
Grandparents' Visitation Rights

Legalizing the Ties That Bind

Ross A. Thompson
Barbara R. Tinsley
Mario J. Scalora
Ross D. Parke

University of Nebraska
University of Illinois
University of Nebraska
University of Illinois

ABSTRACT: *In recent years, statutes granting grandparents legal standing to petition for legally enforceable visitation with their grandchildren—even over parental objections—have been passed in all 50 states. This psycholegal review critically examines the origins of and justifications for this important change in family law, some of the psychological assumptions underlying this policy (e.g., the role of grandparents in child development), problems in judicial determinations of whether visitation is in a child's best interests, and both intended and unintended consequences for family functioning arising from this policy. In the end, although efforts to ensure multigenerational supports for children are admirable in the abstract, there are some significant risks in using legal policies for achieving this goal. Directions for further contributions from social scientists, as well as future directions in the evolution of grandparent visitation policy, are outlined.*

In recent years, changes in family roles and structure have been catalysts for changes in family law. For example, child custody guidelines when parents divorce now are based on a gender-neutral “best interests of the child” standard (replacing the traditional presumption that the mother should have custody) because the role of fathers has broadened and become recognized, and consequently, gender-based distinctions have been challenged (Thompson, 1986). At times, revisions in family law not only reflect changing social conditions but also idealized images of family functioning, such as the current enthusiasm for joint custody, which neglects the potentially deleterious impact of continuing parental conflict on children in such arrangements. When they are well conceived, revisions in family law respond to changing social conditions but also are based on careful judgments of their direct and indirect effects on family members, their potentially unanticipated consequences for family functioning, and problems that may occur in the judicial application of legal guidelines. Poorly designed policies permitting unwarranted legal intervention in family life can be far more damaging than no legal safeguards at all. Moreover, because family law helps to define and institutionalize family structure and roles, well conceived revisions in family law are especially important because they may not only reflect cultural changes in family life but also help to foster them.

Recent changes in the legal status of grandparents exemplify some of these complex considerations in changing family policy, and the contributions that can be made by social scientists. During the last 10 to 15 years, legislators in all 50 states have passed laws giving grandparents the right to petition the court for legally enforced visitation privileges with their grandchildren. Moreover, in 1983 the House of Representatives recommended that the National Commission on Uniform State Laws develop a uniform statute ensuring grandparents' visitation rights. This is a significant change from common-law tradition, in which grandparents had almost no rights with respect to their grandchildren except with the consent of the child's parents. Now, under certain conditions, grandparents can have visitation rights enforced over the parent's objections. This change in family policy and the assumptions about family functioning it reflects raise a variety of significant psycholegal concerns that are the subject of this article. They also indicate the kind of dialogue that can occur between policymakers and students of child and family development in shaping the direction of family policy.

Evolution of Grandparent Visitation Policy

The traditional emphasis on parental autonomy and the consequent denial of independent rights to grandparents have been justified in several ways. First, some courts have argued that giving independent rights to grandparents would undermine parental authority and the parents' capacity to raise children as they think best (e.g., *Jackson v. Fitzgerald*, 1962; *Odell v. Lutz*, 1947). Second, some have indicated that a child's best interests are not promoted by involving the child in intergenerational conflict between parents and grandparents (e.g., *Noll v. Noll*, 1950) and that coercive legal remedies are unlikely to be helpful in resolving this conflict (e.g., *Commonwealth ex rel. Flannery v. Sharp*, 1952; *Succession of Reiss*, 1894). Third, and more broadly, the courts have traditionally supported parental autonomy in child-rearing as a *fundamental* value in our pluralistic society, and they have hesitated to invoke the state's *parens patriae* power (i.e., the state's power to protect its dependent citizens) to intervene in the family except in extreme circumstances directly related to the child's welfare (see Kotkin, 1985).

