

TO: THE DEMOCRATIC PARTY PLATFORM COMMITTEE
FROM: THE PROJECT FOR INTEGRATING SPIRITUALITY, LAW, AND POLITICS (<http://www.spiritlawpolitics.org>)

RE: A PROPOSAL TO MOVE AWAY FROM A PUNITIVE APPROACH TO CHILD SUPPORT AND TOWARD A FAMILY-BUILDING APPROACH AIMED AT STRENGTHENING RELATIONSHIPS AND RESPONDING TO THE CALL OF THE BLACK LIVES MATTER MOVEMENT FOR DISMANTLING INSTITUTIONAL RACISM

DATE: JULY 9, 2020

1. Confronting the Problem of Child Support Laws: Reforming Existing Legal Processes that Disproportionately Harm Communities of Color and the Poor and Stigmatize and Demean the Non-Custodial Parent

The Project for Integrating Spirituality, Law, and Politics (PISLAP, pronounced pie-slap) is a nationwide group of lawyers, law professors, law students, and legal workers of diverse backgrounds and faiths who seek to shift the focus of our existing legal system toward the healing of broken relationships and the fostering of empathy, compassion, and mutual understanding. Our group has in recent weeks been seeking to respond constructively to the call for challenging the manifestations in law of institutional racism that remain part of the tragic legacy of slavery, our nation's "original sin."

While we recognize and affirm the importance of fundamentally reforming police practices following the police killing of George Floyd and many other African-Americans in recent years, we also believe that related disrespect, indignity, and social harm are inflicted upon African-Americans and other communities of color in other areas of law. These areas of law must also be transformed if we are to truly address the kind of systemic racial injustice that so many hundreds of thousands of demonstrators have been protesting against in recent weeks.

Central among these other areas of law is that of child support, in which our existing system often operates to reinforce existing cycles of poverty, in a way that punishes and humiliates those who cannot make child support payments. In the context of low-income families in particular, the operation of the current system can make more rather than less likely the destruction of family relationships, to the detriment of parents and wider communities affected by this system, and to the detriment of the children who will comprise the next generation within these same communities.

Because African-Americans are disproportionately represented in low-income communities, the harm suffered by black lives in the police context is mirrored in the child support context by subjecting many of those affected by current child support laws to disrespect and punishment, even if child support does not involve the same level of physical

violence as does police misconduct. If “Black Lives Matter,” we must bring a fundamentally new ethic and legal response to the suffering inflicted in the child support context as well.

In our current system, the federal government underwrites public assistance payments made by states to custodial parents responsible for raising their children. In return, states are required to levy child support payments against the non-custodial parent, and in most states some or all of those payments are used to reimburse the government for federal monies spent in public assistance.

As mandated by federal law, if the non-custodial parent fails to make child support payments, the state routinely suspends the driver’s license of the parent who has fallen behind in his or her payments—often the first step in a series of punishments that push the non-custodial parent further into poverty and make it less possible for that parent to actually support his or her child or children, and less likely that that parent will be able to constructively and caringly participate in the upbringing of his or her child. Without a driver’s license, the parent is often unable to work, loses his or her job, and thereby falls further behind in payments—or he or she disobeys the license suspension and decides to drive to work, risking arrest for driving without a license. Such an arrest may, and in some states often does, lead to the imposition of a criminal record, which further undermines the parent’s ability to find employment. If the parent then continues to be unable to pay his or her child support debt, now hampered by further unemployment and lack of transportation, he or she then may face incarceration through criminal charges like “Child Abandonment” or, more commonly, civil contempt of court. This modern-day form of debtor’s prison leaves the now stigmatized parent not only enduring a term in a jail cell, but also leaves him or her deeper in debt and even less able to find stable employment, much less a pathway to restoring relationships with his or her children and co-parent.

The destructive consequences of these practices authorized by our legal system have been evident since they were first chronicled by Charles Dickens in novels such as Hard Times and Little Dorritt almost two hundred years ago. Punishing a person for his or her inability to pay a debt rarely helps that person pay off the debt and achieve self-sustainability. More often, such punishment pushes that person further into poverty and despair while severely damaging their connections to family, employer, and community. We need to adopt legal processes that succeed in holding parents accountable for their financial obligations while supporting them in their efforts to gain stable employment and to restore relationships with their co-parents and children.

We therefore urge the Democratic Party Platform Committee to reject the use of punitive and ineffective methods to enforce child support obligations, and to embrace a fundamentally different paradigm that actively seeks to foster the building and stabilization of family relationships.

- 2. The Democratic Party should call for the reframing of the child support program as a whole from one shaped by a coercive enforcement paradigm to a paradigm that fosters the building of long-term family relationships. This new paradigm would empower parents to build an effective co-parenting relationship that treats both parents with dignity, and respects and enhances the many kinds of contributions they can make as co-parents to raising a healthy child.**

As it is now constituted, the child support program is almost exclusively a one-dimensional program, based on the assumption that what non-custodial parents have to contribute to their children is a monthly payment. This is demeaning to non-custodial parents, most of whom love and support their children in a variety of ways—emotionally, financially, and with whatever gifts and in-kind contributions they can manage.

Moreover, the child support program usually ignores the family challenges of low-income unmarried parents, in a relationship that may be quite fragile, as they work through their respective parenting roles and how they will co-parent together to raise a healthy child. Instead of continuing to treat these challenged relationships through a punitive lens aimed at merely extracting financial contributions from the “deadbeat” parent, the new paradigm we are proposing would seek to strengthen the relationships of co-parents, and to empower both parties in recognizing the important roles and contributions of both mothers and fathers in developing the skills and understanding needed for effective co-parenting.

