

THE DETRIMENTAL EFFECTS ON WOMEN OF THE GENDER EGALITARIANISM OF CHILD-CUSTODY DISPUTE RESOLUTION GUIDELINES

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I believe that one factor operative in the burgeoning rate of child custody disputes has been the misguided gender egalitarianism of the guidelines used in recent years for courts when ruling in such disputes. These guidelines, although benevolently motivated have placed women in a disadvantageous position and contributed thereby to the utilization of tactics and maneuvers (sometimes cruel and even vicious) that they might not have otherwise utilized. Here I describe this phenomenon in detail and provide recommendations which, if implemented would place women in a more secure position and thereby lessen the need for resorting to such maneuver. The recommended changes will still respect fathers' needs and rights and are in conformity with gender criteria that the courts are required to subscribe to when ruling in child-custody disputes.

Western Society's Changing Attitudes Regarding Parental Preference in Custody Disputes

In the days of the Roman Empire, fathers were automatically given custody of their children at the time of divorce. Mothers had no education or reasonably marketable skills, and so were not considered to be as fit as fathers to care for their children alone. Subsequently, in fact right up to the 20th century, divorce was uncommon because there was no easily available route to it either via secular or ecclesiastical channels. It was not until the mid-19th century that we see the first indications of what came subsequently to be called (in the 20th century) the *tender-years presumption*. The courts began to work under the presumption that there were certain psychological benefits that the child could gain from its mother that were not to be so readily obtained from its father. The notion of wresting a suckling infant from its mother's breast came to be viewed as wrong. Accordingly, mothers began to be given custody of their infant children. But when the children reached the age of three or four (the age at which breast-feeding was usually discontinued in the 19th century), they were considered to have gained all that they needed from their mother and they were transferred to their father, their "rightful and just" parent.

In the late 19th century we see the birth of the women's liberation movement. Women began to gain entrance into educational and other institutions. By the end of the 19th century, however, little headway was made regarding custody of children. This was primarily related to the notion (supported by the courts) that to give a mother custody of the children while requiring the father

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to contribute significantly, if not entirely, to their financial support was unjust to the father. And the courts ultimately reflect prevailing notions of what is just and unjust. What we accept today as perfectly reasonable was beyond the comprehension of 19th century legislators and judges. Until this change in attitude came about, mothers could not reasonably hope to gain primary custody.

The shift in attitude came about by what was possibly an unanticipated route—the child labor laws, passed in the early part of this century. Previously, children were an important economic asset. Children as young as five or six worked in factories, mines, and on farms. With the passage of these laws, children became a financial liability. Fathers no longer rallied around the flag of injustice when asked to support children in the homes of their ex-wives.

In the 1920s the states gradually changed their laws, and custody was no longer automatically given to fathers. The concept of the tender-years presumption prevailed and mothers were generally viewed as the preferable custodial parent. A father had to prove a mother grossly unfit before he could even hope to gain custody.

In the mid-1970s we began to see a male “backlash” to the tender-years presumption. The notion that a woman is automatically a preferable parent, they claimed, is as sexist a concept as the idea that a man should automatically be considered the preferable parent. In most states, new statutes were passed that clearly stated that the sex of a parent should not be a consideration when courts were asked to settle custody disputes. The tender-years presumption was replaced with the *best-interests-of-the-child presumption*. Suddenly, fathers who had previously thought that they had no chance of gaining custody found out that they had.

We see then, when we look back over the span of history, that there was only a 90-year period—from the mid-1920s to the mid-1970s—when mothers were considered the preferable custodial parent following divorce. Prior to that time fathers were generally considered to be the preferable parent and since then mothers and fathers have been considered to be equally capable, at least in the eyes of the law.

In the late 1970s and early 1980s we saw the development of another phenomenon that has markedly affected the security women enjoyed under the tender-years presumption, namely, the joint custodial concept. The idea that one parent should be designated the sole custodial parent and the other the visitor came to be viewed as inequitable. The concept has become so popular that in some states the judge must order a joint custodial arrangement unless there are compelling reasons to consider another plan. Ideally, in order for the joint custodial concept to work both parents must be able to communicate and cooperate well with each other and to be equally capable of assuming child-rearing responsibilities. Furthermore, their living situation must be one in which they on both participate in bringing the children to and from school. Not surprisingly, its popularity has been associated with even more child custody litigation.

The Parental Alienation Syndrome

Prior to the early 1980s, I certainly saw children whom I considered to have been brainwashed by one parent against the other. However, since then I have seen—with increasing frequency—a

new disorder primarily in children who have been embroiled in protracted custody litigation. It is now so common that I see manifestations of it in most children who have been involved in custody conflicts. Because of its increasing frequency and the fact that a typical pattern is observed—different from simple brainwashing—I considered a special designation to be warranted. Accordingly, I termed this disorder the *parental alienation syndrome* (PAS).

I introduced this term to refer to a disturbance in which children are preoccupied with deprecation of a parent—denigration that is unjustified and/or exaggerated. The notion that such children are merely brainwashed is narrow. The term *brainwashing* implies that one parent is systematically programming the child to denigrate the other. The concept of the PAS includes the brainwashing component but is much more comprehensive. It includes not only conscious but subconscious and unconscious factors within the programming parent that contribute to the child's alienation. Furthermore (and this is extremely important), it includes factors that arise within the child that are independent of the parental contributions.

