WHERE DID STEPFAMILIES COME FROM?
To hear all of the tsk-tsking\(^1\) going on these days, you’d think stepfamilies\(^2\) were a modern invention of today’s immoral divorced people. Not at all true. Most early societies encouraged remarriage because this provided household stability when both life expectancy and life-long marriages were short.\(^3\)

The atmospheric change seemed to occur when influential faith-based groups turned their focus on marriage. Socially, the rules also changed; even the remarriage ceremony itself was downgraded.

By the late 1800s, the death rate had dropped in the western world and stepfamilies briefly decreased. However, at nearly the same time, divorce was on the upswing and remarriages increased once again.\(^4\)

WHAT MAKES THE STEPFAMILY TOPIC SO IMPORTANT TODAY?
There does not seem to be general awareness of the differences between first and second marriages or how laws and social policies, designed for first marriages, may be detrimental to stepfamily marriages around the world.\(^5\)

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\(^1\)Exclamation of disdain and contempt.

\(^2\)Stepfamilies are created when one or both partners bring children from a prior relationship to the new relationship.


\(^5\)Preliminary survey using stepfamily legal status information from Argentina, Canada, The Czech Republic, Ethiopia, France, Hong Kong, Israel, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Papua New Guinea, Sweden, United Kingdom (England and Wales, Ireland, and Scotland) and the United States (*hereinafter Selected Countries*). Also, see
This reality has trans-national importance because the increased incidence of divorce, remarriage, parents marrying partners without children, the first marriage of previously unwed mothers, and the increasing death numbers of parents with AIDS, all mean the stepfamily has become an important resource for children.

The disconnect between stepfamilies and the legal system stems from the institutions of marriage and the family. Family courts have been slow to accommodate people traditionally defined as outsiders. At present, the legal rights and obligations for the first-marriage family, however stormy and brief, are generally not extended to the stepfamily, however stable and lengthy. Clearly, the perils associated with the changing composition of families have not been adequately considered.

The quality of stepparent-stepchild relationships seems to be negatively affected by the lack of a legal relationship between stepparents and stepchildren. Studies have found that there are generally negative stereotypes of stepfamilies and reports for this presentation indicate similar


See generally Katharine Bartlett, Rethinking parenthood as an Exclusive Status: The Need for Alternatives When the Premise of the Nuclear Family has Failed, 70 VA L. R., 879 (1984).


negative stereotypes across national borders.

This discussion provides the first comparative look at the negative impact on stepfamilies of laws and social policies in selected countries. The discussion will show that legal systems worldwide are uniformly in a quandary about how to deal with stepfamilies.

THE CURRENT STATUS OF STEPFAMILIES

Vocabulary Used for Stepfamily Relationships

When a parent marries an adult who is not the child’s other parent, a stepfamily is born. Fairy tales of wicked stepparents, especially stepmothers, have given the step words a pejorative connotation just about everywhere.

Ironically, the reality is that the immensely popular fairy tales by the German brothers Grimm originally maligned parents, not stepparents. When these adult anecdotes transitioned to children’s bedtime stories, publishers switched to a more saleable version having wicked stepmothers. Now, many years later, stepfamilies endure the law of unintended consequences.

A discussion about the question of names almost always includes complicated and negative connotation. Several countries — including Argentina, Canada, France, and Sweden — are struggling to envision stepfamilies as large and all-encompassing family entities by including all of a child’s parents and stepparents. They are finding that existing laws and social policies make this an uphill battle. Other countries struggle to recreate the first family framework, Japan for example, or attempt to ignore stepfamily relationships altogether, as they appear to do in Mexico. It seems that until we reach consensus on the membership component of a stepfamily, we’re destined to maintain a hodge-podge of terms to describe each other.


11 Chart for Stepfamilies-International: Stepfamily Vocabulary. See also Engel, Stepfamilies Worldwide, supra note 7, at 224-230 (discussing stepfamily vocabulary).

Classifying and Counting Stepfamilies

With worldwide talk about the importance of family and the welfare of children, one would expect solid census data on family composition. It doesn’t exist...anywhere. There is a lack of consensus on the definition of family and what is important to count for social, political, financial, and legal purposes.

The United States and all other countries queried under-estimate the percentage of stepfamilies in four important ways.

First, estimates are based on counts of households where children under the age of majority reside. There are no estimates of the number of young adult or adult children in stepfamilies. (Adult stepchildren are important - think “inheritance decisions.”)

Second, a child is not counted as a member of a stepfamily if the child resides with a single mother or father.