Even under traditional assumptions, however,

grandparents have been granted visitation or custody rights when the child's best interests clearly warranted it. These include situations in which the child had lived with the grandparent for an extended period, or when the parent was declared "unfit" and the grandparent assumed custody, or when a decision relating to child custody explicitly included provisions for grandparent visitation (e.g., *Benner v. Benner*, 1952; see Barineau, 1984; Collins, 1985; Gault, 1973). These limited provisions are consistent with prevailing case law concerning "third party" visitation/custody disputes, in which grandparents are accorded no special status but are considered along with other nonparental adults who have developed a special relationship with the child. Thus, there has been a long-standing recognition that certain circumstances clearly warranted legally enforced grandparent visitation or custody rights.

What can account, then, for the dramatic broadening of grandparents' rights in recent years? One reason certainly has to do with the growing influence and political prominence of older adults. Legislators share popular sentiments about the importance of the grandparent-grandchild relationship and the desirability of ongoing contact between them, and some scholars have suggested that the concerted advocacy efforts of groups representing older Americans have helped to catalyze this sentiment into statutory law (Derdeyn, 1985; Ingulli, 1985). The advocacy of older adults was also influential in provoking the interest of the House of Representatives in this issue (Biaggi, 1984). Arguments that grandparent visitation is sometimes the only way of preserving the child's continued contact with one family line further suggest that the interests of grandparents have been at least as important as those of grandchildren in shaping statutory provisions.

From the child's standpoint, grandparent visitation is thought to be beneficial by providing the child with an alternative source of family support, especially when parents may be unable to provide such support. In this regard, it is noteworthy that relatively few states permit grandparents to petition for visitation rights in any circumstance. Instead, in most states petitions can occur only when the child's natural family has been disrupted, such as after the death of a parent, or when parents have separated or divorced, or (with certain reservations) when the child is adopted or in foster care (see Collins, 1985; Ingulli, 1985). These "triggering conditions" permit the court to accept a visitation petition. Later, the award of visitation rights depends in most states on a judicial determination that doing so is in a child's "best interests." Thus, grandparents are now permitted to seek visitation privileges primarily under nontraditional family condi-

tions when the family may be under stress and when they can demonstrate that the child would benefit from visitation. It is often assumed that grandparents may not only directly help the child under these conditions, but may also buffer the child against the effects of parental stress (see, for example, Zaharoff, 1981). Significantly, because the courts are now an accessible arbitrator of family conflict over visitation, a litigated visitation award is almost always over the objections of the child's custodial parent.

In the broadest sense, then, the purpose behind the recent broadening of grandparents' rights is not only to respond to the concerns of an increasingly influential generation of older Americans but also to foster the child's access to support within the extended family. In this sense, the extension of grandparent visitation rights probably reflects a broadened legal recognition of the importance of "psychological parenting" outside the nuclear family (cf. Goldstein, Freud, & Solnit, 1979). Although any effort to strengthen intergenerational ties is admirable, the use of legal policy to do so carries with it certain risks that must be weighed against the potential benefits derived from such a policy. Moreover, the assumptions underlying grandparent rights (e.g., the importance of the grandparent-grandchild relationship) also merit scrutiny in light of our knowledge of the role of grandparents in child development.

The Role of Grandparents in Child Development

To what extent do grandparents affect grandchildren's development? The limited research evidence indicates that grandparents can potentially contribute to child development in a dual manner: directly (by caregiving and by serving as interactive partners providing cognitive and social stimulation) and indirectly (as a resource of social support for parents).

