CHILDREN IN DIVORCE: SOME FURTHER DATA

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INTRODUCTION

This paper presents the main findings of a small research project conducted at the Centre for Socio-Legal Studies, Wolfson College, Oxford. It was intended to complement the large scale survey of the manner of disposition of the custody issue after divorce based on an examination of court records and published in 1977.[1] That study was based on a representative sample of divorce cases involving children under 18 filed during 1974 in ten courts in England and Wales and in the Court Session in Edinburgh. A total of 855 cases was examined. The data yielded information on the proposals and patterns of arrangement made by parties for their children on divorce and the courts' responses to them. Some of this will be referred to shortly.

An outstanding finding of that study was, when the totality of divorce cases is considered, how insignificant the role of the courts appears to be. Only 6.9% of the English cases were classified as being contested on custody or access at time of hearing, but this may be an underestimate.[2] Of the uncontested cases, the court order changed the children's residential status quo in only 0.6%(4) cases: in all the rest, it simply confirmed the arrangements agreed between the parties. In only two of the 39 cases where custody was considered contested was a child moved from one parent to the other without the agreement of the parents.

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1. John Eekelaar and Eric Clive, with Karen Clarke and Susan Raikes, Custody after Divorce (SSRC Centre for Socio-Legal Sutdies, 1977); see also I.F.G.Baxter and Mary Eberts (eds.) The Child and the Courts (1978), ch.1.
2. In a similar, though smaller scale study, Susan Maidment found 13% of cases to be contested on these issues: "A Study in Child Custody" (1976) Family Law 195 and 236 (referred to as "the Keele study"). The difficulty lies partly in defining what counts as a "contest" and partly in the limited information contained in the documents.

But despite the relative smallness of the number of cases which are contested and (particularly) which result in a court imposed solution, they are still significant in absolute terms. It may be estimated that, in 1979, some 101,837 divorce cases involved one or more children under 18[3] of which, on an assumption of contest in about 10% of cases,[4] indicates an annual incidence of some 10,000 of such disputes. These are notorious in terms of emotional cost and professional time. What the criteria for their resolution should be is uncertain. Indeed, the very appropriateness of a court-centred process of their resolution is in question.

To obtain information about the 'difficult' divorce cases in adequate depth poses considerable methodological problems. Examination of a population obtained by self-referral or from persons who have sought clinical or other therapy may yield valuable results, but forfeits any claim to provide a balanced picture of the overall scene.[5] A random sample of people contacted at the divorce court will yield a more representative picture, though shortage of research personnel is likely to limit the sample to a particular locality. This method was adopted by Mervyn Murch who interviewed 102 petitioners in this way and his findings have been published after the present research was completed.[6] Murch used a second sample of 41 couples known to divorce court welfare officers in three counties. The present study also sought its population through divorce court welfare officers. Our first study had shown that, in 11.3% of all the cases, reference had been made to a divorce court welfare officer for investigation and report to the court. This was done in over half of the

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3. See below, p.18
4. See note 2 above and associated text.
5. Thus the major American study reached its population through referrals by parents and clinicians: J.S. Wallerstein and J.B. Kelly, Surviving the Breakup (1980).
6. Mervyn Murch, Justice and Welfare in Divorce (1980.

contested cases. Welfare reports were more likely to be sought in the following cases: the larger the number of children involved; where a child had moved between parents after separation and prior to petition; where it was proposed that the child's residence should be changed; if non-relatives (other than a cohabitee) were in the household; if the children were split between households; where the children were living with persons other than a parent.

A population reached through divorce court welfare officers is therefore a pre-selected one; but the selection will be made on the basis of a perception that the cases contain elements indicative that the family breakdown contains higher risks of hardship or disruption to the children than 'normal' cases. The sample will also be adequately representative of contested cases. Since we not only wanted to find out about these cases themselves in some detail, but also of the role of welfare officers generally, we sought to obtain a representative sample of cases referred to the officers. Data was to be obtained by questionnaire, and to achieve our purpose, we asked the liaison officer (who allocates referred cases among the welfare officers) to supply a questionnaire each time he allocated a case (irrespective of its nature) to a different officer. No officer would receive a second (or subsequent) questionnaire until all participating officers had received one. This not only spread the load among the officers; it also achieved the requisite element of representativeness we sought.

