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## Promoting Children's Interest Through a Responsible Research Agenda

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## ARTICLES

### PROMOTING CHILDREN'S INTERESTS THROUGH A RESPONSIBLE RESEARCH AGENDA

*Margaret F. Brinig\**

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#### I. INTRODUCTION

I deeply wish to see more good empirical work in family law.<sup>1</sup> If our system had all of the money in the world, I would wish to spend it to guarantee happy, healthy children.<sup>2</sup> But since resources are scarce, and children's issues must compete with other interests that range from national

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\* Edward A. Howry Professor, University of Iowa. I owe thanks to the University of Florida symposium and to the empirical symposium held at the University of Illinois during spring 2001 and my able research assistant Nicholas Keppel.

1. Margaret F. Brinig, *Empirical Work in Family Law*, ILL. L. REV. (forthcoming 2003) (expanding these ideas at some length). Forthcoming papers are available from the author upon request. Many can also be obtained for download from her web site, available at <http://www.uiowa.edu/~mfblaw> (last visited Jan. 15, 2003).

2. See generally Margaret F. Brinig, *Moving Toward a First-Best World: Minnesota's Position on Multiethnic Adoptions*, 28 WM. MITCHELL L. REV. 553 (2001) (stating my ideas on family preservation).

security<sup>3</sup> to care for the elderly,<sup>4</sup> I would suggest spending a relatively modest amount to determine what programs would likely prove successful.

Usually public policy follows from the wishes of adults.<sup>5</sup> In family law, this occurs although virtually all the legislation dealing with families and children begins with a "best interests of the child" premise.<sup>6</sup> Most, if not all,

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3. President Bush's budget for homeland security is \$37.7 billion in fiscal year 2003, up from \$19.5 billion in 2002. President George W. Bush, *Securing the Homeland: Strengthening the Nation*, available at [http://www.whitehouse.gov/homeland/homeland\\_security\\_book.html](http://www.whitehouse.gov/homeland/homeland_security_book.html) (last visited Jan. 15, 2003).

4. Extramural Program Data for the National Institute on Aging, Annual Data Report, 1999, available at [www.nia.nih.gov/naca/meetings/1999](http://www.nia.nih.gov/naca/meetings/1999) (last visited Mar. 21, 2003) (showing that from fiscal year 1990 to 1999, the budget increased from \$238.9 million to \$594.6 million). Even larger amounts are budgeted for Social Security, \$3,597 million (according to the President's 2003 Budget), available at <http://www.whitehouse.gov/omb/budget/fy2002/bud15.html> (last visited Jan. 15, 2003); and Medicare, \$3,549 million (according to the President's 2003 Budget), available at <http://www.whitehouse.gov/omb/budget/fy2002/bud13.html> (last visited Jan. 15, 2003).

5. In her recent manuscript, Carolyn Frantz concludes, for example, that joint legal custody primarily serves parental interests. Carolyn Frantz, *Child Support* (2003) (unpublished manuscript, on file with the NYU Law School). See also Carolyn J. Frantz, Note, *Eliminating Consideration of Wealth in Post-Divorce Child Custody Disputes*, 99 MICH. L. REV. 216 (2000).

6. See AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.02(1) & comment b, at 101-02 (2002) (including a lengthy commentary and state statute references). The primary objective of Chapter 2 is to serve the child's best interests. *Id.*

of the litigated outcomes at least seem to maximize the results for adults.<sup>7</sup> This should not be surprising, for both substantive and procedural reasons.

The substantive reason is, as even the U.S. Supreme Court has noted, that in most cases what is good for parents will also be good for children.<sup>8</sup> For example, in *Parham v. J.R.*, when representatives of children in voluntary commitment proceedings charged that their clients' parents might be trying to warehouse them, the U.S. Supreme Court noted:

The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children. . . . That some parents "may at times be acting against the interests of their children" . . . creates a basis for caution, but is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests.<sup>9</sup>

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7. See generally, e.g., *May v. Anderson*, 345 U.S. 528 (1953) (stating a custody decree concerns personal rights of the parents, at least as important as the property rights that undoubtedly require personal jurisdiction); *Bailey v. Bailey*, 200 S.E. 622, 623 (1939); see CARL E. SCHNEIDER & MARGARET F. BRINIG, *AN INVITATION TO FAMILY LAW* (Teacher's Manual) at 57-58 (2001) (discussing procedural protections in termination cases); see Scott Altman, *Should Child Custody Rules Be Fair*, 35 J. FAM. L. 325, 353 (1996-97) (arguing that parental interests ought to be considered, especially since they are so often in line with the child's); David L. Chambers, *Rethinking the Substantive Rules for Custody Disputes in Divorce*, 83 MICH. L. REV. 477, 499 (1984) ("[a]dult interests need not be ignored as a matter of first principle and probably should not be as a matter of sensible policy so long as they can be kept subordinate to the interests of children."); John Elster, *Solomonic Judgments: Against the Best Interests of the Child*, 54 U. CHI. L. REV. 1, 16-21 (1987) (arguing that it is unjust to parents to always put the child's interests ahead of them); see MARY ANN MASON, *THE CUSTODY WARS: WHY CHILDREN ARE LOSING THE LEGAL BATTLE AND WHAT WE CAN DO ABOUT IT* 65-92 (1999) (arguing that the law too often protects parental rights against the rights of children); MARY ANN MASON, *FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES* 121-60 (1994); Margaret F. Brinig & F.H. Buckley, *Joint Custody: Bonding and Monitoring Theories*, 73 IND. L.J. 383 (1998); Janet Leach Richards, *Redefining Parenthood: Parental Rights Versus Child Rights*, 40 WAYNE L. REV. 1227 (1994); Andrew Schepard, *Taking Children Seriously: Promoting Cooperative Custody After Divorce*, 64 TEX. L. REV. 687, 692 (1985); Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parent's Rights*, 14 CARDOZO L. REV. 1747, 1785-86 (1993); Barbara Bennett Woodhouse, "Who Owns the Child?": *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995, 1112-14 (1992).

8. *Parham v. J.R.*, 442 U.S. 584 (1979).

9. *Id.* at 602-03.