With respect to direct influences, grandparents vary widely in the extent to which they serve as caregivers for their grandchildren, primarily as a function of proximity, social class, ethnic group, and family structure (Tinsley & Parke, 1984). Only a small percentage of grandparents in middle socioeconomic groups are major regular caregivers for their grandchildren (Neugarten & Weinstein, 1964), although this role is more common among lower socioeconomic and certain minority groups. Grandparents more often function as playmates, especially for young grandchildren. We know little, however, about *how* grandparents play with their grandchildren (relative to parents) or about their influence through play. A study by Tinsley and Parke (1987) found that parents were rated more competent, relaxed, flexible, calm, and confident in their interactive play with infants than grandparents, whereas grandparents were rated higher on gentleness. However, grandparents were rated overall as highly effective interactive agents, and the infant's development was positively related to grandparental behavior: More stimulating grandparent behavior was correlated with higher scores on measures of infant intelligence (although causal

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Correspondence concerning this article should be addressed to Ross A. Thompson, Department of Psychology, 209 Burnett Hall, University of Nebraska, Lincoln, Nebraska 68588-0308.

links could not be specified). Evidence for both the similarities and differences in parental and grandparental interactive style is important because similarities across social partners may reinforce significant components of childhood socialization, and differences may help broaden children's experience with interactive and caregiving agents. Moreover, when grandparents are involved with the nuclear family, children are exposed to more diverse social relationships (such as between parents and grandparents and the in-law relationship) that add complexity to the child's evolving understanding of family functioning.

Other direct grandparent influences occur through their roles as family historians, transmitting family values, ethnic heritage, and family traditions to succeeding generations (Kornhaber & Woodward, 1981). Grandparents can also serve as mentors for grandchildren, as well as direct negotiators or buffers between parent and child. This role might take on added significance when parents divorce, in light of substantial evidence that major disruptions in parent-child relationships occur during the first two years following divorce (Thompson, 1986).

In addition to these direct influences, many grandparental influences are indirect. The most common way in which grandparents indirectly affect their grandchildren is through their relationships with their adult children, the child's parents. Emotional support is an important aspect of this relationship, which may include allaying the fears and anxieties associated with being a parent, solving problems with child-rearing, or counseling during periods of emotional crisis (Tinsley & Parke, 1984). Grandparents (especially grandmothers) can indirectly influence grandchildren by providing parents with advice, information, and models of child-rearing skills. Grandparents may also provide financial support to the family, thus relieving parents of financial burdens and permitting a higher standard of living.

Although these modes of direct and indirect influence are potentially significant, students of grandparent-grandchild relationships have consistently noted great variability in the degree of involvement of grandparents in the lives of their grandchildren. The level of involvement is influenced by many circumstances, including the geographical proximity of grandparent and grandchild, the age, health status, socioeconomic conditions, job and marital status of grandparents, and the age and gender of the child (e.g., Cherlin & Furstenberg, 1986; Kornhaber & Woodward, 1981). Thus the extent to which a grandparent exerts a significant impact on the lives of grandchildren is multiply determined. The attitudes and interests of the child's parents are a particularly important mediating influence, with grandparents having a more profound role in the lives of grandchildren when parents are themselves supportive of this role. Because of this, the nature of grandparent-grandchild relations is likely to be significantly shaped by the kinds of relationships shared by grandparents with their own offspring.

Finally, it is important to note that the roles of grandparents in the lives of their grandchildren change

when families are under stress. For example, Cherlin and Furstenberg (1986) reported that when parents separated and divorced, maternal grandparents typically saw the grandchild more frequently, assumed more of a parental role in the child's life, and assisted the child's mother (the custodial parent) financially and in other ways. By contrast, paternal (noncustodial) grandparents typically experienced a reduction in contact with grandchildren, which was more commonly a result of geographical distance from the child than active resistance by the custodial parent. Thus, the role of grandparents in disrupted families depended, in large part, on the relationship that existed between grandparents and the custodial parent.

Taken together, our limited knowledge of the role of grandparents in child development affirms that children can derive potentially significant benefits from ongoing relationships with their grandparents. It underscores, however, that a range of factors influence the degree to which these benefits can be realized by children in both stressed and unstressed families. These mediating factors include the geographical proximity between grandparents and grandchildren, the age of the children, and characteristics of grandparents themselves. Foremost among these, however, is the quality of the relationship that exists between grandparents and the child's own parents. If the relationship is harmonious and supportive, this opens avenues for direct and indirect benefits that grandparents can offer their grandchildren. If not, these potential benefits are likely to be much more limited (indeed, children may suffer from extended contact with grandparents if significant intergenerational conflict exists). Consequently, most of the obstacles that grandparents may encounter in their efforts to support their grandchildren cannot readily be resolved through litigation that makes the child's parents and grandparents adversaries in a courtroom.