The data was obtained by asking each officer to record information about the case and his own response to it on the questionnaire supplied. It was intended that he should do this when (or shortly after) he wrote his report and that he should return the completed questionnaire to the liaison officer together with his report. The liaison officer would

complete a separate questionnaire at a later stage indicating what the final outcome of the case was. It is obvious that qualitative information about cases obtained by this method is, strictly, data on the officers' perceptions and is accordingly liable to variation according to the subjective interpretations given to the facts by individual officers. But we must remember that a welfare officer is in a unique position to make judgments about the family. In nearly two-thirds of the investigations the officer spent more than ten hours on the case, and often considerably longer. Researchers can seldom devote so much time to their subjects.

Two hundred and ninety-five questionnaires were distributed to liaison offers during June and July 1978. By July 1980, 122 completed questionnaires had been returned, and these form the basis of the study. In 100 cases information was also returned about the hearing and its outcome. Questionnaires were returned from 24 separate probation areas.[7] The distribution between areas was as follows: 8, 21, 10, 8, 3, 2, 14, 1, 1, 15, 6, 6, 1, 1, 1, 1, 1, 10, 1, 1, 5, 1, 1, 3. The areas contained a wide range of social and demographic characteristics, but were all situated in the south-western and west midlands regions of England. It was, unfortunately, not possible to include the London area, which is served by a specialist divorce court welfare service. This spread seems sufficient to support a claim to the adequacy of the representative nature of the sample. But the methodology and the results obtained have their limitations and the research must be seen as being of modest scope, endeavouring to answer some of the questions left unanswered by Custody after Divorce (hereafter referred to as CAD), and, in particular must be

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7. The divorce court welfare service outside London is provided by the Probation and After-Care Service.

read in the light of Murch's more extensive research, with respect to which it can provide some supplemental or supportive evidence.

Some unanswered questions

There was evidence in CAD that a party on whom a petition had been served on the 'fact' of unreasonable behaviour[8] was more likely to adopt an initially hostile stance than if another 'fact' was chosen, and that this was reflected in the likelihood that a custody or access issue might be contested.[9] Would this finding be confirmed by an examination of cases referred to welfare officers? The information about the arrangements presently pertaining regarding the children on which the results of CAD were based was (mostly) that contained in the Statement of Arrangements for Children which must be filed with the petition.[10] It is also an important (though now not the sole)[11] source of information for the court.

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8. The sole ground upon which divorce can be granted in England and Wales is that the marriage has irretrievably broken down. But this can be established only by the allegation of the following five fact-situations:
(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent (popularly known as "unreasonable behaviour");
(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the petition;
(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted;
(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

9. CAD, paras. 1. 4, 5.

10. Matrimonial Causes Rules 1977, r.8(2), Form 4.

11. Under the "special procedure", introduced in 1973, a petition which is undefended is examined first by a registrar and, if he is satisfied that the facts alleged are established, he issues a certificate to that effect and the judge is bound, accordingly, to grant a decree nisi. When, in 1977, the procedure was extended to cases involving children, it was provided that: "Unless in the circumstances of the particular case the court thinks it inappropriate to do so, the registrar shall fix an appointment for consideration by a judge in chambers of the arrangements for the children and send notice of the appointment to the petitioner and respondent": Matrimonial Causes Rules 1977, r.48(4)

How accurate is it? The officers were asked to make a check on this. CAD revealed the disturbing fact that in nearly one-third of all cases, access was stated not to be taking place at all at the time the petition was filed. There was little difference between contested and uncontested cases on this matter. It seemed important to try to discover, from the welfare officers, what the reasons were for this breakdwon in contact between the children and one of their parents. CAD had been unable to elicit any information about the sources of financial support of children when families break up and it was thought that this, too, was a matter on which the welfare officers could provide some information. Nor could CAD obtain any indication about the condition of the children involved in the divorce, what their relationships with their parents were like and whether their wishes had been consulted. No significant information on this question is available in the United Kingdom,[12] and, although our contribution could only be slight, any advance in knowledge in this direction is valuable. Finally, reference has already been made to the outstanding finding of CAD[13] concerning the paramountcy of the status quo in the eventual outcome of the cases. It seemed important to see whether this finding would be confirmed in the welfare officer cases and how far the officers themselves acted upon that principle. If the principle was confirmed, it also seemed important to try to discover more about those cases where the principle was departed from. In particular, in view of growing controversy on the topic,[14] how far both welfare officers and courts

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12. Murch's research concentrates mainly on the reactions of the parents to the divorce process.
13. Confirmed by the Keele study: see note 2. And see Susan Maidment, "Child Custody: Do Fathers get a Raw Deal?"
14. Encouraged by the 1980 film, "Kramer v. Kramer." And see Susan Maidment, note 13 above.

approached the question of the exercise of care and control over children by their fathers.

