

GIVING CREDIT WHERE CREDIT IS DUE:
THE ROLE OF THE NONECONOMIC CONTRIBUTION OF THE
PHYSICAL CUSTODIAN IN ESTABLISHING CHILD SUPPORT

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Several of the child support formulas under consideration purport to consider and balance the contributions of both parents by making the support they pay or are deemed to pay proportional to their incomes. While such a system seems fair, it ignores the essential noneconomic tasks performed by the parent who provides the child with the majority of the child's physical and emotional nurturance. Whether this parent is legally a sole custodial parent or a joint custodial parent, the tasks he or she performs for the child are vastly different from those performed by the other parent, and the significance of his or her nonfinancial contribution is enormous. It is the argument of this paper that the noneconomic contribution should be credited when child support is calculated.

Children need both financial support and physical and emotional nurturance in order to grow. For the last century or so, predominant theories of family relations placed the duty of financial support on the father and the duty of nurturance on the mother. In theory, these roles did not change after divorce: the father was supposed to continue to provide financial support while the mother's duty was continuing nurturance. The law expressed this theory by giving one parent, usually the mother, custody and charging the other parent, usually the father, with child support.

Modern social and economic theories no longer accept as valid strict gender-based divisions of labor. Instead, it is now asserted that mothers and fathers are equally qualified to give both financial support and nurturance to children. The modern theory is recognized in law when the earnings of both parents are considered in setting the amount of child support. A calculation that takes the earnings of both parents into account assumes, in other words, that both parents are competent actors in the labor market with co-equal responsibilities to provide financially for their children.

Modern theory also asserts the equal abilities of both parents to provide nurturance to their children. In a small but growing number of families, both parents do that, whether or not they share a household with the other parent. In the more typical situation, one parent, often but not always the mother, does a disproportionate share of the nurturing tasks. In all too many cases, one parent

does all of the nurturing tasks while the other parent performs no nurturing at all.

Disproportionate nurturing patterns are a product of the older theories of division of labor within the family. Post-divorce patterns of custodial and visiting relationships were established, it should be recalled, during a time when it was believed that custodial care was exclusively the duty of the mother. Visitation was the father's right and privilege, but his duty was financial, not nurturing.

A thorough modernization of the duties of parents requires an equalizing of their nurturing obligations as well as their financial obligations. It is not enough, therefore, to stop where child support formulas stop now, with equivalent financial duties. Parents should be expected as well to provide equivalent nurturing, irrespective of gender. To the extent that disproportionate nurturing occurs, the excess contribution of the parent performing the disproportionate share should be recognized.

Taking nurturing tasks into account when establishing the child support award can be justified on other grounds as well. Some children, especially very young ones, may mature better with the fulltime care of a parent. Providing such services for free, however, is impossible, so the parent must be compensated for nurturing. Some families decide that one parent should make a career sacrifice for the purpose of nurturing children. Following divorce, that sacrifice continues to impair the parent's earnings potential, and the parent is entitled to compensation. For most families, however, the predominant reason for taking nurturing into account when calculating child support is the disproportionate and inappropriate division of labor.

THE TASKS OF THE PHYSICAL CUSTODIAN

A parent of either sex who provides physical care to a child on a solo basis leads a very full life. Most such parents hold an income-producing job as well as a nurturing job. Of all mothers with children under the age of 18, 66% are in the paid labor force; for divorced mothers, the figure is 79%. While divorced mothers of older children are more likely to be in the paid labor force than those with younger children, the differences are not great: 84% of divorced mothers with children between 6 and 17 are in the labor force; 75% of mothers with children between 3 and 5; and 56% of mothers with some children below the age of 3. The comparable figures

for all mothers are 77%, 63% and 45%. (Norton & Glick, 1986). No figures were found for labor force participation of custodial fathers, but it is likely the figures are higher because the higher average earnings of men would make child care more affordable. (Greif, 1985¹).

Studies of the amount of time spent by parents on the care of children vary widely in terms of actual numbers of hours, but not in pattern: the parent who assumes the larger responsibility for the children spends a grossly disproportionate amount of time in child care. For example, a study of employees of a large northeast business reported that single female parents spent an average of 18.89 hours per week providing child care, for a total work week (paid labor, home chores and child care) of 75.31 hours a week. Single male parents, who the researchers believed did not have custody of their children, spent an average of 8.5 hours per week on child care, for a total work week of 65.16 hours per week. (Burden, 1986). Another study found that the fully employed single mother spent an average of one hour a day on child care, or 7 hours a week, an amount not different to a statistically significant degree from the amount of time spent by the employed mother in a two-parent family. (Sanick and Mauldin, 1986). Evidence collected during the 1970's consistently showed that mothers do by far the greater amount of child care and that this task allocation is unaffected by their participation in paid labor (Scanzoni and Fox, 1980). Where fathers have sole custody, the amount of time they spend on child care increases substantially (Greif, 1985). Although Greif did not provide exact figures, the amount of time spent by the fathers probably would equal that spent by custodial mothers.

