

**Moving Beyond Custody Law to Achieve Shared Parenting:
Making Child Custody Disputes Less Common, Less Contentious,
and Less Central to Defining Parents' Legal Relationship to Each Other**

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The law of child custody has always been a core component of family law. This area of the law has undergone tremendous change over time. Since the 1970s, law reform has focused on increasing noncustodial parents' involvement in their children's lives. "Shared parenting," which emphasizes that both parents should have a substantial amount of time with their child after the parents' romantic relationship breaks up, has gained considerable attention lately. Unfortunately, however, proposals for "shared parenting" have not been about helping parents co-parent as a cooperative and supportive team. Yet psychologists warn that the quality of the parents' relationship can be critically important to their child's well-being.

The creation of supportive partnerships requires more than end-of-relationship custody rules. At present, too few parents are supportive co-parents after their relationships break up, despite the fact that "friendly parent" and "domestic violence" factors are part of the best-interest inquiry and despite the availability (and sometimes requirement) of parenting education and mediation as part of court proceedings. While these provisions and practices have been helpful, the extent of father disengagement in unmarried and divorced families as well as the amount of parallel parenting after breakup among couples who are capable of better arrangements suggest that a different approach is required.

In fact, without broader legal and social change to encourage more supportive co-parenting relationships from the outset of parenthood, a shared parenting law will exacerbate tension for some couples, create custody arrangements that are prone to relitigation, and pose real risks for some children. In contrast, fostering strong parent-partnerships from the time of the child's birth might significantly decrease the importance of custody laws for all but highly conflicted couples; others might readily agree to arrangements that work best for their families regardless of the background custody law. Using the law to improve co-parenting relationships first, i.e., before changing custody law further, is also warranted because gaps exist in the empirical knowledge about which custody law best meets children's needs and because people's reactions to reform proposals are too often clouded at present by proposals' gender implications.

Increasing the number of supportive parenting partnerships after the end of parents' romantic relationships requires society to take account of several facts as part of any law reform effort: co-parenting is embedded in a broader relationship to which society must attend; caregiving patterns during the romantic relationship affect parents' willingness to share parenting after the romantic relationship ends; and society's expectations about the nature of the parents' relationship could affect the parents' behavior. Consequently, to the extent that society wants both parents to have a substantial amount of time with their child after they dissolve their romantic relationship *and* wants the parents to have a supportive co-parenting arrangement, lawmakers should set up a legal structure that will strengthen parents' relationships generally, encourage shared caregiving during the romantic relationship, and convey norms about cooperation and support. Such a regime should

cause more parents to agree to share parenting, a result that most people would find desirable.

To accomplish this end, this paper recommends, consistent with the proposal in this author's book, *A PARENT-PARTNER STATUS FOR AMERICAN FAMILY LAW* (Cambridge University Press forthcoming 2015), that the law impose an automatic status on parents upon the birth of their children to govern their *inter se* relationships. The purpose of the status would be to create a new social role of "parent-partner" that would encourage parents to treat each other as supportive partners, among other things. This social role would come with expectations that parents exhibit fondness, acceptance, togetherness, empathy, and flexibility in their interactions with each other, from the outset of parenthood until their child reaches eighteen years old, regardless of whether the parents' own romantic relationship ends. The status should include a legal obligation that would encourage both parents to share caregiving during their romantic relationship. With these changes in place, custody disputes might then become less common and less contentious. That outcome would be one of many benefits that a parent-partner status might have for children, parents, and society.

This paper concludes by raising some questions that help the reader imagine what the law of child custody might look like in a world transformed by a parent-partner status.