Third, a child is not counted as a member of a stepfamily if the adults in the household are not married to each other. (US research indicates that about half of the 60 million children under the age of thirteen are currently living with one biological parent and their parent's current partner.

Fourth, stepfamilies are also formed in a first marriage when an unwed mother marries a single man who is not her child’s biological father.

Worldwide, stepfather families seem to be the predominant stepfamily form as most countries still favor maternal custody following divorce.

However, none of the countries queried are able to say with assurance how many of all their

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13 Chart for Stepfamilies-International: Counting Stepfamilies [hereinafter S-I: Counting Stepfamilies]. See also Engel, Stepfamilies Worldwide, supra note 7, at 230-238 (classifying and counting stepfamilies).

children, regardless of age and living arrangements (including a growing number of cohabiting couples with children\textsuperscript{15}), are part of a stepfamily.

[handout] Chart for Stepfamilies-International: Counting Stepfamilies

WHAT STEPFAMILIES ARE UP AGAINST AT HOME
Stepparent Authority and Parental Status\textsuperscript{16}
Codifying the definition of a legally significant stepparent-stepchild relationship (including rights and responsibilities) is not a priority in any of these countries.\textsuperscript{17}

The one consistency is that parental status in day-to-day stepfamily activities is largely determined by the willingness of the parent, stepparent, and stepchild as well as the acceptance of the child’s world outside the stepfamily home.

[transparency] under new management

Day-to-day household parental status is not to be confused with legal parental authority. Current laws deny official parental status to stepparents for purposes of directing the health, education, religion, and general welfare of stepchildren.\textsuperscript{18}

[handout] Chart for Stepfamilies-International: Relationships

Half of the represented countries, including Italy, Japan, and Malaysia, make no other provision for stepparent recognition outside of legal stepparent adoption.\textsuperscript{19} A short handful of the

\textsuperscript{15}Spokespersons for each of the countries represented indicate a steadily growing number of stepfamilies.

\textsuperscript{16}Susan Gamache, PhD in Counseling Psychology, Vancouver, BC, Canada, coined the term Parental Status defined as “...the degree to which the stepparent-stepchild relationship is considered to be parental.” A detailed discussion of parental status can be found in What family life educators need to know about stepfamilies, FAMILY CONNECTION, Fall 1998.

\textsuperscript{17}In 1987, the Family Law Section of the American Bar Association began work on the Model Act Establishing Rights and Duties of Stepparents (resolution has been tabled awaiting more input).

\textsuperscript{18}Chart for Stepfamilies-International: Relationships [hereinafter S-I: Relationships]. See also Engel, Stepfamilies Worldwide, supra note 7 at 270-274 (discussion on parental status).

\textsuperscript{19}See S-I: Relationships, supra note 18. See also Engel, Stepfamilies Worldwide, supra note 7, at 253-261 (discussion on adoption).
countries, including Argentina and France, recognize a proactive stance on the part of the stepparent and may provide some form of custodianship. England even acknowledges the existence of the non-custodial stepparent! In practice, wherever stepparent parental status and parental authority are in evidence but not officially challenged, the law turns a blind eye.

Stepparents appear to be legally invisible until the stepchildren need either supervision or money.

WHAT STEPFAMILIES ARE UP AGAINST OUTSIDE THE HOME

Legal, Religious, Financial, and Social Deterrents to Remarriage

An overview of constraints to remarriage indicates that the practical ramifications of a negative first marriage experience may be the greatest detriment of all. Some laws, religious beliefs, and financial circumstances also serve as an actual deterrent or simply as a “caution” signal.

May Steprelatives Marry?

Countries have developed a varied, and often inconsistent, legal definition for relative. They are fairly consistent in denial of marriage between half-siblings (blood relatives) and in permitting marriage between stepsiblings. More confusing is the position of marriage between former stepparents and stepchildren. Argentina says “No” because the stepparent-stepchild relationship survives a marital divorce. Japan says “Maybe” if the stepparent takes specific steps to officially end the stepparent-stepchild relationship. Italy, Mexico, Sweden, and non-Muslims in Malaysia say “Yes” to a former stepparent and stepchild marriage. The on-again off-again definition of incest within step relationships in Papua New Guinea has resulted in contradictory laws. Bottom line? Confusion is the norm.

Most faith-based groups accept remarriage while Catholics, Jews, and Muslims face additional yet surmountable religious requirements. While remarriage may cancel financial supports, they

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21 Chart for Stepfamilies-International: Deterrents to Remarriage. See also Engel, Stepfamilies Worldwide, supra note 7, at 238-253 (discussion on deterrents to remarriage).