A parent who provides a disproportionate share of nurturance, irrespective of gender, is likely to be disadvantaged in the labor market and suffer economically. Of the 1136 sole custody fathers in Geoffrey Greif's study, 73% reported experiencing changes in their jobs after gaining custody and many experienced a drop in income. Changes included having to arrive at work late or leave early (35%), having to miss work (34%), having to reduce work-related travel (32%), reducing workload (19%), quitting a job (6%) and being fired (4%). Greif also reported on the similar but somewhat more extreme

¹ The abbreviated citation form is being used here to conserve space. Full citations are provided in the reference list that follows.

experiences of a smaller group of sole custody mothers. Ninety percent reported experiencing job changes: 12% had to quit jobs, 7% were fired, 9% reduced their workload, 32% had to arrive at work late or leave early, 32% had to miss work and 9% had to reduce work-related travel. (Greif, 1985). In the study of business workers mentioned earlier, single female parents (assumed to have custody) averaged only 38.95 hours a week at work, while single male parents (assumed not to have custody) averaged 43.10 hours a week. The responses of the male parents to the work/family related stress "appeared to be more similar to nonparent employees than to parent employees." (Burden, 1986).

Another way of looking at the labor force detriment sustained by the custodial parent is to estimate the opportunity costs of being a parent. A recent study by Espenshade found that fathers, on the average, experience no opportunity costs associated with being a parent. In other words, because the gender-based division of labor still predominates in American families, fathers usually do not perform the predominate share of childrearing tasks and do not forego opportunities to work and earn money. The numbers of fathers who do not fit this pattern are still too small to affect the averages.² On the other hand, mothers, who still perform the bulk of childrearing tasks whether married or single, forego significant numbers of hours of work and earnings. For a married white woman born in 1960 who finishes high school, the average lifetime opportunity costs of having one child at age 23 are 2,169 hours of work and \$22,247 of market earnings (in constant 1981 dollars). With a second child born 2 years later, the costs rise to 4,268 hours and \$43,809, and the third child increases the costs to 6,297 hours and \$64,644. A black woman in the same circumstances would forego 958 hours of work and \$5,203 in earnings with the first child; with 2 children, 1,905 hours of work and \$10,413; and with 3 children, 2,848 hours of work and \$15,664. With higher levels of education, both black and white women forego slightly fewer hours but those hours translate into somewhat higher foregone earnings. (Espenshade, 1985, Table 18, p. 66.)

For the purposes of this paper, the more significant question is the effect of divorce on opportunity costs. According to Espenshade, divorce

² But see Coverman, 1983, reporting that earnings of married fathers decrease where their households include preschool children and both parents are employed at least 20 hours a week.

reduces opportunity costs by only 10 to 15 percent. One should expect, therefore, that 85 to 90 percent of the opportunity costs experienced by a married mother would continue to be experienced by a divorced woman with custody. Although Espenshade's study does not speculate on the effect of sole custody on the opportunity costs of fathers, the Greif study suggests that they would be considerably greater than the zero opportunity costs experienced by married fathers. Deborah Lupenitz found that 56% of the custodial fathers in her small sample were working fewer hours so they could be home with the children, although only 1 father took a cut in pay. (Lupenitz, 1982).

The picture suggested by these studies is that the custodial parent, whether male or female, does all of the nurturing tasks and absorbs all the costs. The simple picture appears accurate for at least a majority of parents and children who do not live together. In a national study conducted by Frank Furstenberg and his colleagues, it was found that contact with the outside parent was fairly minimal in terms of time and content. Nearly half - 49% - of the children had not seen the outside parent in the year before the interview. Sixty percent had not seen the outside parent in the last month and only 1 child in 6 averaged weekly contact or better. Eighty percent had not slept in the home of the outside parent; the majority had not even been to the home. When together, the child and outside parent tended to do social and entertainment activities; very few shared usual child-parent activities such as working on homework, projects or playing a game or sport. On the average, contact with the outside parent occurred twice a month for a primarily social event. (Furstenberg, 1985).

