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## New York Divorce and Family Law Blog

### [Should There Be No Fault Child Custody Laws?](#)

Posted on February 18, 2010 by [Daniel Clement](#)

[Ruth Bettelheim](#) in the [Huffington Post](#) and in an op-ed piece in the [New York Times](#) argues that we should have no-fault custody legislation.

Ms. Bettelheim's correctly urges that custody battles are damaging to children. Indeed, most family law practitioner's would agree that children are the unintended victims in contested divorces, particularly when custody is in issue. As a result, most would agree that reducing family conflict and the acrimony of divorce would be beneficial to the children's well-being.

As Ms. Bettelheim aptly points out, however, litigated custody battles have just the opposite effect; parents at war are forced to "do their utmost to demonstrate that they are the better parent — and that the other one is worse, unfit or even abusive."

Her solution, however, to force parents to enter into binding mediation agreements that "could not be discarded or contested later if new disagreements were to arise" is untenable.

First, the needs of the children and their relationships with their parents change over time; parents must have an ability to address these changes with court intervention if necessary. Clearly, a parenting plan created when children were of pre-school age will not address the needs of teenagers.

Secondly, a non-modifiable custody plan would give little consequence to a parent who willfully violates a visitation schedule or attempts to alienate the children from the other parent.

Perhaps a better solution to lessening the pain inflicted from a contested custody battle would be to start with a presumption that both parents are fit and that some type of joint custody arrangement is warranted. In most cases, both parents want to be involved all facets of their children's lives; decisions regarding the children's health education and welfare should be shared. Likewise, children should be afforded sufficient time with both parents to create strong and lasting bonds.

Obviously, joint custody could never be an option in cases, where, for instance, there is evidence of abuse, abandonment or mental illness.

If sole custody was an option only in those cases where one of the parents was unable, unwilling or unfit to share custody, I am sure there would be far fewer custody fights, thereby achieving Bettelheim's goal of "peace between parents" and an end to custody litigation