The Politics of Child Support

Stephen Baskerville, *Howard University*

Professor Jo Michelle Beld's response contains some interesting material, but I cannot see that it detracts significantly from my argument. Indeed, she seems to establish some parts of my case better than I did. She confronts only a few aspects of child support enforcement and bases her argument entirely on personal experience in one state. Aside from the question of whether it is wise, from this vantage point, to charge another with using anecdotal evidence, her personal role in determining child support levels does not alter the political nature of the process.

As an active player in the policy process, Professor Beld's argument in fact comes close to being self-refuting: On the one hand, "the guidelines are not as high as possible." On the other hand, they are indeed being raised—and, she says, should be raised—higher.

Professor Beld first acknowledges that child support and family law professionals have a vested interest in having large numbers of citizens pay child support, then points out what is an obvious conflict of interest: that they are also setting the child support levels. The very fact that Minnesota's enforcement agency is directing the guideline review and controlling the review panel indicates that the police are effectively writing the laws. She not only concedes, but even emphasizes, that precisely "what is notable" about the higher guidelines "is that they emerged directly from the child support and family law professionals" whose livelihood depends upon setting them higher. The assemblage of interested parties she enumerates as setting policy merely confirms that Minnesota is pervaded by the same conflicts of interest as the states I cite. She acknowledges the unsurprising fact that guidelines promoted by the enforcement agency will continue the process of ratcheting burdens upwards; in fact, they will make Minnesota's among the highest in the nation. Finally, she accepts the irrefutable: that "unrealistically high child support orders" and enforcement policies, "have a negative effect on contact between noncustodial parents and their children."

Professor Beld's defense of all this forces her into an extreme version of the classic institutional approach to politics, whereby everyone plays by the rules codified in laws, constitutions, and bureaucratic mission statements. Clear incentives of financial gain and political aggrandizement count for nothing, and government officials have no self-interests.

For example, she emphasizes repeatedly that, when formulating child support guidelines, states are required by federal (and often state) law to include economic research on the costs of raising children. This fact alone, however, is not proof that they actually do so.

If child-rearing costs are paramount, it is odd that most states do not require an economist on their review panel. Virginia's had none in 1999 or 2002, and the only economist on the Georgia panel dissented vehemently from its recommendations. In fact, Georgia's panels have ignored the advice of every economist to appear before them; each economist has urged the panel not to use Georgia's guidelines because they conflict with all studies on child costs. Professor Beld makes no mention of an economist, or indeed any disinterested members, on the Minnesota panel.

Virginia has been in open violation of the law on precisely this question. Section 20-108.2 of the state's domestic relations code specifically requires the state's Joint Legislative Audit and Review Commission (JLARC) to "include in its study of child support enforcement an examination of the costs of raising children." JLARC reported that such a study "would cost millions" and never undertook it, though it received federal money to do so (Leone 2000). In other words, officials simply refuse to obey the law, pleading that it would cost too much, when it is for precisely this reason that they are jailing parents without trial: failure to obey the law (in that case court orders) because they cannot afford it.

Professor Beld also seems to positively exult in the way the Minnesota child support machinery breaches the separation of powers. "Complex connections" may indeed exist among officials in the legislative, executive, and judicial branches and render their powers "inextricably linked in family policies like child support," but this does not make such "collaboration" constitutional. What she terms "the interdependence of legislative, judicial, and administrative functions" means not only that burdens are set by the same police and courts that enforce and adjudicate them, but that child support enforcement agents can issue subpoenas and arrest warrants and can search private papers without court orders. They can "adjust" child support orders by administrative decree and cases are heard by executive-appointed "marital masters," or "judge surrogates," who are not confirmed by the legislative branch and who are often patronage appointments. This is precisely the kind of "interdependence" the Constitution was designed to protect against, and why it provides for the *separation,* not the interdependence, of powers.

Nor is this only my assessment. In 1999, the Minnesota Supreme Court held that the administrative child support process created by Minnesota Statute §518.5511 was unconstitutional on precisely these grounds, declaring that it violated the separation of powers by usurping judicial power to an administrative agency and "by permitting child support officers to practice law" (*In Re Holmberg* 1999). Plainclothes police act as judges and juries.

Neither do such rulings necessarily vindicate Professor Beld's institutional approach. When a Tennessee court struck down a portion of the state's guidelines on equal protection grounds last year, the Tennessee Department of Human Services, which regularly jails fathers for violating court orders, simply announced they would not abide by the court's ruling (*Gallaher v. Elam* 2002; Downing 2002). When a Georgia court declared that state's guidelines unconstitutional, the ruling was overturned by a supreme court that included one justice who was instrumental in formulating the guidelines (*Georgia DHR v. Sweat* 2003). The fact that the justice recused herself was an admission that conflicts over the separation of powers were raised.