Some new questions

By Rule 95 of the Matrimonial Causes Rules 1977

> (1) A judge or the registrar may at any time refer to a court welfare officer for investigation and report any matter arising in matrimonial proceedings which concerns the welfare of a child.
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> (2) Without prejudice to paragraph (1), any party to an application to which Rule 92 applies[15] may, before the application is heard, request the registrar to call for a report from a court welfare officer on any matter arising in the application, and if the registrar is satisfied that the other parties to the application consent and that sufficient information is available to enable the officer to carry out the investigation, the registrar may refer the matter to a court welfare officer for investigation and report before the hearing.

It will be observed that the remit of the welfare officer is to investigate the case and report to the court. This function is intended to re-inforce the protective role of the court, which is underlined by the provision that a judge shall not make a decree absolute unless he is satisfied that the arrangements for the children are satisfactory or the best that can be made in the circumstances.[16] However, one of the most significant developments in family law in recent years has been the growing appreciation of the importance of the conciliation process in divorce cases. This was indicated in CAD in relation to the finding concerning the limited role the court can play in altering the arrangements agreed between the parties. If this is true then, it was argued [17] that the concept of the court employing the welfare officer as an investigator is called into question. For no matter how many more 'facts' the officer unearths and

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15. That is, an application concerning custody of or access to children.
16. Matrimonial Causes Act 1973, s.41(1)(b)(i).
17. CAD, para.13.26.

puts before the court, the limitations on the court in influencing the outcome remain. The officer might be more profitably employed in helping the parties to deal with their problems, either by providing them with practical advice relevant to their new needs, or (or in addition) by bringing about an agreed solution between the parties regarding their differences. These questions have been substantially explored by Murch, who presents a convincing case for restructuring the divorce process so as to separate the 'counselling' and 'investigative' role of the welfare officers and, most importantly, to enable the counselling process to take place at a much earlier stage than can usually happen at present. His suggestions are grounded in the practical experience of an experimental scheme set up for a three year period in Bristol whereby solicitors refer potential divorce clients to a specialist conciliation service before proceedings are commenced. Preliminary reports suggest that valuable results can be achieved by such intervention in those (relatively) early stages.[18]

In spite of the formal remit to welfare officers under the Matrimonial Causes Rules, there is a growing appreciation in the probation service of the importance of the counselling role.[19] Apart from Murch's data (which was obtained in 1973 and 1974), there is little evidence on the evolution of the role of welfare officers and its impact on the cases they deal with. It was the intention of the present research to obtain further information on these matters.

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18. Gwyn Davies, Research on Bristol Courts Family Conciliation Service.
19. See especially David Millard, "The Divorce Court Welfare Inquiry" (1977) 141 J.P. 765; Martin Wilkinson, Children and Divorce, 1981

THE FINDINGS

Cases which were contested

Of the 122 cases, 54 (44.2%) were recorded as being contested as to custody when the officer made contact with the family and 24 (19.6%) on access alone. In order to discover whether there is any relationship between the 'fact' for divorce chosen to establish irretrievable breakdown[20] and the likelihood of disputes over the children, it is necessary to compare the distribution between the facts chosen in the project sample with the national distribution between these facts. This is shown in Table 1.

Table 1 : Divorce Facts Alleged

Grounds	All Project cases n = 122	Contested Project cases n = 78	All petitions		All decrees nisi	
			1978 n=162,450	1979 n=162,857	1978 n=151,533	1979 n=139,503
Adultery %	28.6	33.3	26.6	27.0	28.1	29.1
Unreasonable behaviour %	53.2	51.2	34.6	37.3	31.3	32.4
Desertion %	3.3	1.3	3.4	2.7	3.5	2.9
Two years separation & consent %	9.8	2.7	24.7	23.8	26.2	26.1
Five years separation %	1.6	0.0	9.2	7.9	10.1	9.0
Unreasonable behaviour in combination %	2.5	2.7	0.9	0.8	0.3	0.2
Others %	0.8	1.3	0.3	0.3	0.1	0.05

Compiled from figures published in Judicial Statistics 1978 and 1979 Tables D 8(b) and (c)