Likewise, where grandparents sought to force a fit custodial mother to give them more visitation than she had allowed,<sup>10</sup> the U.S. Supreme Court maintained:

First, the Troxels did not allege, and no court has found, that Granville was an unfit parent. That aspect of the case is important, for there is a presumption that fit parents act in the best interests of their children. . . .

Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.<sup>11</sup>

Moreover, allowing parents to possess many rights allows them to better exercise their parental responsibilities.<sup>12</sup> From a procedural perspective, adults usually are the named parties in suits involving children.<sup>13</sup> This is because children are not themselves legally capable of bringing most actions,<sup>14</sup> lawyers and guardians are expensive, and children may not know what rights they do have. All of these mouthpieces speak the voice of the child, like a telephone game — imperfectly.<sup>15</sup> Since adults usually bring lawsuits, it is not surprising that the adult perspective is foremost.

These adults are parents, though sometimes they also would like to be social welfare professionals. Though a case can be made for listening directly to what children want,<sup>16</sup> the problem I identify comes from a

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10. *Troxel v. Glanville*, 120 S. Ct. 2054, 2059 (2000).

11. *Id.* at 2061.

12. See Margaret F. Brinig, *Troxel and the Limits of Community*, 32 RUTGERS L.J. 733 (2001); Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401 (1995).

13. See *Grissom v. Grissom*, 886 S.W.2d 47 (Mo. App. 1994) (involving children that sought unsuccessfully to intervene in their parents' custody battle); see also *Yarborough v. Yarborough*, 290 U.S. 202 (1933) (involving a similarly unsuccessful attempt by a child to enforce child support obligations).

14. See MARGARET F. BRINIG, FROM CONTRACT TO COVENANT: BEYOND THE LAW AND ECONOMICS OF THE FAMILY 111-12 (2000) (arguing why this should be so).

15. See MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990) (including lengthy discussions of these points); Wendy A. Fitzgerald, *Maturity, Difference and Mystery: Children's Perspectives and the Law*, 36 ARIZ. L. REV. 11, 20 (1994).

16. See, e.g., CARL E. SCHNEIDER & MARGARET F. BRINIG, AN INVITATION TO FAMILY LAW 844-49 (2d. ed. 2000); Carl E. Schneider, 1986 *Survey of Books Relating to the Law: VI. Law, Government, and Society: Lawyers and Children: Wisdom and Legitimacy in Family Policy*, 84

disconnect between what legislators and courts do and what the outcomes of the policies or decisions are for children.<sup>17</sup> I am not referring to whether the child is removed from the parent<sup>18</sup> or whether there is an adoption from foster care.<sup>19</sup> What I am concerned about is that the system does very little follow-up of its policies, even though these rules or structures may make tremendous differences to the children involved.<sup>20</sup> As I have argued

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MICH. L. REV. 919 (1986); see also Woodhouse, *Hatching the Egg*, *supra* note 7, at 1784-94; Lynn E. Wardle, *The Use and Abuse of Rights Rhetoric: The Constitutional Rights of Children*, 27 LOY. U. CHI. L.J. 321, 345 (1996); Barbara Bennett Woodhouse, *Children's Rights: The Destruction and Promise of Family*, 1993 BYUL REV. 497, 497.

17. Are there analogous cases where the legislators are not in tune with the people on whom they are trying to legislate? One possible set of examples comes from the mandatory reporting literature. One of the most persuasive arguments against mandatory reporting by physicians caring for substance-abusing pregnant women is that if the women fear they will be arrested for the abuse (to themselves or their unborn child) or are concerned that their child might be removed on the grounds of their abuse and neglect, they will not show up for prenatal care or will try to deliver at-risk children outside a medical setting. Robert G. Newman, M.D., Letter to the Editor, *Cocaine and Pregnancy*, N.Y. TIMES, May 22, 2001, A18.

18. See Douglas J. Besharov, *Symposium: Violence in the Family: Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL'Y & L. 165, 168-170, 190 (2000) (showing statistics reporting results of incidence studies of child abuse and neglect and maintaining that each year 700,000 families are put through investigations of unfounded reports, a massive and unjustified violation of parental rights).

19. As of August 2002, the Adoption and Foster Care Analysis and Reporting System (AFCARS) Report No. 7, the Department of Health and Human Services reported that as of September 30, 2000, 556,000 children were in foster care, 131,000 of whom were waiting for adoption. AFCARS Report No. 7, available at <http://www.acf.hhs.gov/programs/cb/publications/afcars/June2001.htm> (last visited Apr. 28, 2003). During that fiscal year, 46,581 children were adopted. *Id.* at 3.

20. An example of this problem comes from the work on family violence reported by Lawrence Sherman and others based on a very well-conceived study done in Minneapolis. Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261 (1984). Sherman's early work showed that mandatory arrest of domestic abusers resulted in a lower recidivism rate than did more traditional approaches to domestic abuse complaints made to law enforcement officers. Lawrence W. Sherman & Ellen G. Cohn, *The Impact of Research on Legal Policy: The Minneapolis Domestic Violence Experiment*, 23 LAW & SOC'Y REV. 117 (1989). The single most frequent reform these days, based on Sherman's study, is mandatory arrest. *Id.* More traditional responses might be separation of the spouses for a cooling off period, a lecture by the police officer, or the issuance of a restraining order. See, e.g., CAL. FAM. CODE § 6200 (2003); see SCHNEIDER & BRING, *supra* note 7, at 228-47. The problem is that when money and court permission were obtained to replicate the study in six other cities, the results were quite different and in some cases completely opposite. See, e.g., Evan Stark, *Mandatory Arrests of Batterers: A Reply to Its Critics*, in DO ARRESTS AND RESTRAINING ORDERS WORK?, 115, 141-45 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (criticizing arguments that mandatory arrest policies "disempower" battered women); Dennis P. Saccuzzo, *How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence*

elsewhere, those studies that are conducted tend to have flaws that make them less useful than they could be.<sup>21</sup> Sometimes the principal researchers have stakes in one outcome or the other.<sup>22</sup> Sometimes they recruit a sample that is too small or otherwise unrepresentative.<sup>23</sup> At still other times the