Space does not permit an analysis of the economics of Minnesota's

Stephen Baskerville *teaches political science at Howard University and is the author of* Not Peace but a Sword: The Political Theology of the English Revolution *(Routledge 1993). His interests are in political theory and gender politics. He can be reached by email at sbaskerville@cox.net.*

https://doi.org/10.1017/S1049096503003007 Published online by Cambridge University Press

guidelines, though it is worth noting that Professor Beld's suggestion that guidelines underestimate child-rearing costs is based on data such as that of the U.S. Department of Agriculture, which was created for *intact,* not separated, families and which cannot be considered realistic for the costs of two households rather than one (Rogers 2003).

Guidelines devised by Policy Studies Inc. (PSI) also ignore the mitigating factors listed by Professor Beld, such as non-custodial parents' expenses, other children, and a self-support reserve. She insists these considerations are included, but they are only recommendations of an advisory panel, not legal requirements. Even were they enacted into law, they are not built into the presumptive tables but exist outside as "deviations." Judges may simply ignore them and have bureaucratic incentives to do so.

To the extent that statutory guidelines do address these factors they do so with questionable logic. Professor Beld notes that current Minnesota guidelines have a self-support reserve. She neglects to mention that it is based on poverty thresholds from 1983. She asks how guidelines should be adjusted if children spend equal time with each parent. PSI addresses this by inserting a multiplier of between 1.25 and 1.5 into its costs. In other words, PSI makes certain theoretical assumptions of how to calculate fair and reasonable levels of support and then violates its own principles by taking the figures produced by those assumptions and arbitrarily increasing them by 25–50%. The guidelines already hold parents to spending the same proportion of their income on children in two households as they spend in one, a clearly unreasonable assumption; the multiplier requires them to spend 25–50% *more* than they would spend in an intact household.

More to the point politically, burdens exceed costs not only because of the conflicts of interest in setting them, but also because guidelines used in Minnesota, as elsewhere, were originally designed not to support middle-class children but to recoup welfare monies from low-income, unmarried fathers (Rogers 2003). They are, by nature and intent, punitive.

Like government spokespersons, Professor Beld emphasizes the number of cases involving unmarried rather than divorced parents. We do not have hard figures on this, but unmarried cases tend to be welfare cases, and it was welfare cases that originally justified federal involvement.

Yet, this justification is melting away. The most recent figures available show less than 19% of all child support cases involve welfare, and the proportion is shrinking. The remaining 81% are non-welfare cases (OCSE 1999, fig. 2). Naturally, it is much easier to get the money out of middle-class fathers, for whom the system was never designed, than from poor inner-city teenage fathers, who provided the original justification for creating it.

Federal involvement adds further incentives to mine the pockets of these fathers. HHS pays incentive funds of 6–10% on each dollar collected by states, as well as 66% of operating costs and 90% of computer costs (HHS 1997). To collect these funds, states must channel support payments—including current ones—through their criminal enforcement machinery, further institutionalizing the criminalization of parents and allowing governments to claim their perennial crackdowns increase collections despite the federal program operating at a consistent loss.

The federal funds also supply an added incentive to make guidelines as onerous as possible and to squeeze every dollar from every individual available. Georgia assistant district attorney William Akins writes that the incentive payments create an "incentive to establish support obligations as high as possible without regard to appropriateness of amount" (Akins 2000, 9–10).

One could hardly design a more elegant system for creating criminals by administrative fiat, with potential for limitless bureaucratic expansion. The fact that no political scientist can even attempt to refute more than a small portion of these charges confirms the existence of a massive and growing sector of government power that has received virtually no scholarly scrutiny. A huge opportunity exists here for political scientists to bring their expertise to bear on one of the most vexing and destructive sectors of public policy.

References

Akins, William C. 2000. "Why Georgia's Child Support Guidelines Are Unconstitutional." *Georgia Bar Journal* 6 (October), 8–14, 54–57.

Downing, Shirley. 2002. "DHS Keeps Child Support Rules Intact." www.GoMemphis.com (13 August).

Gallaher v. Elam. 2002. Tennessee Appeals Court, No. E2000-02719-COA-R3-CV (29 January).

Georgia DHR v. Sweat. 2003. Georgia Supreme Court, No. SO3A0179 (29 April).

HHS. 1997. *Child Support Enforcement Incentive Funding.* Washington, DC: Department of Health and Human Services.

In Re Marriage of Sandra Lee Holmberg v. Ronald Gerald Holmberg, et al. 1999. State of Minnesota In Supreme Court, C7-97-926, C8-97-1132, C9-98-33, C7-97-1512 (Office of Appellate Courts, filed 28 January).

Leone, Philip A. 2000. "Special Inquiry: A Review of Child Support Enforcement and the Judicial Process." Richmond, VA: Joint Legislative Audit and Review Commission, 19 December.

OCSE. 1999. *FY 1998 Preliminary Data Report.* Washington, DC: Office of Child Support Enforcement.

Rogers, R. Mark. 2003. "Child Support Guidelines: A Comparison of Methodologies." Testimony to the [Minnesota] House Judiciary Policy and Finance Committee, Senate Judiciary Committee, and House Civil Law Committee, 11 March.

https://doi.org/10.1017/S1049096503003007 Published online by Cambridge University Press