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# FATHERS, THE WELFARE SYSTEM, AND THE VIRTUES AND PERILS OF CHILD-SUPPORT ENFORCEMENT

*David L. Chambers\**

FOR half a century, Aid to Families with Dependent Children (“AFDC”)<sup>1</sup>—the program of federally supported cash assistance to low-income families with children—has been oddly conceived. Congress has chosen to make assistance available almost solely to low-income single-parent families, not all low-income parents with children. At first many of the eligible single parents were women whose husbands had died. Over time, a growing majority were women who had been married to their children’s father but who had separated or divorced. Today, to an ever increasing extent, they are women who were never married to the fathers of their children.<sup>2</sup>

Where are men and fathers in this scheme of assistance? They are themselves eligible for AFDC if their income is sufficiently low and if they are the single custodial parent of a child. They are also eligible if they are living with the mother and the child and one of the two adults is incapacitated or meets some other stringent criteria. Few fathers qualify.<sup>3</sup> AFDC is a program for children and their mothers. Low-income men are not the object of our public compassion. They are a cause of the problem. Over the last several decades, as the proportion of American children living in one-parent families has grown—tripling between the

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\* Wade H. McCree, Jr., Collegiate Professor of Law, University of Michigan Law School. I am grateful for the comments and guidance of Stephen Sugarman, Terry K. Adams, Irv Garfinkel, Marsha Garrison and Sara McLanahan. I would also like to thank Noreen Nash for her assistance.

<sup>1</sup> The AFDC program is provided for in the Aid to Families with Dependent Children Act, 42 U.S.C. §§ 601-617 (1988).

<sup>2</sup> As of 1993, 55% of children receiving AFDC benefits had parents who were never married to each other. Office of Family Assistance, U.S. Dep’t of Health and Human Servs., *Characteristics and Financial Circumstances of AFDC Recipients, Fiscal Year 1993*, at 34 tbl. 16 (1995) [hereinafter *Characteristics of AFDC Recipients*]. In 1975, that figure was 31%. Office of Child Support Enforcement, U.S. Dep’t of Health and Human Servs., *Child Support Enforcement: Seventeenth Annual Report to Congress 6 (1994)* [hereinafter *Seventeenth Annual Report*].

<sup>3</sup> In 1993, only 8.1% of families receiving AFDC benefits included two or more adults who met the narrow criteria for eligibility. See *Characteristics of AFDC Recipients*, supra note 2, at 27 tbl. 9, 33 tbl. 15.

1940s and the 1990s<sup>4</sup>—and as the number of AFDC recipients and the cost of AFDC have grown correspondingly, fathers have been joined with teenage girls raising babies and welfare-fraud queens driving Cadillacs as the principal pathologic agents of increased costs. As a popular news magazine recently put it, “[i]f the 90s offer one villain by consensus, it is the deadbeat dad, that selfish fugitive condemned by liberals and conservatives alike. . . .”<sup>5</sup>

The irresponsibility of fathers takes three forms: they bring into the world “illegitimate” children they do not intend to support, they leave marriages they should remain in, and, whether married or not, they fail to pay support for the children they leave behind. For the last twenty years, Congress has worked to reduce welfare costs by forcing fathers to reimburse the states for AFDC benefits paid for their children, but most fathers still make no contributions. Recently, comparable figures have become available on child support payments by mothers under orders of support. They too frequently fail to pay.<sup>6</sup> Because the overwhelming majority of children who live with only one of their parents live with their mothers, however, the problem is still justly perceived in gendered terms. Thus, in this essay, I will generally refer to the noncustodial parent as the father.

Professor Stephen Sugarman, in his article, *Financial Support of Children and The End of Welfare As We Know It*,<sup>7</sup> reconceives the role of noncustodial fathers in the welfare system, seeking a way to treat them as foresighted rather than irresponsible. He proposes enlarging the Social Security system by requiring workers to contribute part of their wages as insurance against the possibility that they will someday become the noncustodial parent of a child. In the pages that follow, I appraise the Sugarman proposal and then re-examine our current efforts to collect support from absent fathers—a set of efforts that, even under the Sugarman plan, will remain a central aspect of future programs that address children’s economic well-being.