20. See note 8 above and associated text

The figures provide striking confirmation of the findings in CAD of a link between the Unreasonable Behaviour ground and difficulties over children. While the percentage of project cases on the other major ground (Adultery) differs little from the national figure, the percentage for Unreasonable Behaviour is considerably higher, and, correspondingly, the percentage for Two Years' Separation and Consent much lower, than their national counterparts. This does not simply reflect any tendency of divorcing parties with children to favour the Unreasonable Behaviour ground because it was shown in CAD[21] that the grounds for divorce chosen by parties with children followed the same pattern as that for all parties. Table 1 shows that there is little difference, as far as Unreasonable Behaviour is concerned, between those cases which were contested at contact and all the project cases. So the conclusion must be that Unreasonable Behaviour petitions are heavily over-represented in all cases referred to Welfare officers, whether contested or not. This of course may indicate anxiety by courts about the condition of the children in cases where, for example, violence is alleged against a party. The reason for the link between that ground and the likelihood of disputes over the children must remain a matter of some speculation. The contention that the gound is always, or even usually, chosen because a state of hostility already exists which predisposes towards disputes over the children is weakened by the finding in CAD of sharp regional variations in the grounds chosen. It seems likely that the choice of Unreasonable Behaviour is dictated as much by tactics (e.g. the desire for a quick divorce) as by the relations between the parties. What does seem clear is that

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21. CAD, Table 1

parties willing to wait (or allege) the lapse of two years' separation and to obtain their divorce by consent are significantly less likely to be in dispute over the children than any other group (apart from those divorcing after five years' separation, by which time the issues will be likely to have resolved themselves).

The study also confirmed the findings in CAD[22] that wives are more likely to challenge the husbands' exercise of custody[23] than vice versa. 42.9% of cases where the children were residing with the husband alone (n=28) were contested as to custody at contact and a further 14.3% on custody and access as opposed to 26.3% and 7.0% respectively where they were resident with the wife alone (n=57). Similarly, wives were more likely to dispute access (29.8%) than husbands were (21.4%). Although the figures are small, the data indicated that disputes were twice as likely to occur in cases where the child (or eldest child) was aged 6-7 than in any other category. This was not an artefact of some other variable, such as the child's sex or where the child was resident. If this can be confirmed, the point may be of importance in furthering our understanding of the dynamics of family conflict.

The outcome in court was known in 100 cases of the study. In 31 of these cases, custody (or access and custody) had been contested at at least one hearing and in 14 it had been contested on access alone. Thus some 13% (reduction from 44.2% to 31%) fewer disputes over custody or custody and access were still disputed at hearing than were in dispute at contact, and five per cent (reduction from 19.6% to 14%) fewer where the dispute was only about access. Put another way, about a quarter of the cases which were in dispute at contact are no longer disputed at hearing. But this proportion may be an underestimate. One reason why there may have

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22. CAD paras. 3.2, 6.2.
23. For convenience, the term "custody" is used throughout in the sense of "care and control."

been no information on the outcome in court may have been because the matter was not pushed to a hearing. Also, some hearings may have been only "apparently" contested. (See note 39 below.) This data has implications on the role of welfare officers and will be returned to later.

The Accuracy of the Documents

It is gratifying that in only two cases did the welfare officer discover any discrepancy between the information in the Statement of Arrangements for Children and the facts as he found them with respect to the child's residence. In one, the child was stated to be with the father while he was with foster parents while the father was away at sea; in the other, the Statement anticipated an arrangement soon made. In only one instance was there any substantial inaccuracy in what was said about access. But more frequent and serious inaccuracies were revealed regarding statements made about the residence of the parties and other adults. Statements were inaccurate when made on these matters in one in ten cases. Most inaccuracies concerned the housing situation (for example, a party might be found to be homeless, or living in a caravan); once the parties were still living together and on another occasion the presence of a cohabitee, who had three children in care, had not been revealed. This pattern is to be expected. A respondent is more likely to challenge any inaccuracy relating to the residence of the child, which will be of concern to him, that statements concerning the actual conditions in which the children live, about which he may be ignorant or unconcerned. If he is not opposing the divorce itself, why should he expose such inaccuracies or raise difficulties about the problems faced by the petitioner, and hence risk the withholding of the divorce?