Identifying the Child's "Best Interests"

Despite evidence that a continuing relationship with grandparents might benefit a child in certain circumstances, the courts might not be the best arena for determining when this is so. As noted earlier, in most states a court's determination of the "best interests of the child" is the basis for awarding visitation rights to grandparents. A basic problem is that most state legislatures have provided few guidelines for how to determine a child's best interests. When they do, courts are usually instructed to consider the nature of the relationship between grandparents and grandchild, the amount of prior contact between them, and related factors. In a few states, the court must presume that visitation is in a child's best interests unless it is shown otherwise; in other states, a best interests judgment is a factor in awarding visitation privileges but is not exclusively determinative.

Determining a child's best interests in custody disputes is an excruciatingly difficult judicial task when parents divorce, and it is a judgment the courts are ill-prepared to make (Mnookin, 1975). Determining a child's best interests is at least as difficult in grandparent visi-

tation petitions. Judging a child's interests in either case involves consideration of changes in psychological development with age as well as the nature of the relational ties between children and adults. In grandparent visitation petitions, it also involves balancing the benefits the child is likely to derive from grandparent visitation against the costs to the child of intergenerational conflict if the custodial parent objects to visitation. In many cases, there seem to be equally strong arguments for and against any decision a judge might try to determine objectively. Judges are thus faced with a very difficult decision in which there is no clear "correct" solution because of the complexity of the relevant issues and the vagueness of legislative guidelines for determining a child's best interests.

As a result, judges may rely on subjective value judgments and their own intuitive assessments of family functioning: criteria that are applied parochially and unreliably and that may vary widely on a case-by-case basis (Mnookin, 1975). As in parental custody determinations, assessments of the child's best interests in grandparent visitation disputes may rely less on child-centered concerns and more on intuitive judgments of parental/grandparental "fitness" as a caregiver. In these situations, parents are likely to be at a disadvantage, especially given the "triggering conditions" permitting grandparents to petition for visitation noted earlier (e.g., separation, divorce, or death of a parent). For example, when considering the struggles of a recently divorced or widowed mother trying to cope with the new demands of a job and parenting, judges are likely to believe that children would naturally benefit from the contributions of their grandparents who can offer wisdom and financial resources. Such a judgment, however, is neither a valid nor a complete index of the child's best interests, and it does not anticipate the child's future experience after the family has restabilized and family members are coping better with new demands.

More broadly, appraising a child's best interests in a grandparent visitation dispute is complicated by the costs to the child of intergenerational conflict. Grandparents are likely to turn to the courts only if they cannot come to an agreement with the child's parents about visitation with grandchildren. Children are likely to encounter loyalty conflicts during the judicial proceedings, and if a visitation petition is granted, loyalty conflicts are likely to be maintained over time as the child remains the focus of intergenerational conflict. Because a child already experiences distress owing to the triggering conditions linked to a visitation petition (e.g., parental divorce or death), it is hard to see how further legal conflict between family members can assist the child in coping. Thus, part of the difficulty in determining a child's best interests is weighing the long-term benefits a child gains from continuing contact with grandparents against the costs that a visitation dispute usually entails for the child. Is the judicial system the most appropriate arena for this kind of intrafamilial dispute resolution?

Of course, similar benefits and costs are entailed when children establish a visiting relationship with the

noncustodial parent after parents divorce. However, the visiting relationship a child shares with a parent who formerly lived at home is not the same thing as a visiting relationship with a grandparent (cf. Foster & Freed, 1979). We have sufficient knowledge about parent-child relationships to justify the judicial presumption that children will benefit from a visiting relationship with the noncustodial parent despite its costs (and indeed they do; see Thompson, 1986). Without similar certainty concerning the relationship between grandparents and grandchildren, it may be unwise to make the same assumption.