22 See S-I: Relationships, supra note 18. See also Engel, Stepfamilies Worldwide, supra note 7, at 250-253 (discussion on steprelative marriages).
Existing, Pending, and Proposed Legislation About Remarriage and Stepfamilies

In the United States, detailed laws have been left to the states and this creates broad discrepancies in legislation about remarriage and stepfamilies. Federal law is inconsistent by defining stepchildren differently from program to program and treating stepchildren differently from other children.

Worldwide, legal systems are uniformly in a quandary about how to deal with stepfamilies.

[handout] Chart for Stepfamilies-International: Legislation

About half of these countries seem to recognize the relationship and about half of them do not. Overall, Sweden and Canada have the broadest recognition of family diversity. Japan’s quagmire in clarifying the meaning of family terms in current law exists, to some extent, in each of these countries that do not officially recognize stepfamily relationships.

[transparency] wedding and new management

The Prevalence and Complexity of Stepparent Adoption

Under current adoption procedures in the United States, adoption severs the adopted child’s connection to the parents for social and legal purposes and has put unnecessary legal barriers into place for a practical form of stepparent adoption.

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23 Chart for Stepfamilies-International: Legislation. See also Engel, Stepfamilies Worldwide, supra note 7, at 243-249 (discussion on existing, pending, and proposed legislation).


25 Engel, Stepfamilies Worldwide, supra note 7, at 253-261 (discussion on adoption).

26 Mahoney, Margaret M., STEPFAMILIES AND THE LAW, (1994)(hereinafter Mahoney, STEPFAMILIES AND THE LAW), US statutory and case laws, and reports from other countries referenced in this chapter, at 161 (summarizing the different legal issues across the country that affect the stepparent-stepchild relationship).

27 See Mahoney, STEPFAMILIES AND THE LAW, supra note 26, at 177 (discussing stepparent adoption).
Generally, courts in all countries queried have had difficulty accepting the possibility that it might be in the child's best interest to have two legal fathers or two legal mothers.\(^{28}\) The legal community might serve family values better when it recognizes that a child can, and often does, have multiple parents.\(^{29}\)

Argentina has developed legal precedents for legitimizing the stepparent-stepchild relationship while retaining all parental rights and responsibilities. The Czech Republic and Ethiopia, provide this as an adoption option.\(^{30}\) A few deny any connection between stepparent and stepchild, including Mexico and Muslims in Malaysia, or, as in the United States, hold to the rigid traditional adoption formula that creates replacement parents. Sweden reports that about half of their adoptions are stepparent adoptions. Ethiopia, facing the reality of AIDs decimating the parent population, has been forward-thinking by providing legal family supports for establishing the legal right of a stepparent’s new partner to adopt the stepchild.\(^{31}\)

[transparency] Debbie resigns herself to her fate

Lawyers, legislators, and child development specialists need to review the various programs and cobble together a policy recognizing that biology is not the sole determining factor in parenting that involves meeting the emotional, financial, and practical needs of children.

**Financial Responsibility for Children Living in Stepfamilies\(^{32}\)**

Stepparent financial responsibility for stepchildren is typically secondary to that of the parents.


\(^{29}\) Using my own definitions, a *mother* and a *father* are a biological happenstance; a *parent* takes an active interest in a child’s upbringing, studies, and everyday life; promotes standards to be enforced and values to be upheld, is available during sickness and difficult times, can be counted on for economic support, and understands that simply loving a child from a distance is not enough.


\(^{31}\) See *S-I: Relationships*, supra note 18. See also Engel, *Stepfamilies Worldwide*, supra note 7, at 253-261 (discussion on adoption).

\(^{32}\) Chart for *Stepfamilies-International: Financial Status* [hereinafter *S-I: Financial Status*]. See also Engel, *Stepfamilies Worldwide*, supra note 7, at 261-269 (discussing stepparent financial support).
No uniform treatment of the stepparent-stepchild relationship exists in the United States.33

Argentina puts stepparent responsibility after the child’s blood relatives while Israel continues to focus on the parent even for posthumous support. The Netherlands does require stepparent financial support — but only for the duration of the marriage. Where stepparents have obtained court recognized parent-like relations, as in Canada, or legal shared custody, as in the Netherlands and New Zealand, they also assume some degree of official financial responsibility. The official status of stepparent responsibility is everywhere undermined by the practical reality of stepchildren’s financial needs.34

[handout] Chart for Stepfamilies-International: Financial Status

There are four underlying struggles about codifying stepparent financial responsibility for stepchildren.35

First, maintaining the non-custodial parents' incentive to support their children.
Second, adjustment of the stepparents’ payments to their children living in another household if expected to allocate funds for stepchildren in their own household.
Third, different sex and age combinations among stepparents and stepchildren yield different relationships.
Fourth, a stepparent may also expect custodial rights.