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<sup>4</sup> See Donald Hernandez, *America’s Children: Resources from Family, Government, and the Economy* 65, 103 (1993).

<sup>5</sup> David Van Biema, *Dunning Deadbeats*, *Time*, Apr. 3, 1995, at 49.

<sup>6</sup> In 1991, mothers were the payors named in about 8% of child support orders. See Bureau of the Census, U.S. Dep’t of Com., *Child Support for Custodial Mothers and Fathers: 1991*, at 6 (1995) [hereinafter *Child Support for Custodial Mothers and Fathers*]. As of spring 1992, a far smaller proportion of noncustodial mothers were under orders of support than were noncustodial fathers (approximately 41% versus 56%). *Id.* at 5. Of parents who were under orders of support, about 76% of men and 63% of women paid something during 1991. *Id.* at 6. See also Donald E. Metz, *Deadbeat Moms (Cont’d)*, *Wash. Post*, June 10, 1995, at A15 (discussing the Census Bureau study).

<sup>7</sup> 81 Va. L. Rev. 2523 (1995).

My views about efforts to collect child support remain conflicted. The results from the last twenty years of expanded efforts to collect support are mixed, but the successes suggest that it should be possible to collect vastly more than has been collected in the past. My puzzlement arises from a suspicion that although improved enforcement programs would likely produce substantial positive results for many women and children, they would also, for a substantial and unmeasurable number of men, women and children, inflict unintended and undesirable harms that we would regret. As is often true in our society, these negative consequences would be borne disproportionately by the poorest persons and by persons of color.

#### I. THE SUGARMAN PROPOSAL AND WHY, WHEN IT IS RAISED UP THE FLAGPOLE, FEW WILL SALUTE

To end the welfare system as we know it, Sugarman proposes adding single-parenthood to the list of life events covered by Social Security. Today, when a worker dies after having worked in the labor force for the requisite length of time, Social Security benefits are available for the worker's child. They are also available for the child's surviving parent if the parents were married.<sup>8</sup> Sugarman would provide similar coverage for children whose working parent ceases to live with them or whose working parent has never lived with them at all.<sup>9</sup> To deal with the moral hazard problem (that is, the possibility that providing benefits will encourage marital breakups and out-of-wedlock births) and to reduce other costs of the program, Sugarman would require the absent parent to reimburse the government for the Social Security benefits paid for his or her children up to the level of child support he or she would otherwise be required to pay in the circumstances. In these respects, his proposal closely resembles Irwin Garfinkel's proposals for child support assurance.<sup>10</sup>

Sugarman's proposal would provide assistance to the majority of children currently receiving welfare payments through the AFDC program,

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<sup>8</sup> 42 U.S.C. § 402(d),(g) (1988) (providing child's insurance benefits and mother's and father's insurance benefits).

<sup>9</sup> Sugarman, *supra* note 7, at 2561 ("[W]e should entitle a child and his or her caretaker parent to the same Social Security benefits when the caretaker is a single parent owing to absence as they would have obtained if single parenthood had arisen from the death of the other parent.").

<sup>10</sup> See Irwin Garfinkel, *Assuring Child Support: An Extension of Social Security* (1992). The most significant difference between Sugarman's proposal and Garfinkel's proposal is that Garfinkel would bring all children with an absent parent under his new program, not simply those with an absent parent who had worked long enough to qualify for Social Security benefits.

but, as he acknowledges, would leave out those children whose absent parents have never participated in the labor force or have not participated for the number of calendar quarters necessary to be eligible for Social Security benefits.<sup>11</sup> Those who would be left out include disproportionate numbers of the children on welfare about whose parents conservatives already grouse most loudly. The parents would be disproportionately in their teens or twenties; most would not have been married to each other, and most would be African-American or Latino.<sup>12</sup> For these children Sugarman has no easy solutions.

As he explains at length in his article, Sugarman believes that his Social Security proposal can attract the support of conservatives and liberals to a greater extent than other approaches. I find a great deal to admire in his proposal, as in all his writing on this and other subjects. Over and over in his career, Sugarman has been the iconoclast, defending heretical positions with a quiet care that makes them compelling.<sup>13</sup> I admire his recasting of single-parenthood as simply another one of life's perils, viewing it as a problem to be regretted (like death or disability) but one that deserves to be resolved without stigmatizing those needing assistance. The details of his proposal are also appealing—particularly the higher benefits Social Security would provide as compared to the current AFDC system and the lower “tax” rate that would apply to the earnings of the custodial parent.

