

Resolving Child Custody Disputes after Divorce — The Development of the Best Interest of the Child Doctrine in America

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Abstract

The problem of child custody after divorce is one of the most important yet difficult issues in American family law. Since the 1970s, the “Best Interest of the Child” doctrine has been guiding courts in determining custody cases in the United States. The BIC doctrine is reflective of social and legal commitments to promote the welfare of children. However, the BIC doctrine is criticized heavily for being vague, and thereby permitting arbitrary judicial decisions in the name of the interests of the children.

Discontent with the BIC doctrine, the American legal community has begun looking for another test to clarify or even replace the troubled doctrine. This essay argues that the proposed alternative tests do not live up to expectations because they fail to resolve the problem of vagueness while raising still more questions regarding the interests of the child. The essay also suggests that an effort to build a court-centered mechanism, with various procedures and services, would seem to be a more plausible approach.

Key Words: the best interest of the child, friendly parent provision, joint custody, primary caretaker preference, past care-taking standard