One cannot be sure that the ten per cent inaccuracy found in the sample exists for all cases involving children. The sample is a pre-selected

group of the more "difficult" cases. But how many "difficult" cases have gone undetected, and therefore unreferred? It is also true that, under the special procedure, the judge will normally interview at least one of the parties in chambers,[24] and this may provide some additional information to the court about the children's circumstances. We have no data about those interviews, but if information can be concealed or mis-stated in the documents, this can equally happen in interview. These considerations can only underline the difficulty for the court assuming any kind of investigative or protective role concerning the children of divorcing parents. The court depends on the parties (or one of them) as its primary source of information, and (unless in dispute) they have an interest in concealing the worst. Schemes to (partially) overcome some of these limitations by, for example, passing the names of petitioners over the social services departments in case something is known about the family, have been criticized on libertarian grounds.[25] Apart from these considerations, it is certainly difficult to see what 'protective' measures the court can take, even if fully informed, except perhaps in the most extreme cases where the children should be committed into care. The withholding of decree absolute[26] is unlikely to improve matters. As presently structured, the investigatory role is ineffficient and can lead to little protective or preventative action; any attempts to overcome these problems would be beset with ideological and practical difficulties.

Access

At time of contact, the welfare officers recorded that access was taking place frequently in 45.9% of cases, infrequently in 23% and not at

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24. See note 11.
25. Mervyn Murch, op. cit, ch.12.
26. See note 16.

all in 28.7%. CAD showed that access was more often exercised in the contested cases (indeed, that might be the very reason for the dispute) and the corresponding percentages for the contested cases in CAD were broadly similar: 44.4, 13.3 and 24.4. The main reasons ascribed by the welfare officers for the non or infrequent exercise of access in the present study are set out in Table 2. No significant variations were found related to the age or sex of the children, other than for children under three, who were less frequently visited.

Table 2: Reasons for non or infrequent exercise of access (n=63)

Reason ascribed by officer	%	No.
Lack of interest by absent parent	22.2	14
Consideration for the children	9.5	6
Consideration for other parent	3.1	2
"Legal advice"	1.6	1
Injunction against absent parent	7.9	5
Hostile attitude of other parent	7.9	5
Opposition by children	7.9	5
Practical difficulties	35.0	22
Unknown	4.8	3

The formidable problems of role-adjustment faced by an absent parent when visiting the children are well described by Wallerstein and

Kelly.[27] The categorisation by the welfare officers must, inevitably, be crude. Nevertheless, the data does provide some understanding of the relatively high non-exercise of access. The dominance of "practical" difficulties draws attention to the inherent disruptive effect of divorce on a child's relationships with his parents; hostility by the children or the custodian spouse rank relatively low. "Lack of interest" was the reason given in nearly one-quarter of instances, and this almost certainly understates the proportion if viewed nationally because this category is bound to be lower in a project sample dominated by disputes over children. On the other hand, the reasons for an apparent lack of interest by the absent parent to visit his children may lie deep and could only be probed by a special study which this research does not provide.

While the CAD data showed no difference between absent mothers and fathers as regards the frequency or otherwise of the exercise of access, in the present study there was non or infrequent exercise by husbands in 61.4% of cases where the children were with the wife as compared with 50.0% in the converse case. But this is not necessarily due to greater indifference by fathers: the "lack of interest" motivation was evenly distributed between mothers and fathers. Men are more likely to meet practical difficulties or encounter opposition from the mother or be prevented by an injunction. Nor did the likelihood of remarriage by either parent seem to have any relevance. Absent mothers were more likely to keep away because of hostility from the children. The figures are small, but should be seen in conjunction with the data on the children's relationships with their parents.[28]

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27. Op. cit. (note 5), pp.123 et seq.
28. Below, pp. 17-21.

Financial Support

The information obtained on this matter could not be refined and a detailed breakdown of the family finances could not be made.[29] The prime source was the statement made by the petitioner in the Statement of Arrangements for Children. Officers were asked to check this, and no significant discrepancies were found. In 35.2% of all cases the husband was said to be the sole provider of support for the children and support from social security was acknowledged in 38.5% of all cases. The position in relation to the residence of the children is shown in Table 3.