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<sup>11</sup> Generally, forty quarters of work are required for eligibility for Social Security old-age and survivors benefits, 42 U.S.C. § 414(a)(2); twenty are required for disability insurance benefits. *Id.* § 423(c)(1). Under certain circumstances, individuals who have worked fewer quarters are eligible for benefits. For example, disability insurance benefits are available to an individual under age 31 if that person has worked half, but not fewer than six, of the calendar quarters that have passed since he or she reached age 21. *Id.* § 423(c)(1). Still, social security eligibility and benefits are pegged to time spent in the workforce, requirements that many parents, particularly those of children receiving AFDC benefits, do not meet.

<sup>12</sup> I can find no statistics relating to noncustodial parents who do not have employment histories that would qualify them for Social Security benefits, but they are almost certainly disproportionately the same young and minority men for whom unemployment rates are the highest. These men's partners and children are greatly overrepresented among AFDC recipients. See *Characteristics of AFDC Recipients*, *supra* note 2. As of 1993, about 31% of AFDC recipient mothers were 24 years old or younger, *id.* at 46 tbl. 22; 58% of AFDC recipient children were black or Hispanic, *id.* at 35 tbl. 17; and 55% of AFDC recipient children had parents who had never been married to each other. *Id.* at 34 tbl. 16.

<sup>13</sup> See, e.g., John E. Coons & Stephan D. Sugarman, *Education by Choice: The Case for Family Control* (1978); Stephan D. Sugarman, *Dividing Financial Interests on Divorce*, in *Divorce Reform at the Crossroads* 130 (Stephan D. Sugarman & Herma Hill Kay eds., 1990); Stephen D. Sugarman, *Doing Away with Tort Law*, 73 *Cal. L. Rev.* 555 (1985); Stephan D. Sugarman, *Reforming Welfare through Social Security*, 26 *U. Mich. J.L. Ref.* 817 (1993).

Still, on this occasion, Sugarman is surely wrong about his proposal's likely appeal to liberals and conservatives alike. Perhaps his proposal is best seen not as an earnest legislative recommendation, but rather as a heuristic device that gives us perspective on our current programs. Nevertheless, I will take him at his word for a few pages.

Professor Dorothy Roberts, the other commenter on Sugarman's article, is one liberal who prefers to explore ways of improving rather than abandoning the current system. Although she and I (and most other liberals) would certainly prefer the Sugarman proposal to the AFDC reforms currently under consideration in Congress, Roberts would not be alone in her preference to explore ways of improving the current AFDC program. As to conservatives, when Sugarman presented his paper at the New Directions in Family Law Symposium, two conservative contributors made no effort to conceal their contempt. They too would not be alone.

Although Sugarman is right that conservatives are more sympathetic to Social Security than to welfare—to programs tied to worker contributions rather than to taxpayer subsidies—he misunderstands or ignores the passion of the current right.<sup>14</sup> Many are concerned almost solely with reducing the size of the federal budget.<sup>15</sup> Others care about social policies bearing on families but believe that eliminating all economic assistance for children is the only way to discourage poor women from having babies outside of marriage and from “choosing” to rely on welfare rather than on work.<sup>16</sup> Still others simply wish to punish women for what they view as promiscuity and sloth. Sugarman's proposal would provide benefits to the household of an eighteen-year-old mother who has one child and then another by a twenty-eight-year-old worker who does not want

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<sup>14</sup> See *Contract with America: The Bold Plan* by Rep. Newt Gingrich, Rep. Dick Armey and the House Republicans to Change the Nation 65-77 (Ed Gillespie & Bob Schellhas eds., 1994) [hereinafter *Contract with America*] (discussing the Republicans' welfare reform proposals).

<sup>15</sup> For example, the first version of the solely Republican-sponsored Personal Responsibility Act of 1995 (“[a bill t]o restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence”) introduced in the House of Representatives, H.R. 4, 104th Cong., 1st Sess. (Jan. 4, 1995), limited the amount of federal spending for AFDC and certain other welfare programs, id. § 301, and required all savings to the federal government resulting from the new spending limits to be used for deficit reduction. *Id.* § 303.