Judith Wallerstein's 10-year followup study found similar patterns of low-level contact. Even though a third of the children in her study lived within an hour's drive of the home of the nonresidential parent, 25% had not seen that parent or seen him no more than 1 time during the year before the interview, which occurred approximately 10 years after the parents had separated. More than a third of the children visited irregularly with the nonresidential parent, for a total of between 5 and 12 visits a year. Only a third saw the nonresidential parent at least once a month. (Wallerstein, 1984).

Deborah Lupenitz found that nearly 50% of the nonresidential fathers in her study visited rarely or not at all; the same held true for 25% of the nonresidential mothers. Another 9% of the nonresidential fathers and 31% of the nonresidential mothers visited "occasionally" (term

not defined). Like Furstenberg, she found that visits tended to be occupied with entertainment and visiting friends rather than with instrumental interactions between parent and child. (Lupenitz, 1982). Greif's single fathers reported that 9% of the nonresidential mothers never visited, 50% visited during holidays, summers or on other nonperiodic occasions, 14% visited once a month and 24% visited once a week. Half of the children never visited the nonresidential mother overnight. (Greif, 1985.)

While this relatively simple picture is accurate in most cases, it is not true for a significant minority. In this group, parents share some portion of the nurturing tasks irrespective of marital status and formal custodial arrangements. Such sharing is important to both the other parent and the children.

Where the outside parent participates in the lives of the children, the children usually benefit. Very briefly, it has been found that, unless there has been violence or abuse during the marriage, a higher level of involvement by the nonresidential parent usually means the children will be less upset and more secure. They do not feel the same level of rejection and longing that characterizes children whose nonresident parent does not visit them. (Weiss, 1979; Wallerstein and Kelly, 1980; Wallerstein, 1984; Furstenberg, 1985; Greif, 1985; Lupenitz, 1982.)

The residential parent also benefits from the involvement of the nonresidential parent. Robert Weiss described the contributions of the marital partnership to parenting as "help when help is needed; support, understanding, and, in general, emotional sustenance; and a sharing of responsibility for the well-being of the family." (Weiss, 1979, p. 61.) Obviously, few non-marital partners have such a shared parenting relationship. Nonetheless, residential parents report that involvement by the outside parent has a number of benefits that resemble Weiss's description. The first is that they have an easier time with the children. This may be the result of the children having fewer problems than children who lack contact with the nonresidential parent. In addition, it may be the result of the nonresidential parent performing some of the nurturing tasks that otherwise would be the exclusive responsibility of the residential parent. (Greif, 1985.) The second benefit is that the residential parent has an easier time working. He or she may be receiving child care assistance from the nonresidential parent (Greif, 1985; Lupenitz, 1982) or other less measurable assistance, such as a willingness by

the nonresidential parent to assume responsibility for emergencies arising during working hours. The third category of benefit is that the residential parent has a greater amount of time free from childcare tasks, which can be an enormous boon to someone whose schedule is tightly controlled by the demands of work and children and who has little time for himself or herself.

In terms of emotional well-being, the overwhelming feeling that usually characterizes sole parenting is that nobody else has any responsibility for the children. That feeling is alleviated somewhat when the nonresidential parent is more involved. Sole responsibility ranked second on a list of 9 stress factors for most of the residential sole-custody parents in Lupenitz's study, while it ranked fifth and sixth for the parents in her study who shared nurturing tasks and responsibilities. (Lupenitz, 1982, Appendix A, Table B-4). When combined with all the other duties of single parenthood, the stress induced by feeling solely responsible may help to explain why residential parents feel a high level of anger and resentment against nonparticipating nonresidential parents. (Furstenberg, 1985; Weiss, 1979). Most residential parents, irrespective of gender, would prefer the outside parent to be more involved with the children and are willing to make sacrifices to foster such involvement (Weiss, 1979; Furstenberg, 1985; Wallerstein & Kelly, 1980). Where a nonresidential parent is more involved, furthermore, the residential parent tends to involve him or her more in discussions and decisionmaking concerning the children. (Furstenberg, 1985).

What the studies indicate, in sum, is that a partial change in family relations theory has been integrated into the lives of parents and children. While both parents are now likely to be members of the paid labor force, it is still common for the burden of nurturance to fall more heavily or exclusively on one parent. That parent still is likely to be the mother, whether or not the parents are living together. If the father provides a home for the children after separation, however, his experience will not vary much from the mother's: he will perform a disproportionate share of the nurturing tasks and, like the mother, his labor force participation will be affected. Most nonresidential parents take no responsibility for ongoing nurturing tasks, and their nonfeasance increases the workload of the residential parent. Where the nonresidential parent maintains a continuing sense of responsibility and involvement in the lives of the children, the tasks and responsibilities of the residential parent are lightened.