Table 3: Source of financial support, by residence of children

Source of Support		Parent with whom child resident	
		Wife (n=57)	Husband (n=28)
Husband alone	%	19.3	3.
Wife alone	%	10.5	0
Both parents	%	8.8	0.0
Social security alone or in part	%	52.6	25.0
Other outside help	%	5.3	0.0
Other	%	3.5	0.0

The heavy reliance of separated wives on social security is evident, and while the sample is not of course representative of the divorcing

29. Further research on this question is in progress at the Centre for Socio-Legal Studies.

population as a whole, the figure is consistent with other data suggesting that, both in the immediate aftermath of divorce and often in the long-term, something over half families rendered fatherless by divorce become dependent on social security.[30] The information also throws a side-light on one of the difficulties facing men who obtain (or seek to obtain) custody of the children. They will continue to provide the main source of income. In no case did the wife make a financial contribution in such circumstances.[31]

The Condition of the Children and their Relationships with the Parents

One of the more disturbing findings of the research is that in 31.9% of all cases the officer recorded signs of emotional disturbance in one or more of the children. Although this percentage was higher in cases where custody (37%) or access (33.3%) were in dispute, it was nevertheless found to be present in a quarter of the cases where neither was in dispute. The methodology did not permit any sophisticated analysis of the types of disturbance detected. As their main source of information, the officers drew on reports from schools recording aggressive or attention seeking behaviour, but they also reported what parents told them, and, of course what they observed. In 10 of the 39 cases, reference was made to the involvement of specialist outside help, such as Child Guidance Clinics, educational psychologists, psychiatrists and medical practitioners. In only one case was delinquency expressly mentioned. In considering what weight is to be put on the officers' recording of emotional disturbance, it should be remembered that the officers are members of the probation service, well accustomed to dealing with deviant young people.

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30. Report of the Committee on One-Parent Families (1974) Cmnd. 5629, vol.1, paras. 5.19-20 and Table 5.1; Elsa Ferri, Growing up in a One-Parent Family (1976), pp.49-50; John Eekelaar, Family Law and Social Policy (1978) pp.167-8.
31. Seabrook p.26.

Their threshhold for recording "disturbance" is thus likely to be higher than that of people who are less familiar with aberrant behaviour.

On the basis of this data, we may obtain some indication of the order of magnitude of the extent of disturbance among children in divorce. It seems that something like 10% of divorce cases involving children lead to substantial disputes over the custody or access arrangements.[32] This study indicates that emotional disturbance may be observed in children in about one-third of these cases. About 73% of divorce cases involve children under 18.[33] On the 1979 figure of 139,503 decrees nisi of divorce, one may estimate a figure of 101,837 cases involving children. If 10,184 involve disputes over custody or access, then on our evidence, about 3,400 will include emotionally disturbed children. But disturbed children were also found in a quarter of the non-contested cases. They may be over-represented in our sample, however, since they were cases of referrals to welfare officers and would include, for example, cases where children were in care or where some other aggravating features were present. Extrapolating from our figures to those of England and Wales as a whole can only be tentative and would need to assume a percentage of less than 25; that is, something less than 23,000 cases. On present data, therefore, it can be surmised that children[34] are suffering observable emotional disturbance in somewhat less than 26,400 divorce cases each year.

The incidence of recorded disturbance was not related to the sex of the children, but it was found to be slightly more pronounced with children aged

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32. See notes 2 and 4 above and associated text.
33. Central Statistical Office, Annual Abstract of Statistics, 1977. The numbers of children involved in divorce doubled during the years 1970-1976, and in 1976, 13 out of every 1,000 children under 16 were involved in divorce. Richard Leete: Changing Patterns of Family Formation and Dissolution in England and Wales 1964-76 (H.M.S.O., 1979), p.95. On the surmise of this paper, about 3 of the 13 will suffer observable emotional disturbance.
34. There may, of course, be more than one disturbed child in any particular case.

four and five and slightly less for children aged six and seven and under three, despite the fact that disputes were twice as likely where the children were aged 6-7. This might be no more than an artefact of the sources of information available on the children, but could warrant further investigation. Wallerstein and Kelly have recorded different kinds of reaction to divorce among children in different age groups but also indicate that children between five and eight may overcome their distress more quickly than other age groups. One suggestion they make to explain this is that these children were more often visited by the absent parent,[35] but our findings do not show more frequent visiting in their case. The data also revealed a significant difference in recorded disturbance related to whether the child was living with the mother or the father. 34.5% (n=58) of the former and 25% (n=58) of the latter showed disturbance, despite the fact that (as has been shown) custody was more likely to be challenged in the latter situation. Significant information about the quality of the relationship between parents and children was obtained regarding only or eldest children and second children. This is shown in Table 4.

