* at 32.