A child support formula that allocates responsibilities of the parents solely on the basis of finances is ignoring a large portion of the lives and relations of parents and children. Such a formula makes one of two assumptions. One assumption is that only one parent, usually the custodial mother, has any responsibility for nurturing the children. That assumption is no longer acceptable as a theoretical matter. The alternative assumption is that both parents are making an equal contribution to the nurturing of the children. As the studies show, that assumption is simply inaccurate.

A formula should be founded on a more accurate assumption. As the evidence shows, the more accurate assumption in both financial and practical terms is that, since children require both financial and nurturing support, both parents should provide both. Where either responsibility is not met, the burden on the other parent increases and that excess burden should be recognized.

Given this set of assumptions, two questions remain. First, how can one determine whether a parent has met his or her nurturing responsibilities and, second, how does one translate into dollars the recognition owed the nurturing parent who is performing excess nurturing tasks?

The first question could be answered in specific or general terms. That is, the conduct of particular parents could determine the result or a general formula could be applied. The first alternative raises specters of custody battles with questions such as who took Jimmy to the baseball game, who went to the school meeting, etc., etc. Rather than introduce yet another divisive litigation event into the lives of parents, I prefer a formula. The simplest formula, of course, would turn on a 50-50 split: if a child spends half of his or her nights at the home of each parent, equal nurturing may be presumed. Equal physical nurturing requires a fairly high income level; however, since two homes must be provided, so it is beyond the reach of many parents who are willing to share nurturing responsibilities. It also has substantial disadvantages in terms of parental autonomy. Given these problems, a less strict formula seems appropriate. To determine what an appropriate formula should be, it seems appropriate to look at what many involved parents do. Furstenberg found that over 32% of nonresidential fathers and 69% of nonresidential mothers managed at least monthly visits. Sixteen percent of nonresidential fathers and 31% of nonresidential mothers saw their children at least once a week. (Furstenberg, 1983.) In Greif's sample, 24% of the nonresidential mothers saw their children at least

once a week, 22% every other week, and 14% once a month. (Greif, 1985.) Overnight visits were also very important in many situations: half of the children in Greif's sample had spent the night at their mother's home, with the average being 2 nights a month. (Greif, 1985.) Although exact numbers of visits per week or month were not reported, Lupenitz found that children were dissatisfied with "occasional" visits and relatively more satisfied with "frequent" or "continuous" visits. The children whose physical care was provided by both parents were the most content. These children stayed overnight in both homes on a regular basis of weekends, split weeks or vacations. (Lupenitz, 1982.) The satisfaction of the residential parent with the involvement of the nonresidential parent was reported to increase as the level of involvement increased, although none of the reports gave a specific number of visits that was associated with increased satisfaction on the part of the custodial parent.

One reasonable conclusion to draw from these studies is that regular overnight visits 2 times a month or an equivalent number of overnight visits during vacations provide sufficient time for the nonresidential parent to perform substantial parenting tasks, probably enough to relieve some of the exclusive burden of the residential parent. In such a case, therefore, one could presume an equal contribution to nurturing. In any case falling short of that standard, the residential parent should receive a credit of some kind for shouldering an excessive burden of nurturing responsibilities.

The next question is how to figure out the residential parent's credit. Again, one has the choice of specific and general answers. One could, for example, add up all the hours spent by the specific residential parent on childcare, multiply the hours by the parent's real or imputed market wage, divide by 2 and add the result to the child support paid by the nonresidential parent. While this calculation is conceptually correct, it is also enormously difficult to assess because the first quantity, the number of hours spent on childcare, is hard to determine. What would be preferable is an average amount for the first quantity, which could then be plugged into the formula. None of the studies of household labor located by this author identified that average, because their samples did not differentiate between situations in which both the residential and the nonresidential parent provided nurturance and those in which only the residential parent performed those tasks. My guess is that there would be some small but significant difference in the average number of hours per week spent on nurturing

tasks. Further studies are thus necessary. In the meantime, based on the division of labor studies discussed above, I would propose accepting as a fair estimate 10 hours a week.

This paper has argued that the support of a child includes more than money; a child requires nurturing as well. A comprehensive child support formula, therefore, should recognize and give credit to the contributions made by a parent to the emotional and physical well-being as well as to the child's financial well-being. Despite the complexities of nurturing, a fair set of presumptions and calculations can be devised to determine whether a nonresidential parent has made a reasonable contribution to the emotional and physical nurturance of a child and, if not, the manner in which to compensate the excess nurturing tasks performed by the residential parent.

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