Table 4: Children's Attitudes to Parents

Status of Child in Family	Attitude to Mother		Attitude to Father	
	Ambivalent or Negative	Very Negative	Ambivalent or Negative	Very Negative
Only or eldest child (n=116) %	10.3	3.4	11.3	3.5
Second child (n= 90) %	16.7	2.2	5.6	3.4

35. Op. cit., note 5, p.220.

The difference in the attitudes of second children to their mothers and fathers is striking.. The matter becomes more complex when related to the residence of the child: see Table 5.

Table 5: Children's Attitudes to "absent" Parent

Residence of Child		Attitude to absent parent					
		V.good	Good	Neutral	Negative Ambivalent	Very Negative	No Relationship
With husband only or eldest child (n=27)	%	11.1	25.9	18.5	22.2	7.4	11.1
second child (n=19)	%	21.1	10.5	21.1	42.1	5.3	0.0
With wife only or eldest child (n=53)	%	15.1	28.3	5.7	15.0	3.8	5.7
second child (n=38)	%	7.9	36.8	10.5	5.3	5.3	5.3

Both only or eldest children and (particularly) second children were more likely to retain a good relationship with their father when living with their mother than children who were living with their fathers in relation to their mother. Not only that, relationships with the absent parent were much more likely to be bad if that parent was the mother. This finding warrants further research. It is suggestive that children may harbour deeper resentments against a mother who fails to fulfil a full parental role towards them than they do against a father. If this is true, it may have implications for assessment of the relative merits (from the children's point of view) of the two parents as sole custodians of the children after divorce. On the other hand, this study finds no evidence

that the children who stayed with their fathers were apparently any worse off emotionally than those who stayed with their mothers or had a less satisfactory relationship with their fathers than the others had with their mothers. Indeed, the indications seemed to point in the other direction.

Where the Children ended up

In 73.3% of all cases in CAD, the children were living with the wife alone at the time of the petition and 10.3% with the husband; the percentages in the contested cases showed a far smaller proportion living with the wife (37.7% and 26.7% respectively). In the present study 47.5% of children were living with the wife (57 cases) and 23.0% with the husband (29 cases). Apart from children under four (who were more likely to be with their mother) the age, sex or number of children in the family had no bearing on their residence. We have noted how it was found, in CAD, that these arrangements at time of petition were very rarely departed from. How far would this happen in the present study?

We have already observed that custody was more likely to be contested where the children were living with the husband than with the wife. Our data also shows that, where there was such a dispute at time of contact by the welfare officer, it was less likely to be resolved by agreement where the children were living with the husband than with the wife. (Such failure occurred in 39.5% of cases where the children were with the wife, compared to 52% where they were with the husband). Where such agreement was reached, the officers were satisfied that it took into account the children's interests "completely" in 80% of cases where the children were with the husband, in contrast to only 60.5% where they were with the wife. This did not mean that they would have been moved from their fathers. In only two of the 29 cases where the children were with the father did the agreement involve moving the children from him to the mother (to the officers' complete satisfaction) and in one of the 57 cases where they

were with the mother, they were moved to the father, again to the officer's entire satisfaction. Thus the officers saw no grounds for disapproving of fathers caring for the children where this course had been agreed by the parties.

What was the reaction of the courts to children continuing to live with their fathers? The outcome of 31 cases where custody was in dispute at the hearing is known. In 23 cases the continued residence of a child or children with one of the parents was in issue. In nine of them the mother's sole custody was challenged, in eleven the father's and in three children were split between them. Eight (89%) of the mothers succeeded and 7 (63.6%) of the fathers. Of the three cases where the children were divided, in two a child was moved from the mother to the father and in the third the status quo remained. Thus, the status quo of at least one child was altered in seven cases, that is, 22.6% of cases which were contested on the custody issue at the hearing. This proportion is considerably higher than that revealed in the earlier studies. Let us consider the salient features of each of those cases.

(a) Cases where children moved from mother to father

Case 1 Transfer was achieved by consent at the second hearing under a joint custody order giving care and control of two boys (7 and 4) to the father despite the fact that divorce was granted "against" him on the ground of unreasonable behaviour and an injunction had been issued against him for violence. The officer recommended this outcome on the understanding that the father would obtain "100% support" from his parents. A supervision order was made.

Case 2 The order re-united an 11 year old girl with her 16 year old sister living with the father, as the officer recommended. He commented that the girl was considered "at risk" with the mother and that, although the divorce was on the ground that the father had assaulted the mother, "the