Consequences for Family Functioning

In many respects, the broadening of grandparents' rights may reflect a subtle broadening of legal constructions of the family that are based, in part, on beliefs in the importance of "psychological parenting" that may occur outside the parent-child relationship (cf. Bartlett, 1984; Foster & Freed, 1979). Although the "psychological parenting" construct has been a valuable contribution to scholarly thinking about child development, its institutionalization in revised legal policy carries with it the danger of fostering (perhaps unintended) changes in family roles and structure. The most immediate impact is that the traditional legal emphasis on parental autonomy in decisions relating to their offspring is significantly abridged. More generally, a broadening of legal constructions of the family in recognition of extraparental "psychological parenting" relationships may also engage families in new forms of intergenerational conflict (whether or not they are brought to the courtroom) in which children may be unintended victims. In this regard, the existence of grandparent visitation statutes may alter the nature of family functioning in both intended and unintended ways.

One consequence of visitation statutes is that they are likely to affect how intergenerational disputes are negotiated, especially those related to children. Legal scholars have recognized that laws related to the family impose certain parameters on family dispute resolution regardless of whether a court battle occurs, because the threat of a lawsuit is itself a significant negotiating resource (Mnookin & Kornhauser, 1979). The reduction of parental autonomy effected by grandparent visitation statutes means that such intergenerational "bargaining in the shadow of the law" (Mnookin & Kornhauser, 1979) can create potentially coercive situations for parents when faced with the threat of a visitation lawsuit from the grandparents, with unfortunate consequences for children. This seems especially likely given that the triggering conditions permitting a visitation petition (e.g., divorce or death of a parent) often render the parent less prepared financially for a court battle than grandparents are likely to be. Thus, whether or not the courts are used, the existence of grandparent visitation statutes changes the leverage of grandparents over the child's parents when intergenerational disputes related to grandchildren are negotiated. Although this leverage may be beneficial when grandparents have genuine and legitimate interests in their

grandchildren, it can be dysfunctional when the grandparents do not have the interests of grandchildren at heart (e.g., when grandparents use a lawsuit to "get back" at a son or daughter; see Derdeyn, 1985).

Another consequence of the broadened view of the family implied by grandparent visitation laws is that other child-related decisions by parents may also necessarily involve grandparents. For example, Ingulli (1985) has asked whether one of the procedural rights implied by visitation statutes is that grandparents are notified—and perhaps have standing to intervene—in proceedings affecting the custody and legal status of their grandchildren (e.g., parental separation or divorce, adoption, etc.) This could be justified because these are often the conditions in which a visitation petition would be accepted by the court. If this is true, it seems likely that the involvement of grandparents would significantly alter the negotiations of parties with more direct interests in these proceedings (e.g., the child's parents). Although a few state legislatures have written statutory provisions concerning these procedural issues, most have not, and thus significant uncertainty remains about how grandparent visitation provisions affect broader aspects of family functioning.

These consequences for family functioning would perhaps be acceptable in the face of additional evidence that grandchildren always benefit from ongoing contact with their grandparents, despite parental objections. Without such evidence, these consequences imply much greater multigenerational involvement in child-related concerns than the courts have typically allowed under the parental autonomy tradition, with unknown consequences for the child's development.

Future Directions

Role of Social Scientists

The variety of unanswered questions raised by this psycholegal review indicates that social scientists concerned with child and family development have a considerable research agenda. Although not enough is known about the role of grandparents in child development (perhaps because of developmentalists' focus on the nuclear family), the emergence of grandparents' rights as a current interest in family policy exemplifies Bronfenbrenner's (1974) contention that social policy can inform developmental research (as well as the reverse) by highlighting elements of the ecology of human development that merit further research exploration. We have argued throughout this review that well-conceived changes in the legal status of grandparents can be framed only when researchers have extended our current empirical portrayal of grandparents' roles in child development. Much work remains to be done.