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*Analysis of Mandatory Arrest*, 39 SANTA CLARA L. REV. 765, 765 (1999); Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, U. ILL. L. REV. 533 (1996); see IOWA CODE §§ 236.12, 708.2A, 907.3 (1997) (including statutory examples). As Sherman himself reported, the original conclusion works in homogeneous populations and in those where the bulk of the offenders are employed (i.e., have reputations to maintain). Lawrence W. Sherman et al., *Crime, Punishment, and Stake in Conformity: Legal and Informal Control of Domestic Violence*, 57 AM. SOC. REV. 680, 685 (1992). When the domestic abuse offender has less stake in community or employer reputation, mandatory arrest may cause more rather than less recidivism. Lawrence Sherman & Evan Stark, *Should Police Officers Be Required to Arrest Abusive Husbands?*, 8 HEALTH 32, 133 (1994). In the author's opinion, the follow-up studies have been largely ignored, apparently, by state legislatures working on domestic violence laws. The more pressing the problem, the less likely policymakers will be to wait until they have enough evidence to make critical decisions. Another example of trying to make policy changes based on single experiences may be welfare reform. See, e.g., WIS. STAT. § 49.90(2) (1987) (evidencing the success of Governor Thompson in Wisconsin); see generally Rogers Worthington, *Wisconsin's Big Cheese: Can Wisconsin Gov. Tommy Thompson Ride Welfare Reform into the White House?* CHI. TRIB., Apr. 10, 1994, at E8. This does not seem to be duplicated in all states under the Temporary Assistance to Needy Families Act enacted in response. See, e.g., *Sojourner A. v. N.J. Dep't of Human Servs.*, 794 A.2d 822, 834 (N.J. App. 2002); Randall J. Peach, *Judge Upholds NJ's Welfare Cap Linked to Birth of Added Children Finds No Equal Protection Violations or Interference With Right to Procreate*, 161 NJLJ 1028 (2000); Michael W. Lynch, *The Hassle Factor: Welfare Reform Turns Check Recipients into Job Seekers*, 32 REASON 18 (2000), available at <http://reason.com/0012/ml.the.shtml> (last visited Mar. 17, 2003).

21. *Empirical Work in Family Law*, 2002 ILL. L. REV. 1083, 1087-94 nn.21-68.

22. *Id.* nn.71-80.

23. Sarah H. Ramsey & Robert F. Kelly, *Using Social Science Research in Family Law Analysis and Formation: Problems and Prospects*, 3 S. CAL. INTERDISC. L.J. 631 (1994). This observation does not mean that no good theoretical work has been done in family law (including that of law professors), as should be obvious from the remainder of the discussion. Some of the policy reaction to it has come only recently. See Elizabeth Scott & Andre Derdeyn, *Symposium: The Parent-Child Relationship and the Current Cycle of Family Law Reform: Rethinking Joint Custody*, 45 OHIO ST. L.J. 455 (1984) (for example, may have provided the empirical basis for Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 CAL. L. REV. 615 (1992)). In turn, the replication principle she argues for in the *Pluralism* piece has become the default rule (the rule for when parents do not themselves come to an agreement) under the AMERICAN LAW INSTITUTE, PRINCIPLES OF FAMILY DISSOLUTION 2.09 (2001). See *Lee v. City of Richmond*, 456 F. Supp. 756, 766 (citing, "The Court concludes that the numbers involved are too small to allow a finding of disparate impact under the Griggs rule. . . . The number of different individuals who were applicants in 1973 and 1975 is only ten, four black and six white.").

control groups have characteristics that result in a final outcome that does not answer the question policymakers or enforcers really want answered.<sup>24</sup>

## II. THE EFFECT OF DIVORCE ON CHILDREN

Most people, some with more reluctance than others, accept no-fault divorce as a necessary option in modern marriage as long as only the couple itself is involved.<sup>25</sup> However, there is much more reluctance to endorse divorce without substantial thought when the marriage involves children,<sup>26</sup>

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24. See, e.g., Susan Golombok & Fiona Tasker, *Do Parents Influence the Sexual Orientation of Their Children? Findings from a Longitudinal Study of Lesbian Families*, 32 DEVELOPMENTAL PSYCHOL. 3 (1996) (studying 21 lesbian families, concluding that the fact that there are lesbian co-parents is not a concern because these children tend to do at least as well with general psychological adjustment and grades as do other children; control group was single heterosexual mothers who did not have a partner living in the household); see also Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEV. 1025, 1026, 1029 (1992) (discussing problems of control groups). The question more properly should have been how those raised by lesbian co-parents do compared to those raised by heterosexual partners. See also generally Susan J. Wells & Jean M. Agathen, Child and Fam. Res. Center, Sch. of Soc. Work: U. Ill. At Urbana-Champaign, *Evaluating the Quality of Kinship Foster Care: Final Report 32* (1999) (comparing Illinois children living with kinship caregivers with those living with unrelated foster parents rather than adoptive parents); Jill D. Berrick, *When Children Cannot Remain Home: Foster Family Care and Kinship Care*, in 8 THE FUTURE OF CHILDREN: PROTECTING CHILDREN FROM ABUSE AND NEGLECT 72, 81 (1998) (citing studies to the same effect); Sandra Beeman et al., *Kinship Foster Care in Minnesota: A Study of Three Counties*, Center for Advanced Studies in Child Welfare, University of Minnesota School of Social Work (1996) (same effect in Minnesota).

25. See, e.g., Hanoch Dagan & Carolyn Frantz, *On Marital Property* 2002 (manuscript available from author at the College of Law, University of Iowa) (arguing that no-fault divorce is necessary to support a marriage based on the virtues of community, autonomy, and equality); Herbert Jacob, *A SILENT REVOLUTION: ROUTINE POLICYMAKING AND THE TRANSFORMATION OF DIVORCE LAW IN THE UNITED STATES* (1988) (no-fault divorce needed to reduce perjury and acrimony). See Lynn D. Wardle, *The Divorce Conundrum*, 1991 BYU L. REV. 79,99-102 (1988) (arguing that the conflicts addressed by fault divorce surface in other places under no-fault); ALLEN PARKMAN, *GOOD INTENTIONS GONE AWRY* (1993) (arguing for mutual consent divorce to protect homemakers and others who have invested in lengthy marriages).