It has come as a surprise to me from reports in both the legal and mental health literature that the concept of the PAS is often misinterpreted. Specifically, there are many who use the term as synonymous with parental brainwashing or programming. The disorder refers to a situation in which the parental programming is combined with the child's own scenarios of denigration of the allegedly hated parent. It was the child's contribution that led me to my theory about the causes of this disorder. Furthermore, the understanding of the child's contribution is of importance in implementing the recommendations described below.

Unfortunately, PAS is often used to refer to the animosity that a child may harbor against a parent who has actually abused the child especially over an extended period. The term has been used to apply to the major categories of parental abuse, namely, physical, sexual, and emotional. Such application indicates a misunderstanding of the concept of the PAS. The term is applicable only when the despised parent has not exhibited anything close to the degree of alienating behavior that might warrant the campaign of denigration exhibited by the child. Rather, in typical cases the parent would be considered by most people to have provided normal loving parenting or, at worst exhibited minimal impairment in parenting capacity. It is the exaggeration of minor weaknesses and deficiencies that is the hallmark of the PAS.

The most common manifestations of the PAS in the child are: a campaign of denigration against the hated parent, absurd rationalizations for the deprecation, lack of normal ambivalence, belief that the denigration is the child's own idea, absence of guilt over the deprecation of the hated parent, the incorporation of parental terminology in the campaign of denigration, and spread of the animosity to the extended family of the hated parent. My experience has been that in approximately 90 percent of cases, the child supports the mother and the father becomes the hated parent. In about 10 percent of cases, it is the mother who is hated and the father who is the preferred parent. In most cases, the parent with whom the child has been most strongly bonded psychologically is the one who is preferred. These gender differentiations and preferences played an important role in my understanding of what has caused this disorder (see below). Elsewhere (1992) I have described in much greater detail the disorder's origins, development, manifestations, and treatment.

The main reasons for the appearance of the PAS have been the replacement of the tender-years presumption with the best-interests-of-the-child presumption and the increasing popularity of the joint custodial concept. As a result, parents are more frequently brainwashing their children in order to ensure “victory” in custody/visitation litigation. And the children have joined forces with the preferred parent to preserve what they consider to be the most desirable arrangement

The Primary Psychological Factors Operative in the Development of the Parental Alienation Syndrome

The campaign of denigration embarked upon by many parents (mothers more often than fathers) can be both vicious and creative. Mothers are generally more bonded to their children than fathers, and they are more likely to engage in a wide variety of manipulations designed to strengthen their positions in custody disputes. I believe that women are genetically more oriented toward childrearing and men more genetically oriented toward extra-domestic activities. This may be viewed as an injudicious thing to say publicly in these days of gender egalitarianism, but I believe that history provides confirmation for this view. Throughout the course of history, women with a high capacity for empathy, sympathy, and sedentary life were generally viewed as preferred wives; and men with a high capacity for activity and impulsivity and a low capacity for empathy were preferable warriors, food gatherers, and protectors. This selective process has produced a genetic loading that contributes to gender differences in the 20th century, environmental demands for egalitarianism notwithstanding.

I am not suggesting that mothers therefore be relegated to the kitchen and nursery; I am only suggesting that these parental differences should be recognized and accepted. I still hold that women should be given the same ultra-domestic opportunities as men, but we should be aware of the implications of this difference. The ideal solution to this problem is that both men and women be given equal opportunity to spend time both in the home and the extra-domestic realms during a child's infancy. Furthermore, mothers are still generally more available to their children than fathers, and even if the genetic component is not operative, their greater availability (especially during the earliest years of their children's lives) is likely to create a stronger bond with the child than the father's.

The primary factor operative for most mothers who program their children into the development of the PAS is the desire to maintain the psychological bond with the child. Obviously, the custody dispute threatens this bond and there is the omnipresent risk of its attenuation and even its ultimate obliteration. Fueling the program of vilification is the proverbial “maternal instinct” (an instinct that I believe exists, as does a paternal instinct [although I believe it to be somewhat weaker]). Throughout the animal kingdom mothers will literally fight to the death to safeguard their offspring, and women today are still influenced by the same genetic programming. Under these circumstances, fair play is viewed as a nicety that can be reserved for less important conflicts, but it has no place in a battle for one's children. Judicial constraints and threats are ignored (often with impunity), and the name of the game is to get away with as much as one can. With such high stakes threats of imprisonment, fines, and even loss of the children will be risked—so important is this cause. Furthermore, following a divorce mothers are generally in a less advantageous position financially than fathers. One of the effects of this disadvantage is less capacity to afford attorneys who will be as effective as their husband's higher-priced lawyers.

The resulting sense of helplessness contributes to their resorting to programming their children in order to prevail in the custody conflict.