In addition to further basic research on the role of grandparents in child development, social scientists also must engage in more directly policy-relevant studies examining the impact of grandparent visitation statutes on family functioning. At present, we know very little about

what happens in families following a judicial award of visitation privileges: How regularly do grandparents avail themselves of such privileges? How do children of different ages perceive their relationships with grandparents (and parents) under such conditions? To what extent are children engaged in ongoing intergenerational conflict when visitation occurs? If there is conflict, how are they affected? Finally, social scientists can and should offer theoretical and empirical substance to the "best interests" standard for determining the conditions under which individual children might benefit from a visitation award to grandparents. This should be built on further research identifying more clearly the conditions that mediate whether children benefit from ongoing contact with grandparents, as well as hard thinking about what children of different ages require from intergenerational relationships and the extent to which such needs can be addressed in the context of litigation.

Grandparent Policy

Although new laws to support intergenerational ties within the family may look attractive in the abstract, this review has highlighted some of the (perhaps unanticipated) pitfalls in new laws pertaining to grandparent visitation. Grandparent visitation statutes may have been passed so quickly in many states because lawmakers could see no harm in simply giving grandparents the right to petition for visitation rights in circumstances in which the child would be most likely to benefit from continuing contact with grandparents. The perceived value of these statutes is further supported by our popular traditional, and perhaps somewhat idealized, images of the roles of grandparents in child development. Indeed, some empirical evidence suggests that children may derive certain benefits from the grandparenting relationship. Our review suggests that problems may occur, however, in the effects of such statutes on family functioning, in uneven judicial application of the best interests of the child standard and, most important, in the short- and long-term costs to the child of litigating family conflict. To develop wise policy, substantially greater knowledge of the roles of grandparents in child development is needed.

What is to be done? Certainly one useful step would be for policymakers to provide more clearly articulated guidelines for judicial determination of the child's best interests in visitation disputes (at present, only Vermont has such a statute). Doing so would not only facilitate judges' deliberations but would also offer families a much more explicit set of standards for "bargaining in the shadow of the law." Indeed, it is arguable that fewer cases would be litigated if grandparents could better estimate their chances of success in court, and negotiations within the family itself would be facilitated as a result (Mnookin & Kornhauser, 1979). Ambiguity in the best interests guideline not only makes judicial determinations more difficult and unreliable but also heightens the likelihood that decisions will be appealed. Procedurally, the more widespread use of a guardian ad litem—an attorney to represent the child's interests—in grandparent visitation

disputes would also focus judicial attention on the child's interests when considering whether to award visitation.

Perhaps responsibilities to the child should also accompany the awarding of visitation privileges. Grandparent statutes are somewhat unusual in their exclusive emphasis on the latter, despite their focus on the grandchild's best interests. Ingulli (1985), for example, has suggested that grandparents should be obligated, when granted visitation privileges, to maintain regular contact with grandchildren and perhaps also to provide financial support to the children. There are problems with the implementation of either provision, but Ingulli has argued that the latter proposal might reduce the likelihood of nuisance suits and would perhaps also foster parental accommodation to a court-imposed visitation decree. On this point, it is noteworthy that in 1985 Wisconsin passed a law (unrelated to the grandparents visitation statute) holding grandparents responsible for the financial support of the offspring of their unmarried minor children.

More generally, the view that family law should seek to support all the significant relationships a child shares with adults should perhaps be reconsidered (cf. Bartlett, 1984). In California, for example, not just grandparents but "any other person having an interest in the welfare of the child" is entitled to petition for visitation rights (Cal. Civil Code §4601). Although children often benefit from such relationships, the law is a very blunt instrument for ensuring that they are maintained, especially when the costs to the child of a court battle are considered. In this respect, social scientists as well as legal scholars are wise to consider carefully the extent to which psychological constructs (e.g., "psychological parenting") should form the basis for legalizing the ties that bind children and adults to each other.

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