26. See VA. CODE ANN. § 20-91(9) (Michie 2002) (recognizing the difference between a six month period of separation with a written agreement required for childless marriage and a twelve month period with a written agreement required for a marriage in which there are minor children); see Elizabeth S. Scott, *Rational Decisionmaking About Marriage and Divorce*, 76 VA. L. REV. 9, 76-77 (1990) (including one such academic argument for couples with children having a longer waiting period before divorce); see also Jeffrey E. Stake, *Mandatory Planning for Divorce*, 45 VAND. L. REV. 397 (1992); see Paul Amato & B. Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 PSYCHOL. BULL. 26 (1991) (surveying the psychological literature); see also E. Mavis Hetherington et al., *What Matters? What Does Not? Five Perspectives on the Association Between Marital Transitions and Children's Adjustment*, 53 AM.



as most marriages ending in divorce do.<sup>27</sup> In fact, custody rules may have more effect on decisions of the people to divorce,<sup>28</sup> and their happiness afterwards,<sup>29</sup> than do rules about divorce grounds. However, these observations consider the happiness of the parents, not that of the children.

The stakes are so high that when it comes to assessing empirical work done on the effect of divorce on children, dueling studies by well-known psychologists<sup>30</sup> are aired in the popular press including the *New York Times*<sup>31</sup> and *Time Magazine*.<sup>32</sup> There are at least three criticisms that might be made about these two very thorough studies. One, directed to the E. Mavis Hetherington et al. book, *For Better or For Worse: Divorce Reconsidered*, deals with the question of whether the glass of no significant effect is half full or half empty. If twenty-five percent of the children of divorce did have significant problems long after the divorce, does it matter that the other seventy-five percent came out all right?<sup>33</sup> This is more a question of presentation than one of empiricism, but other criticisms are more serious. In both cases, the studies were, of necessity, conducted in a

PSYCHIATRY 167 (1998) (stating that individual vulnerability, family composition, stress, including socioeconomic disadvantage, parental distress, disrupted family process all contribute to adjustment).

27. IN 1989 AND 1990, AT LEAST 53% OF DIVORCES INVOLVED AT LEAST ONE CHILD. SALLY C. CLARKE, ADVANCE REPORT OF FINAL DIVORCE STATISTICS, 1989 AND 1990, 43 VITAL STATISTICS REPORT NO. 9, AT 2, 13, CENTER FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS, 1995.

28. See Margaret F. Brinig & Douglas W. Allen, "These Boots are Made for Walking": Why Most Divorce Filers are Women, 2 A.L. & ECON. REV. 126, 144-45 (2000) (including an empirical argument that though people with children are less likely to file for divorce than those without them, the spouse who anticipates custody will be the one to file).

29. See Margaret F. Brinig & Steven L. Nock, "I Only Want Trust," Norms, Trust and Autonomy, 32 J. SOCIO-ECONOMICS (forthcoming 2003) (for reflections on non-custodial parents' depression following divorce, showing that depression is more pronounced when a father loses custody).

30. E. Mavis Hetherington et al., *Effects of Divorce on Parents and Children*, in NONTRADITIONAL FAMILIES: PARENTING AND CHILD DEVELOPMENT 233 (Michael E. Lamb ed., 1982); E. Mavis Hetherington et al., *Long-Term Effects of Divorce and Remarriage on the Adjustment of Children*, 24 J. AM. ACAD. CHILD PSYCHIATRY 518 (1985); E. Mavis Hetherington, *Effects of Father Absence on Personality Development*, 7 DEVELOPMENTAL PSYCHOL. 313, 316 (1972).

31. Elisabeth Bumiller, *Resolute Adversary of Divorce*, N.Y. TIMES, Dec. 16, 2000, at B11.

32. Richard Corliss & Lisa McLaughlin, *Does Divorce Hurt Kids?*, TIME, Jan. 28, 2002, at 40 (discussing the contradictory findings of studies done by Judith Wallerstein and E. Mavis Hetherington); E. MAVIS HETHERINGTON & JOHN KELLY, FOR BETTER OR FOR WORSE: DIVORCE RECONSIDERED (2002) (showing most children of divorce fare quite well psychologically over the long term).

33. As the Corliss/Time article points out, that is 2.5 times the usual risk for psychological problems. Corliss & McLaughlin, *supra* note 32.

relatively small geographic area. Hetherington carefully observed children in the area surrounding Charlottesville in central Virginia,<sup>34</sup> while the study population of Wallerstein focused on the wealthy northern California area from which she drew her subjects.<sup>35</sup> Further, the study population of Wallerstein was recruited from a clinical population.<sup>36</sup> This means that we do not know what would have happened in a group of families where the parents divorced but did not seek psychological treatment for the children.<sup>37</sup> Arguably, those who experienced divorce were more troubled families whose children would have had more problems as adults at any rate.<sup>38</sup> Finally, Wallerstein has been criticized because she considered (in great depth) too few children to make her results scientifically robust.<sup>39</sup>

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34. See, e.g., Hetherington, *Effects of Father*, *supra* note 30, at 314 (three groups of 24 girls who regularly attended a community recreation center); Hetherington et al., *Long-Term Effects*, *supra* note 30, at 519 (residential parents and children of 124 of original families who were available and willing to participate in a 60-year follow up study; well-educated, middle class, white sample). Wallerstein, Lewis and Blakeslee's *Unexpected Legacy of Divorce* involved a study of 121 Bay Area children whose parents had recently divorced. WALLERSTEIN ET AL., *THE UNEXPECTED LEGACY*, *infra* note 36. They were recruited in 1971 from middle class families and were carefully prescreened so that everyone chosen was doing reasonably well at school and was developmentally on target during the predivorce years. *Id.* at xxvi.

35. Wallerstein's subjects were drawn from Marin County, California. Diana Bagnall, *Divorce: Split Ends* 120 BULL. 33 (2002).

36. JUDITH S. WALLERSTEIN ET AL., *THE UNEXPECTED LEGACY OF DIVORCE: A 25 YEAR LANDMARK STUDY* (2000). This study was criticized methodologically. Walter Kirn, *Should You Stay Together for the Kids?*, TIME, Sept. 25, 2000, at 74; Andrew J. Cherlin, *Review of the Unexpected Legacy of Divorce: A 25 Year Landmark Study*, 271 NATION 62 (2000); Rosalind Chait Barnett & Caryl Rivers, *Effects of Divorce on Kids Not Always Devastating*, ORLANDO SENTINEL, Mar. 27, 2001, at A9. JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, *SECOND CHANCES: MEN, WOMEN, AND CHILDREN A DECADE AFTER DIVORCE* (1989) (including earlier work); JUDITH S. WALLERSTEIN & JOAN B. KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* (1980); Judith S. Wallerstein, *The Long-Term Effects of Divorce on Children: A Review*, 30 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 349 (1991); Judith Wallerstein & Joan B. Kelly, *Fathers and Children*, in *ANTHOLOGY ON FATHERHOOD* (S. Cath et al. eds., 1982).

