

The Primary Parent Presumption: Primarily Meaningless

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Nineteen ninety-three marked the thirtieth anniversary of the publication of *The Feminine Mystique*, the book that spearheaded the drive to unlace the cultural straitjacket of rigid sex-role prescriptions. As we expanded the conventional image of women to include roles beyond those of wife, housekeeper, and mother, we encouraged men to think of themselves as more than just husbands and bread-winners. We invited them to become active partners in the delivery room . . . and they accepted. We required their participation in Indian Guides . . . and they complied. We extolled the importance of father-child bonding, trumpeted statistics linking a father's absence to juvenile delinquency. . . and they listened.

The problem, for some divorcing women, is that their husbands listened too well, and took seriously the call to parenthood. They became emotionally attached to their offspring, and, when the marriage ended, they were unwilling to be demoted to the second string; unwilling to sit on the sidelines of their children's lives. Although lacking in hard data to prove the point, we have at least the perception that more men are seeking and gaining custody of their children after divorce.

Why is this a problem? Because women do not enjoy living apart from their children any more than do men. Also, most women do not want to relinquish the power that goes with custody. This has led to the ironic situation in which some of the same feminists who, in the early 70s, denounced motherhood as "enslavement" now lead a campaign to protect motherhood from divorced fathers who want more involvement with their children. But they face a crucial dilemma: They need to resurrect the belief that women are uniquely suited to rear children and therefore the natural choice for sole custody without appearing to endorse the notions that biology is destiny and that the sexes merit unequal treatment before the law.

The solution to this dilemma is the linguistic sleight of hand known as the "primary parent presumption." This guideline would give preference to the parent who is designated "primary" in the child's life, variously defined as the parent who spends the most time with the child, is more responsible for the child's day-to-day care, or performs more of the daily repetitive maintenance tasks such as chauffeuring, shopping for

clothes, preparing meals, and bathing. Although touted as a gender-neutral standard, everyone agrees that the primary parent presumption would give mothers the same advantage that they enjoyed with the tender years presumption. In fact, law professor Mary Becker advocates dropping the pretense of gender-neutrality and renaming the primary parent presumption the "maternal deference standard."

Briefly, the argument goes that since women are more involved in primary caregiving, they deserve custody. Fathers'-rights advocates respond that it is unfair to penalize men for reduced involvement with their children, since they are only fulfilling society's notions of the man's role as the family's breadwinner.

Neither side's arguments are compelling. Both are blinded by the pre-19th century premise that children are property to be "awarded" to the rightful owner. Both sides miss the point that a custody decision should be guided by the needs of the child not the parents' sense of entitlement.

Some of my colleagues offer arguments in support of the primary parent presumption. They point out that a woman who has been most involved in her children's daily care already possesses the requisite skills. She has less to learn than the father and, by virtue of her experience, is probably more competent to assume the duties of sole custody. Also, because the primary parent standard appears less ambiguous than the best interests standard, parents would be less likely to litigate over custody -- a distinct advantage to the family. But that may be its only advantage. Under critical appraisal, this proposal suffers many serious drawbacks.

Unless we regard custody as a reward for past deeds, the decision about the children's living arrangements should reflect a judgment about what situation will best meet their needs now and in the future. Differences in past performance are relevant only if they predict future parental competence and child adjustment. But they do not.

The primary parent presumption overlooks the fact that being a single parent is a very different challenge than being one of two parents in the same home. A

consensus of research reveals a predictable deterioration in the single mother's relationship with her children. After divorce, the average mother has less time and energy for her children and more problems managing their behavior, particularly that of her sons. Research has also demonstrated that *despite* mother's greater experience in daily child care, fathers who would not be considered primary caretakers during the marriage are as capable as divorced mothers in managing the responsibilities of custody. And, most important, their children fare as well as children do in mother-custody homes.

A more basic problem with the proposed standard: How do we determine who is the primary parent? Before divorce parents think of themselves as partners in rearing their children. Whether or not they spend equal time with the children, both parents are important, and mountains of psychological research support this. Before divorce, we do not rank order parents. Only in the heat of a custody battle do Mom and Dad begin vying for the designation "primary parent."

On what basis do we award this coveted title? We cannot simply measure the amount of time each parent spends with the child. Research has established that, beyond a certain minimum, the amount of time a parent spends with a child is a poor index of that parent's importance to the child, of the quality of their relationship, or of the parent's competence in child-rearing. In fact, we all know of parents who are *too* involved with their children, so-called "smothering" parents who squelch any signs of independence.

If more extensive contact does not make a primary parent, what does? Most definitions provide a list of responsibilities: The primary parent shops for food and clothes, prepares meals, changes diapers, bathes and dresses the child, takes the child to the doctor, and drives the child to school and recreational activities. Such criteria, though, ignore the overriding importance of the *quality* of parent-child relationships.

Furthermore, critics have argued that this list reflects gender bias. Shopping for food and clothes is included, but not earning the money which funds the shopping trips. Also conspicuously absent are responsibilities typically shared by fathers and in which fathers often predominate, activities such as playing, discipline, moral guidance, encouragement and assistance with school work, gender socialization, coaching team sports, and -- something whose significance to children

is often overlooked -- providing a sense of physical protection and security.

Is the primary caretaker the one who does the most to foster the child's sense of emotional security, the person to whom the child turns in times of stress -- the role we most often associate with mothers? Or is it the parent who does the most to promote the child's ability to meet the demands of the world outside the family -- the role we most often associate with fathers? We really have no basis for preferring one contribution over the other. Both are necessary for healthy psychological functioning.

We can say that both parents contribute *distinctively* to their child's welfare. And during different developmental stages a child may relate better to one parent than the other, or rely on one parent more than the other. But most children form strong attachments to both parents in the first year of life and maintain important ties to both parents throughout their lives. By rank ordering the importance of parents, we dismiss children's own experiences of their parents' value, reinforce gender stereotypes, and perhaps discourage fathers from assuming more parenting responsibilities.

In sum, the primary parent presumption is misinformed, misguided, misleading, and primarily meaningless.

Copyright © 1996 by Richard A. Warshak, Ph.D. 16970 Dallas Parkway, #202, Dallas, TX 75248 Dr. Richard A. Warshak is a clinical, research, and consulting psychologist, clinical professor of psychology at the University of Texas Southwestern Medical Center at Dallas, and author of *The Custody Revolution* and *Divorce Poison: Protecting the Parent-Child Bond From a Vindictive Ex*. He has published extensively in the area of divorce and custody and consults with attorneys, mental health professionals, and families. Additional custody resources, including material on relocation, overnight access, and parental alienation syndrome, can be found at www.warshak.com.

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