It is important in discussing this issue to recognize the strong concerns and reservations that advocates for women and survivors of domestic violence have to any co-parenting arrangements. There are situations and relationships (in the case of physical, sexual, emotional or financial abuse) where co-parenting is undesirable and should not be pursued; and for those who have experienced or experience such abuse, collection of child support is a key path for achieving independence and self-sufficiency from an abusive partner. See, e.g., (<https://www.ncsl.org/research/human-services/child-support-and-domestic-violence.aspx>).

The State of Minnesota has demonstrated a model co-parenting paradigm by creating a Co-Parenting Court that sought to bring co-parents together with dignity and mutual respect, and has meaningfully addressed the concerns of domestic violence advocates, who did not want to see survivors of abuse forced together with those who have abused them. With simultaneous parent education and thoughtful mediation, this co-parenting court was able to help co-parents to work better together, to actually increase child support payments, and to enable fathers in particular to feel an increased sense of respect and optimism about the role they can play in their child’s life. The valuable contributions of Minnesota’s co-parenting court are highlighted in The U.S. Partnership on Mobility from Poverty’s report, “Transforming Child Support into a Family-Building System” (The report, which references on page 15 the Minnesota Co-Parenting court, can be found at https://www.mobilitypartnership.org/file/1218896/download?token=i5rjaT_7)

In the Minnesota Co-Parenting Court, a local domestic violence advocacy group joined the partnership of the co-parenting court, and were present at every meeting and court session. There was a carefully thought-through screening process that asked individuals about healthy relationships in an effort to cast as wide a net as possible to identify those for whom co-parenting would be a safety concern. We would suggest a similar approach in designing the co-parenting courts that we are recommending here.

While the Minnesota example is a powerful one, it is by no means a stand-alone effort. Many states have already recognized that a transition from a punitive to a family-centered approach to child support is necessary and far more effective in achieving the goal of enhancing the well-being of families overall. The suspension of driver's licenses has been particularly noted as a problem. Please see the citations footnoted below as examples of these state efforts and analyses.¹

We advocate, subject to the concerns raised above regarding domestic violence, that the Minnesota model be embraced in the Democratic Party platform as a model for the entire country. Such a step would show in a very practical and impactful way that the Democratic Party truly embraces the aspiration of the Black Lives Matter movement to reconceive how Black people are perceived and treated within the system as a whole and not just in isolated circumstances of discrimination by one or another bad actor. Such a shift in perspective would align the party toward healing a broken system that reproduces racial injustice and toward a system that values caring and human connection across races, a system based upon empathy, compassion and love.

Toward this end the following steps should be taken:

1. The Democratic Party should call for an end of the child-support program as a cost-recovery program for the government. This practice stigmatizes and demoralizes non-custodial parents, ignores the opportunity for resolving co-parenting and financial challenges in a way that can build families and human connection, and recoups only a tiny fraction of public assistance. The Minnesota example shows that child-support payments are more likely to

¹ <https://ascend.aspeninstitute.org/engaging-fathers-in-child-support-from-a-punitive-to-supportive-approach/>
<https://www.abell.org/publications/reforming-child-support-improve-outcomes-children-and-families;>
<https://fee.org/articles/why-jailing-parents-who-cant-pay-child-support-is-questionable-public-policy/>
<https://www.fusecorps.org/2019/06/27/how-l-a-county-made-collecting-child-support-less-punitive/>
<https://www.nytimes.com/2019/09/10/opinion/child-support-states.html>
<https://ibo.nyc.ny.us/iboreports/2014childsupport.html>

occur through a dignifying paradigm emphasizing mutual responsibility and respect than through a coercive and punitive model. As a corollary to this point, all child-support payments by the non-custodial parent should go to the child or children they are intended to support, not to the government.

2. In order to empower parents to work together to decide how to best support their children, unless domestic violence or other good cause rules this out, co-parenting training and relationship mediation should be a central part of the legal response to the necessity of child support, in addition to imposing reasonable financial expectations on both parents.
3. The new model should integrate into the design of any co-parenting initiatives the involvement and participation of advocates for domestic violence survivors.
4. Parents should be assisted in the creation of enforceable agreements for the support of children, and custody and parenting time should be established in such agreements in addition to financial obligations. This kind of comprehensive co-parenting agreement should be extended to unmarried as well as divorcing co-parents.
5. Both parties should have the right and opportunity to agree that a non-custodial parent's parenting time and other non-monetary contributions to the co-parenting process should be credited toward any formal child-support obligation, in addition to monetary contributions. In addition, the monetary contribution expected of any parent should be limited to a reasonable share of a parent's actual disposable income.
6. Finally, suspension of driver's licenses as a primary sanction for non-payment of child support to the government should be terminated.

Conclusion

The Project for Integrating Spirituality, Law, and Politics is founded on the belief that the legal system must reimagine its conception of justice to focus not only upon vindicating individual rights, but also upon the fostering of empathy, compassion, and human connection. In our view, that aspiration is also a fundamental aspect of the Black Lives Matter movement, as that movement has emerged through the recent protests against the demeaning of Black lives for hundreds of years in our own nation. While some of this racial injustice has been manifested in illegal acts of discrimination and violence, the vast majority of it has been carried out legally, through rules and social practices that have legitimized and enforced it. If we wish to heal and repair this unjust aspect of our national heritage, we must not only identify and prosecute illegal actions, but also transform piece by piece that legal order within which that injustice has previously been justified and has thus become—as it is often put—systemic.

The routine processing of child support obligations throughout the country has been one important arena in which this kind of systemic racism, disproportionately degrading our communities of color, has been justified and enforced. We call upon the Democratic Party to embrace the dignifying and family-supportive co-parenting paradigm that we have articulated here by including our recommendations in its 2020 platform.