37. Chalandra M. Bryant et al., *The Influence of In-Laws on Change in Marital Status*, 63 J. MARRIAGE & FAM. 614, 617 (2001).

38. As noted, Wallerstein says she prescreened for this. See *supra* note 34.

39. Wallerstein's latest book is based on in-depth interviews with 60 children, while Hetherington's comes from a group of larger studies.

### III. THE EFFECT OF BEING RAISED IN SAME-SEX HOUSEHOLDS ON CHILDREN

Another area of intense public debate involves whether to sanction same-sex marriages;<sup>40</sup> and the adoption, by a same-sex partner, of the other same-sex partner's child.<sup>41</sup> This issue became the critical divide for experts testifying on both sides of the Canadian same-sex marriage case, *Halpern v. Canada*.<sup>42</sup> On the one hand, Professors Judith Stacey and Timothy Biblarz argued (citing a large number of studies)<sup>43</sup> that same-sex parenting produced no ill-effects on the children. The witness for the government, Professor Steven Nock, criticized these studies as inclusive, and concluded

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40. See *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999); *Halpern v. Canada*, 115 ACWS 3d 650 (2002) (restricting marriage to heterosexual couples violates Canadian Charter of Rights and Liberties).

41. England apparently just turned down same-sex adoption:

LONDON, OCT. 16, 2002 (Zenit.org) - The British House of Lords rejected plans to allow homosexual and unmarried heterosexual couples to adopt children, BBC reported.

Members of the lower House of Commons have already agreed to end the present system that allows only married couples and single people to adopt. But the Lords voted 196-162 to maintain the ban on unmarried couples, BBC said.

The bill will now return to the Commons, which is expected to overturn the move. Supporters say it's needed because of the number of children who need homes, but opponents insist it is not right to expose youngsters to irregular situations.

Zenit web site, available at [www.zenit.org](http://www.zenit.org) (last visited Apr. 10, 2003) (on file with author). This is also the position of religious leaders in Africa:

ROME, OCT. 1, 2002 (Zenit.org) - The Symposium of Episcopal Conferences of Africa and Madagascar rejected the adoption of minors by homosexual couples, a move recently authorized by a judge in South Africa.

Zenit web site, available at <http://www.zenit.org> (last visited Apr. 28, 2003) (on file with author).

42. See *Halpern*, 115 ACWS 3d at 650.

43. See generally Judith Stacey & Timothy J. Biblarz, (How) Does the Sexual Orientation of Parents Matter? 66 AM. SOC. REV. 159 (2001) (relying on research discussed at length in reviewing twenty-one studies on the effect of lesbian co-parenting on the gender behavior of children, and concluding that studies show this type of family structure did not matter for most purposes, but do show some differences in the children's sexual preferences and behaviors.).

that the effect of same-sex parenting was generally unknown.<sup>44</sup> Taking a much stronger stand (though not in the Canadian lawsuit), Lynn Wardle concluded, upon his review of the work done, that same-sex parenting encouraged more same-sex ideation and conduct in children.<sup>45</sup> My point here is not to say who is on the right side of the question, but only that a decision made upon a sound scientific basis would clearly be preferable to speculation.<sup>46</sup> From a methodological perspective, perhaps the best study

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44. Factum of Respondent, Attorney General of Canada, Court Ride 39/2001 (Ontario Superior Court of Justice), at 11 & n.30 (referring to Respondent's Record vol. 5, tbl. L, pp. 1560-64, paras. 115-122, 135, 140, available at <http://www.samesexmarriage.ca/legal/> (last visited Apr. 28, 2003) (on file with author).

45. See generally Lynn D. Wardle, *The Potential Impact of Homosexual Parenting on Children*, 1997 U. ILL. L. REV. 833, 839 (showing methodologically flawed and inadequate social science studies ignored increased development of homosexual orientation in children, emotional, and cognitive disadvantages caused by absence of opposite sex parents and economic security). Wardle criticizes small sample size. *Id.* at 846 (showing most studies involve sample of a few dozen); *id.* at 846-47 (relying on samples of convenience recruited from affinity groups that might not be representative); *id.* at 847-48 (using noncomparable control groups); *id.* at 847 (showing same-sex couples compared to heterosexual unmarried parents who might not have partner living with them rather than married couple); *id.* at 848 (controlling for other variables that may influence parenting success or child well-being, such as income and education); *id.* at 849 (showing the lack of longitudinal studies); *id.* at 850 (showing lack of consideration of subsequent sexual orientation of children). Wardle also criticizes the lack of concern over differences between single-sex and dual-gender parenting "because there are gender-linked differences in child-rearing skills. . . ." *Id.* at 857.

46. The best quality study might look like the ongoing "Fragile Families" study undertaken in large metropolitan areas by Sara McLanahan and Irvin Garfinkel. In the case of same-sex parenting, a large enough population would be gathered, based upon random sampling, that at least 100 children being raised by same-sex parents would participate. Given the small percentage of same-sex couples in the general population, this would initially require (if the estimates of 2.5% to 5% have same-sex orientation is accurate) a sample of at least 10,000 parents, since many would drop out during the study if it were to be longitudinal. In order to create similar groups, some careful thought should be given about whether these should all be adopted children (since in order to have biological children, surrogates or in vitro fertilization or parents who had once lived in heterosexual relationships would be required). In an ideal world, a study would be done on each type (biological and non-biological). Then there would need to be independent variables controlling for socioeconomic status (income, education, age of parents, and race), number of siblings, stability of the parents' relationship, and the presence of two parents irrespective of gender (or only one parent in all cases). The closest study methodologically to the one I would propose, which does measure child well-being, is ADDHEALTH, the National Longitudinal Study of Adolescent Health. Data collection for ADDHEALTH began in the early 1990s, and in that data, only a very small (less than 10) number of the parents were identified as same-sex. Susan Golombok et al., *Children raised in Fatherless Families from Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers*, 38 J. CHILD PSYCHOL. PSYCHIATRY 783 (1997) (showing one study that attempts to remove the effects of parental breakup on the children). This study is comparing 30 lesbian mothers, half living as