[transparency] not sure we’re legally married

Countries worldwide need to develop new and consistent policies related to stepfamilies. However, without a nature vs. nurture or nature and nurture consensus, stepfamilies pose ongoing and pressing questions for legal definitions of family, family member benefits, and family member obligations.

Do Stepchildren Qualify as Children for Inheritance Purposes?36

United States inheritance statutes and probate codes do not recognize the stepfamily as a valid family unit. Inheritance rights, almost without exception, are granted only to the issue or descendants of the decedent and the decedent's ancestors.37 Conflict between the children from

34 See Engel, Stepfamilies Worldwide, supra note 7, at 261-270. See also S-I: Financial Status, supra note 32.

35 Id.

36 See S-I: Financial Status, supra note 32. See also Engel, Stepfamilies Worldwide, supra note 7, at 275-279 (discussing stepfamily inheritance).

37 See generally Sol Lovas, When is a Family Not a Family? Inheritance and the Taxation of Inheritance Within the Non-traditional Family. 24 IDAHO L. REV. 353-397 (1988)at 367 (hereinafter Sol Lovas). See also S-I: Financial Status, supra note 32 and Engel, Pockets of
one marriage and the spouse of another results from a growing number of multiple marriages.  

[transparency] part of the territory

In this sample of countries, the primary emphasis is on blood relationships regardless of the quality or length of commitment of inter-and intra-family relationships. All speak of stepfamilies being disadvantaged by existing inheritance laws and policies. Most countries acknowledge steprelatives in a will but do not grant them “child” status in intestacy situations.

US tax codes related to inheritance matters often penalize the stepfamily. The Netherlands recognizes extenuating circumstances and is currently debating the intestate issue. England offers compensating financial support or accepts stepfamily claims against an estate and acknowledges the realities of cohabiting stepfamilies. There is no indication that any change has been proposed or is already in the legal pipeline.

WHERE STEPFAMILIES COULD BE GOING AND HOW STEPFAMILIES MIGHT GET THERE

Stepfamilies in this sample of countries are forced to live in a fluctuating state of hope and fear. Obviously a large number of adults appear willing to face the risks of a complicated marriage.

[transparency] motivational tapes

In the early days of remarriage, stepfamilies appear unaware of their daily and long-term dependence upon laws and social polices.

[transparency] lingerie and laughter

As the stages of stepfamily life progress, there is a gradual awareness that adult/child

Poverty, supra note 5, at 342-363 and WYO. STAT. § 2-4-104 (1997)(specifically provides that stepchildren not inherit).


See S-I: Financial Status, supra note 32.

See Sol Lovas, supra note 37, at 354. See also S-I: Financial Status, supra note 32.

relationships on a daily basis, interaction with the child’s other household and the outside world, and the household’s financial management are all affected by external forces. These laws and social policies have a surprisingly negative impact. At this point, many stepfamilies reach out to the community — neighbors and friends who pitch in for the common good, support organizations, and knowledgeable professionals.

Isn’t it time to move from a pathological/deficit model to the stepfamily as an additional legitimate family?

Not everyone says, “Yes.” There’s a mob at the stepfamily doorstep with myopic vision — members of the marriage movement, legal profession, financial gurus, and religious extremists who do promote marriage...but, only first marriages are welcome. In some countries, and the United States is an example, this mob includes powerful elites who abuse their concentrated power and wealth to be dismissive of stepfamilies.

While some type of funding is disbursed to family-related projects and organizations (separated, divorced, low income, single-parent), none of the countries surveyed provides cash flow to stepfamily programs and education.\(^42\)

Within the world community, legal borrowing is a two-way street. I expect that the use of foreign and international law will grow. In the area of family law, the issue is not less and not more but what kind of child-focused laws and social policies, recognizing multiple parenting, could help deal more successfully with remarriages that create stepfamilies? We need to form a new global alliance to secure stepfamilies a place in the world community — I call it Stepfamilies-International.

**Recommendations**\(^43\)

The extent of laws governing marriage and the family indicate the belief that marriage must be directed for the public good. The legal aspects of marriage increase the couple’s and society’s confidence that the marriage will provide the family with a loving, supportive adult relationship

\(^42\)See manuscript notes for *Stepfamilies Worldwide*, supra note 7, for the deleted segment titled “Government financial support for stepfamily education programs” (on file with author).