I am sympathetic to many women who have programmed their children into the development of the PAS, especially those in the mild to moderate categories. They indeed have been shortchanged by the recent egalitarianism of the criteria for assigning primary custodial status. Regarding women in the severe category of PAS, I have less sympathy because of the psychopathic elements that are often incorporated into their maneuvers. To the degree that they are sadistic and strive toward total elimination of the father, they lose my sympathy. 'Their cruel maneuvers are often derivatives of psychopathological processes (sometimes paranoia) that have become incorporated into their programming and exclusionary procedures.

I am especially critical of mothers who consciously and deliberately bring a false sex-abuse accusation against father in the context of the PAS. This is a common maneuver utilized in recent years, and there is absolutely no excuse for going to this extreme. Many men's reputations and careers have been destroyed by such false accusations, and many have even been incarcerated. It would be an error for the reader to conclude that I do not believe that there is such a thing as genuine sex abuse, even in the context of child custody disputes and even when a PAS is present. The presence of bona fide sex abuse does not preclude a parallel tack of false accusations. Elsewhere (1991 and 1992) I have discussed these issues in great depth,

The most important factor operative in the child's contribution relates to the fact that the child's basic psychological bond with the loved parent is stronger than with the hated parent. Actually, the child is psychologically bonded to both parents, but there is generally a stronger bonding with the parent who was the primary caretaker in the earliest years of the child's life. It is this primary psychological bond that the child wishes to preserve. The campaign, then, is an attempt to maintain that tie, the disruption of which is threatened by the custody litigation. Because most children's psychological bonding with their mothers is stronger than with their fathers, they are more likely to join the mother in the dispute.

It is important to appreciate that the weapons children use to support the mother's position are often naive and simplistic. Children lack the adult sophistication to provide themselves with credible and meaningful ammunition. Accordingly, to the adult observer the reasons given for the alienation will often seem ridiculous. Unfortunately, the mother who welcomes the expression of such resentments will be gullible and accept with relish the most preposterous complaints. The frivolous nature of the complaints and their absurdity are the hallmarks of the child's contribution to the PAS.

The Stronger-Healthy-Psychological Bond Presumption

It might appear from the aforementioned comments that I am on the verge of recommending that we go back to the tender-years presumption. This is not the case. What I am recommending is that we give preference in custody disputes to the parent (regardless of sex) who has provided the greatest degree of healthy child-rearing input during the children's formative years. Because mothers today are still more often the primary child-rearing parent, more mothers would be given parental preference in custody disputes adjudicated under this principle. If, however, in

spite of the mother's superiority at the time of birth. it was the father who was the primary caretaker—especially during the early years of life—such a father might better serve as the primary custodial parent. This presumption, too, is essentially sex blind (satisfying thereby present-day demands for gender egalitarianism) because it allows for the possibility that a father's input may outweigh the mother's in the formative years, even though he starts at a genetic disadvantage. My presumption utilizes primarily the psychological bond with the child as the primary consideration in custody evaluations. I would add, however, the important consideration that the longer the time span between infancy and the time of the custody decision, the greater the likelihood environmental factors will modify (strengthen or weaken) the psychological bonds that the child had with each parent during its earliest years.

I refer to this as the stronger-healthy-psychological-bond presumption. If the early parenting was not "good" then the bond that develops might be pathological. Accordingly, I am not referring here to any kind of psychological bond but a healthy psychological bond. It is not a situation in which any psychological bond will do. A paranoid mother, who has so programmed her son that he too has developed paranoid feelings about his father, may have a strong psychological bond with her son stronger than that which he has with his father. But this joint paranoid bond is certainly not healthy, and its presence is a strong argument for recommending the father as the primary custodial parent. Such a situation, however, is not common, and I generally recommend mothers as the primary custodial parent in the majority of cases.

In summary, the stronger-healthy-psychological-bond presumption is best stated as a three-step process:

1. Preference should be given to that parent (regardless of sex) with whom the child has developed the stronger-healthy-psychological bond.
2. That parent (regardless of sex) who was the primary caretaker during the earliest years of the child's life is more likely to have developed the stronger-healthy-psychological bond.
3. The longer the time lag between the earliest years and the time of the custody evaluation or decision the greater the likelihood other factors will operate that may tip the balance in either direction regarding parental capacity.

I believe that legislators would do well to give serious consideration to these principles and consider substituting them for the present best-interests-of-the-child philosophy. Their implementation would reduce significantly the incidence of the PAS and the false allegations of sexual abuse that often arise in the context of this disorder.

Women would do well to bring these principles to the attention of all those involved in their custody dispute: mental health professionals, attorneys, judges, and legislators. This is the best thing they can do for themselves in child-custody disputes. Embarking upon campaigns of denigration of the father to produce a PAS in their children may very well compromise their cause. Inducing a PAS in children is a form of emotional abuse because it may (especially in severe cases) produce lifelong alienation from their father. And introducing into the campaign of denigration a fabricated (or delusional) sex-abuse accusation is likely to engender negative

feedback and animosity that will significantly compromise women's efforts. Judges, juries, and society at large are becoming increasingly aware of the ubiquity of such cruel accusations. Women who resort to such maneuvers give the feminist movement a bad name and compromise the efforts of those women who dedicate themselves to bring about the changes I am proposing.