to date was one conducted by Susan Golombok and Fiona Tasker<sup>47</sup> working in Great Britain. Golombok and Tasker compared groups of children living in lesbian co-parent households with children conceived outside of marriage and living with their unmarried mothers. These children were followed from early childhood until early adulthood.<sup>48</sup> The study controlled for socioeconomic status and looked at child-related outcomes including such things as college attendance,<sup>49</sup> sexual orientation,<sup>50</sup> sexual relationships<sup>51</sup> and, in a later study,<sup>52</sup> relationships with parents, feelings, intelligence, and lack of emotional disorders. However, even in this well-conducted study, a critic could point out methodological problems. For instance, an obvious one is the small sample size (25 in one group, 21 in the other).<sup>53</sup> Another is the way the participants were drawn.<sup>54</sup> Still another

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single parents, half with partners (10 of whom had been co-mothers since birth) with 42 single heterosexual mothers who had been raised since the first year of life without the presence of a father or father-figure in the home and 42 two-parent heterosexual families stratified "to maximise comparability with the other family types with respect to the age and sex of the children, and the age of the mother." *Id.* at 785. No controls for socioeconomic strata are noted in the study. All the lesbian and the heterosexual single mother participants were volunteers while the heterosexual couples were chosen randomly. *Id.*

47. Golombok & Tasker, *supra* note 24, at 3; Stacey & Biblarz, *supra* note 43, at 168 (praising Golombok & Tasker study for their "unique long-term, longitudinal design").

48. Golombok & Tasker, *supra* note 24, at 5.

49. *Id.* at 6 (noting that 14/25 of those raised by lesbian parents went to college; compared with 7/21 of those raised in heterosexual single parent households).

50. Because of the small sample, there was no statistically significant difference. *Id.* at 7. Two of the 25 were raised in lesbian households self-identified as lesbian, compared with 0 of the 21 heterosexual children. *Id.*

51. Here there were statistically significant differences. Of the 25 children of lesbians, 14/25 felt they might consider a sexual relationship with someone of the same sex in the future ( $p = .003$ ). *Id.* Only three of the 21 children of heterosexual single parents felt they might. *Id.* There was also a statistically significant ( $p = .022$ ) difference in answers to the questions about actual involvement in a same-sex relationship. *Id.* Six out of twenty-five children raised by a lesbian parent had been intimately involved with a person of the same sex, compared to zero of the twenty-one children of heterosexual single parents. *Id.*

52. Golombok et al., *supra* note 46, at 783 (finding that children in the father absent families were no more likely to develop behavioral problems, and felt just as accepted by their mother and by peers as children in families where the father lived in the home; there were no differences between the lesbian and heterosexual mother headed families).

53. The standard of review for public policy may not be the same as for a finding of legal liability. *Lee v. City of Richmond*, 456 F. Supp. 756 (1978) (in which a black woman filed a charge of discriminatory employment practices under Title VII against the Richmond city government). The *Lee* court denied her disparate impact claim under Title VII, where there were three black and three white applicants for promotion in 1973 and no black and two white applicants were selected and there were four black and four white applicants for promotion in 1975 and no black and two white applicants were selected. *Id.* The *Lee* court concluded that "the

problem was that the control group was single mothers without a heterosexual partner in household at the time of the study (being compared to at least some two-adult lesbian households).<sup>55</sup> Some studies also have problems in defining the dependent variables: happiness, sexual identity, sexual experimentation, income, grades, etc.<sup>56</sup>

#### IV. THE EFFECT OF TRANSRACIAL ADOPTION ON CHILDREN

One of the most hotly contested topics in family law over the last thirty years<sup>57</sup> involves transracial adoption.<sup>58</sup> The studies conducted twenty years ago by Professor Rita Simon that supported transracial adoption suffered

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numbers involved are too small to allow a finding of disparate impact under the Griggs rule." Department of Justice Guidelines "do not require a user . . . to conduct a study of fairness on a sample of less than thirty (30) persons for each group involved in the study." *Id.*

54. Golombok and Tasker's participants were identified based on advertisements in lesbian/single parent publications and through contacts with lesbian/single parent organizations. Golombok & Tasker, *supra* note 24, at 5. This problem resembles that of the Wallerstein study of the children of divorce discussed above at *infra* Section II. *See also supra* note 36.

55. Golombok & Tasker, *supra* note 24, at 5. The lesbian parents had their current or most recent relationships with women. The single parent had a heterosexual relationship as their most recent but no man living with them at the time of the original study. *Id.* at 5. The influence of co-resident men in upbringing is ruled out by the study, but not that of having two as opposed to one parent-figure. *Id.* All the children involved were conceived from heterosexual relationships, which might present an additional problem for extrapolating from the study (since at least some gay men are exclusively involved with men and since all the children might have suffered compared to the norm by the breakup of the family of origin). As we will discuss shortly, bringing up children in a single parent household introduces more depression and other negative characteristics than does bringing them up out of wedlock. Margaret F. Brinig & Steven L. Nock, *How Much Does Legal Status Matter? Race, Kinship Care and Adoption*, 36 FAM. L.Q. 449 (2002).

56. LYNN D. WARDLE ET AL. MARRIAGE AND SAME-SEX UNIONS: A DEBATE (2003).

57. *Palmore v. Sidoti*, 466 U.S. 429 (1984) (for one analogous case of the U.S. Supreme Court where the race of a second husband cannot be the criterion for divesting a birth mother of custody of her child). A more recent case involving the placement of an African-American child with a white foster mother who eventually wished to adopt is *In re: Adoption No. 12612* in Circuit Court for Montgomery County, 725 A.2d 1037 (Md. 1999). Federal legislation forbids race-based placement decisions. The Multiethnic Placement Act, 108 Stat. 4056 (1994).