\(^43\)Engel, *Stepfamilies Worldwide*, supra note 7, at 279-280 (discussing author’s recommendations).
and support the rearing of healthy, happy, and socially well-adjusted children.

Stepfamily marriages exist in substantial numbers throughout the world. If marriage is so important, why do states and countries deliberately create laws and social policies that undermine the married stepfamily’s success? If stable and long-married stepfamily members do not share the same legal rights and responsibilities of briefly married first families, what is the advantage to married stepfamilies over cohabiting stepfamilies? And we know that the remarriage rates are decreasing in developed regions of the world because many couples are choosing to cohabit. Is it reasonable to have two classes of marriage? — one with full faith and privilege and the other treated in substantially inferior terms?

The prevailing view is that stepfamilies are defective and require treatment. This is exacerbated by the legal system, mainstream media, and individuals who routinely marginalize, dismiss, or demonize stepfamilies. Humans don’t strive for failure. If stepfamilies aren’t successful, something is wrong with the social structure.

Stepfamilies face far greater legal and daily insecurity than families in first marriages. Every state and country needs a system of laws clarifying protections, entitlements, and responsibilities of stepfamily members — policies and legal practices that recognize and validate stepfamilies.

The Stepfamily Association of America suggests the following changes to support the growth of successful stepfamilies.

**Lifelong Recognition of the Stepparent and Stepchild Relationship**

44See S-I: Counting Stepfamilies, supra note 13.


46See generally, Engel, Pockets of Poverty, supra note 5.

47Stepfamily Association of America: General Policy Goal.
Stepparents serve as parents in all meaningful ways in a large percentage of American families. They provide economic and emotional support, perform child-raising tasks at home, and serve a parental role in the child's world outside the home. The fact that they are not treated as parents in significant ways hinders their ability to parent and the child's ability to thrive. While not reducing the biological parents' role in any way, we believe that the additional recognition of stepparents will serve in the child's best interest.

[handout] SAA General Policy Goal

◊ **Recognition of Stepparents as Parents in Educational Settings.**
  Permissions, releases; Authority with teachers; Financial aid.

◊ **Recognition of Stepparents as Parents in the Courts.**
  Participation in custody mediation and disputes during the marriage; Standing to request visitation/custody in the event of divorce; Facilitated stepparent adoption procedures that retain connection to both parents.

◊ **Recognition of Stepparents as Parents in Health Care Decision-Making.**
  Emergency medical and dental care; Participation in all other health care matters.

◊ **Recognition of Stepparents as Parents in the Community.**
  Sports and recreation leagues, police, fire and other community services, camps and clubs.

◊ **Recognition of the Financial Responsibility of Stepparent to Stepchildren During the Marriage and in the Event of Divorce.**

◊ **Recognition of Stepchildren as Children for Purposes of Medical and All Other Employee Benefits During a Marriage and in the Event of Divorce or Death.**

◊ **Recognition of Stepchildren as Children for Purposes of State and Federal Benefits During a Marriage and in the Event of Divorce or Death.**

◊ **Recognition of Stepchildren as Statutory Heirs.**

It is long-past the time to move from a pathological/deficit model to the stepfamily as an additional legitimate family. Stepfamilies require an appropriate place in society with relevant services to address unique family needs.

The key to regaining a sense of stability during this period of wrenching social, cultural and economic change isn't reclaiming 'traditional family values.' According to historian/author Stephanie Coontz, it's adapting our social institutions. When we insist upon using the parents’
legal relationship to each other as the definition of family, we discourage continued relationships between parents and extended kin with the children after parents divorce and remarry.

Unequal access to economic resources, political power, and social status are social imbalances that affect personal behavior. It’s the individual or group with the most power that assumes other people can act totally free of outside influences. Stepfamilies need social, economic, legal, and political changes to improve their family lives. To paraphrase Aristotle, we need to be angry with the right people, about the right social forces, to the right degree, at the right time, for the right purpose, and in the right way.

[transparency] we don’t have to be just sheep
June 27, 2005

Dear Dr. Wardle,  <wardlel@lawgate.byu.edu>

Attached, in WordPerfect, is a copy of my “rough draft papers” upon which my discussion will be based during:

Presentation Panel 7-D, Thursday, July 21st, 3:15 p.m, International Parenting and Related Issues 12th ISFL World Conference; Salt Lake City, Utah, USA; July 19-23, 2005.

The topic is WORLDWIDE STEPFAMILY TRIBULATIONS UNDER CURRENT LAWS AND SOCIAL POLICIES.

A more detailed version of this discussion is available for submission and consideration in the book.

Sincerely,

Margorie