58. *See* Margaret F. Brinig, *Moving Toward a First-Best World: Minnesota's Position on Multiethnic Adoptions*, 28 WM. MITCHELL L. REV. 553 (2001) (where I have written about the topic myself and discussed the issues involved, but not the methodology of studies). Minnesota may have consistently stuck to racial matching because of its homogeneous population or greater experience with carving out exceptions for racial subgroups gleaned through experience with the Indian Child Welfare Act. Since children need stability and a sense of identity, even transracial adoption should be preferred over foster care. *Id.*

from the problem discussed above of a small sample size.<sup>59</sup> The study also measured the external effects on child well-being of transracial adoptees,<sup>60</sup> but not the internal ones, such as depression, that might address the critical issues of the preparedness of a child to encounter racial society.<sup>61</sup> When compared to foster care, children seemed better off. However, were the adopted and foster children the same age when they left their mothers (or when they were observed)? Had they had the same experiences in their birth families?<sup>62</sup> Had they had similar experiences following separation from their birth families?<sup>63</sup> These problems of control groups and confounding

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59. See RITA J. SIMON & HOWARD ALTSTEIN, *TRANSRACIAL ADOPTION* 29 (1977); LUCILLE G. GROW & DEBORAH SHAPIRO, *BLACK CHILDREN — WHITE PARENTS: A STUDY OF TRANSRACIAL ADOPTION* 9 (1974); RITA SIMON & HOWARD ALTSTEIN, *ADOPTION, RACE AND IDENTITY, FROM INFANCY THROUGH ADOLESCENCE* 1-2 (1992) (including follow-up studies); Rudolph Alexander, Jr., & Carla M. Curtis, *A Review of Empirical Research Involving the Transracial Adoption of African American Children*, 22 J. BLACK PSYCHOL. 223, 233 (1996), at 231-32 (criticizing studies for lack of control groups, use of cross-tabulation and correlation rather than multivariate regressions, sampling methods).

60. Rita J. Simon, *Transracial Adoptions: Does the Law Matter?* AM. EXPERIMENT Q. 85, 90 (Fall 1999); RITA J. SIMON & RHONDA M. ROORDA, *IN THEIR OWN VOICES: TRANSRACIAL ADOPTEEES TELL THEIR STORIES* 383 (2000) (including narratives).

61. This has, to some extent, been remedied by their later work. RITA J. SIMON & RHONDA M. ROORDA, *IN THEIR OWN VOICES: TRANSRACIAL ADOPTEEES TELL THEIR STORIES* 383 (2000) (including narratives). See SANDRA PATTON, *BIRTHMARKS: TRANSRACIAL ADOPTION IN CONTEMPORARY AMERICA* 33-35 (2000).

62. Children adopted at birth have far fewer problems than those who spend significant time in foster care. They will still have inherited problems, but unless "switched on" by the adoptive parents, many will grow up in an entirely typical manner. Xiaojia Ge & Remi J. Cadoret, *The Developmental Interface Between Nature and Nurture: A Mutual Influence Model of Child Antisocial Behavior and Parent Behaviors*, 32 DEVELOPMENTAL PSYCHOL. 574 (1996).

63. Placement in numerous foster homes, or abuse following unsuccessful reunions, both indicate less than good outcomes. DAVID FANSHEL ET AL., *FOSTER CHILDREN IN A LIFE COURSE PERSPECTIVE* 77, 94 (1990) (describing the outcomes of the Casey program and explaining that those who were less troubled while entering care did better with their substitute caretakers); ELIZABETH BARTHOLET, *NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE* 81 (1999) (stating "If left in foster or institutional care, studies indicate that most of them will do better than children who are returned to their parents but less well than children who are adopted, or children in the general population."); NATIONAL CONFERENCE OF STATE LEGISLATURES, *EXECUTIVE SUMMARY, A PLACE TO CALL HOME: ADOPTION AND GUARDIANSHIP FOR CHILDREN IN FOSTER CARE* (2001), available at <http://www.ncsl.org/programs/pubs/bkfst2.htm> (last visited Apr. 10, 2003). Foster care is costly in social as well as in fiscal terms. *Id.* Child welfare experts generally agree that prolonged stays in foster care and frequent moves from one foster home to another are not conducive to a child's healthy development. *Id.* Children who grow up in foster care often exhibit emotional and behavioral problems that contribute to expensive social problems such as school failure, teen pregnancy, homelessness, unemployment, criminal activity, incarceration, and welfare dependency. *Id.* In addition to these indirect costs, states and the federal government spend approximately \$7 billion on out-of-home

causation give critics room to object to what otherwise seems like flawless social science.

## V. KINSHIP CARE VERSUS ADOPTION

The same general set of problems carries over to a yet more contemporary question: how kindly should child welfare workers look upon kinship foster care?<sup>64</sup> The studies so far have considered how kinship care measures up with third party (unrelated) foster care but not to adoption by the kin-caregiver.<sup>65</sup> Most studies look at results for the foster parents and the social services people who work with children, and not the actual children.<sup>66</sup> In particular, they do not address the other-than-placement outcomes for these children.<sup>67</sup>

While we began by comparing kinship care to transracial adoption, data limitations (the small number of black children adopted by white parents) in our sample have moved us instead to compare foster care with adoption for all children. For the duration of the study (the National Longitudinal Study of Adolescent Health), conducted at the School for Population

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placement every year, which exceeds the amount spent on all other child welfare services combined, including child abuse prevention, child protection, family support and adoption services. *Id.*

64. Kinship care means permanent placement with extended family members who usually will not adopt the child. See Charlotte Ingram, *Kinship Care: From Last Resort to First Choice*, 75 CHILD WELFARE 550 (1996) (for a good general description). Ingram defines kinship care as "the full-time nurturing and protection of children who must be separated from their parents by relatives, members of their tribes or clans, godparents, stepparents, or other adults who have a kinship bond with a child." *Id.*; Brinig & Nock, *supra* note 55 (describe kinship care at some length); U.S. Department of Health and Human Services, Children's Bureau, Part I, Research Review at vi, (1999) (approximately 20,000 children were in kinship care in 1997. This amounts to twenty-nine percent of all foster children.).

65. See Beemen et al., *supra* note 24; Ingram, *supra* note 64, at 550-66. Children in kinship care are also less likely to reunify with their birthparents than those in foster family care. Berrick, *supra* note 24, at 72, 81 (citing studies). African American children in kinship homes supported by a foster care subsidy remain in care approximately twice as long as all other children. *Id.* at 82. Howard Dubowitz & Susan Feigelman, *A Profile of Kinship Care*, 72 CHILD WELFARE 153 (1993); SUSAN J. WELLS & JEAN M. AGATHEN, CHILD AND FAM. RES. CENTER, SCH. OF SOC. WORK: U. Ill. At Urbana-Champaign, *Evaluating the Quality of Kinship Foster Care: Final Report* 45 (1999).

66. See, e.g., Berrick, *supra* note 24, at 81; Beeman et al., *supra* note 24; U.S. Department of Health and Human Services, *supra* note 64.

67. See Brinig & Nock, *supra* note 55 (looking at child centered outcomes for adolescents in various living situations, including depression, morbidity, drug usage (alcohol, tobacco and marijuana) and juvenile delinquency).



Studies of University of North Carolina,<sup>68</sup> many of the black children who were in foster care, at least half of them nationally, were being cared for by kin. For these children, the comparison was between kinship care and adoption (by black parents, related or not). What we have found empirically is that foster care does not compare favorably with adoption for any children, regardless of race. Adopted children, regardless of race, perform about as well as children remaining with biological families. But foster children do worse on both internal (depression) and external (substance abuse, school performance, juvenile delinquency and morbidity) measures. The differences are statistically significant and the coefficients are large.<sup>69</sup>

We also discovered that, to our surprise, kinship care has different consequences for children of different racial (or cultural) groups. For African-American children, kinship care cannot be statistically distinguished from living with a birth family or being adopted.<sup>70</sup> Not surprisingly, it is African-Americans who claim a long tradition of reliance on extended families in times of crisis. The children identified themselves as living in kinship care if they were not living with a parent, but indicated that either their aunt or their grandmother took the place of their mother.<sup>71</sup>

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68. J. Richard Udry & Peter Bearman, *The National Survey of Adolescent Health*, from the Carolina Population Center, UNC, 1994-95. The description, found on their web site, reads as follows:

Add Health is a school-based study of the health-related behaviors of adolescents in grades 7-12. It has been designed to explore the causes of these behaviors, with an emphasis on the influence of social context.

That is, Add Health postulates that families, friends, schools and communities play roles in the lives of adolescents that may encourage healthy choices of activities or may lead to unhealthy, self-destructive behaviors. Data to support or refute this theory were collected in surveys of students, parents, and school administrators.

The Add Health study was funded by the National Institute of Child Health and Human Development (NICHD) and 17 other federal agencies. Fieldwork was conducted by the National Opinion Research Center of the University of Chicago. A description of the research design can be found at <http://www.cpc.unc.edu/projects/addhealth/resdesign/index.htm>.

The study URL, available at <http://www.cpc.unc.edu/projects/addhealth/datasets.html> (last visited Mar. 17, 2003).

69. Brinig & Nock, *supra* note 55, at 473.

70. *Id.* at 474.

71. Children who mentioned no biological, foster, or adopted parent were asked if anyone in the household acted in that role. Grandparents and aunts were the overwhelming choices in such circumstances. We have designated all 472 such situations as "kinship care." We had no way of knowing whether the living situation was formalized through a guardianship designation or

For other racial (or cultural) groups, kinship care effects resemble those of foster care, a much less cheerful picture.<sup>72</sup> These children, depending on their race, were: more depressed; more likely to be delinquent; more likely to use alcohol, tobacco, and marijuana; and more likely to fear early death or being killed than children living with birth or adoptive parents.

## VI. CONCLUSIONS

Our study leads to quite different conclusions than those comparing kinship care and foster care. It suggests that the provision of services and financial support for intact or extended families in the African-American community ought to be preferred to more expensive and intrusive forms of state involvement.<sup>73</sup> However, it also suggests that extension of the kinship care idea to cultural groups that have no experience with it should not be preferred to adoption.<sup>74</sup>

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through payments to the kin caregivers through the foster care system. We know, however, that the adolescents we identified as living with kin did not describe their relationships primarily as "foster care" or "guardianship."

72. Brinig & Nock, *supra* note 55, at 474 & tbl. 3.

73. Dorothy H. Roberts, *Kinship Care and the Price of State Support for Children*, 76 CHI.-KENT L. REV. 1619, 1621-22 (2001) (corresponding solution).

74. Some states, like Minnesota, seem to be providing kinship care to an increasingly large proportion of children entering the child welfare system. Beeman et al., *supra* note 24. Note that "the majority of children in both types of care were children of color, although the proportion was slightly higher in kinship foster care in Hennepin County." *Id.* at iii. However, in Hennepin County, 18.4% of the American Indian children (175) were placed in kinship care while 17.4% of the white children (166) were in kinship care situations; while 98.3% of the 58 kinship placements in Anoka County were white. *Id.*; Nancy Goldhill, *Ties That Bind: The Impact of Psychological and Legal Debates on the Child Welfare System*, 22 N.Y.U. REV. L. & SOC. CHANGE 295, 303 (1996) (noting disapproval of kinship care for all children may be contrary to the argument of placing children up for adoption who cannot quickly return home improperly "measure(s) permanency by the legal label attached to their situation."); and with Naomi Cahn, *Children's Interests in a Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO ST. L.J. 1189, 1205 (1999).

A related danger of this provision is that financially-needy states will move too quickly to make children available for adoption in order to receive the incentive bonus. There is no corresponding incentive for successful family reunification. In addition, adoption is not always preferable to foster care. As the legislation recognizes, when children are placed in kinship care, there need be no rush to adoption. For older children, foster care may provide an appropriate balance between safety and connection to their families of origin. Where foster care provides support for reunification, then adoption is certainly not the best solution.

One real value of a conference like "Defending Childhood: Developing a Child-Centered Law and Policy Agenda" is the promotion of interdisciplinary discourse. Academics and practitioners should be able to ascertain, for this critical area in which we all work, what the questions are that most need to be answered, how we might go about getting the information we would like to see, and who could best obtain it.

What I have been describing here demonstrates that public policy decisions could be made more wisely if supported beforehand by careful studies. When the inevitable mistakes are made, careful follow-up studies would allow them to be corrected much more swiftly (at lower financial cost and with fewer negative effects on children).

I have also tried to point out the most common flaws in social science research about children. As we design new projects, we should be sensitive to the reality that what we think we have found may not hold true for other groups. Research designs must employ large and random sample sizes, identify the best control group, and interpose (and collect data about) the most relevant independent variables.