<sup>16</sup> See, e.g., Charles Murray, *Losing Ground: American Social Policy, 1950-1980*, at 227-33 (1984) (examining the advantages—including expected behavioral changes among recipient populations—of scrapping the entire federal welfare system for working-aged persons and leaving those in need to resort to a network of local services). See also 141 Cong. Rec. H3352 (daily ed. Mar. 21, 1995) (statement of Rep. Archer) (“This bill [Personal Responsibility Act of 1995] will reverse the decades-long Federal policy of rewarding unacceptable and self-destructive behavior”).

to marry her and has no intention of supporting his children. That, in the view of many conservatives, will never do.

Dollar costs alone would doom Sugarman's proposal. He does not emphasize that, in at least three ways, his program would be considerably more expensive than the current AFDC system. First, many more people would be eligible for his benefits than are currently eligible under AFDC: the proposal covers all workers whose children are living apart from them, whether or not their children are now eligible for AFDC. Second, the costs per person covered would be higher because benefits are higher for a child covered by Social Security than they are under any state's AFDC program. Third, the per-person costs would be further raised because, unlike the AFDC program, benefits under the Sugarman proposal would not decrease by a dollar for each dollar earned by the custodial parent. Furthermore, rather than the mix of state and federal funds upon which the AFDC program relies, only federal funds would be used to finance the new program. Conservatives might be grateful that states would no longer be coerced into spending their own money to get federal welfare monies, but they would oppose any additional federal expenditures. They would also oppose the loss of state control over social welfare programs within their borders. What they want is chunks of federal money passed back to the states without federal strings attached.

Employers would also oppose the proposal. Another distinction between Social Security and AFDC is that Social Security is funded by employer and employee contributions rather than general tax revenues. Employers are certain to resist any addition to their payroll taxes, especially one that is unlikely to be offset by a reduction in corporate income taxes.

Finally, one of the Sugarman proposal's greatest attractions would also pose a formidable obstacle to its enactment. Unlike recipients of AFDC, recipients of Social Security feel entitled to the benefits they receive, believing that they have paid for the benefits with their labors. Many imagine, erroneously, that somewhere in Washington exists a savings account with their name on it. They view their contributions and benefits as property. Welfare, by contrast, is merely a handout. Sugarman's proposal builds on this erroneous, albeit socially useful, conception of social insurance. I doubt, however, that Congress will in the foreseeable future allow for new benefits to be paid out of the Social Security fund, already one of the largest components of the federal budget. One of the many obstacles to deficit reduction has been Social Security's political inviolability: those who would reduce benefits are seen as thieves. By the same token, spokespersons for retirees and the disabled, who believe in the sacredness of Social Security, are highly likely to oppose saddling the

fund with a new group of beneficiaries—children of divorced and never-married couples—who are politically controversial and whose addition might open all of Social Security to greater tinkering by Congress.

Even I, a fuzzy-thinking liberal, am uncertain about the wisdom of adding a new program for single-parent children to the Social Security system, although I too once argued that it should be considered.<sup>17</sup> Finding ways to make the support of low-income families less stigmatizing is desirable; but it should be accomplished in a manner that leaves them subject to the political process. Politicians should be reluctant to scale back programs that serve low-income families, but these families should not be immune from political discourse.

Another shortcoming of the Sugarman proposal—one that Sugarman acknowledges—is the position in which it leaves children *not* covered by his proposal. The proposal does not apply to children whose noncustodial parents have not worked in the labor force long enough to be eligible for Social Security benefits. His proposal could be expanded to reach more of these children; as drafted, however, it leaves out the most vulnerable children—those with the youngest and poorest mothers and fathers.<sup>18</sup> Of course, programs that address the income needs of poor families cannot be expected to solve all problems at once. I fear, nonetheless, that these children would remain within a residual AFDC program, even more politically conspicuous than they are today.

Sugarman acknowledges that his Social Security proposal would attract more support if a satisfactory consensus could be reached for the excluded group,<sup>19</sup> yet ends his article without offering any suggestion that both liberals and conservatives would likely accept. He flirts with work requirements for fathers (about which I say more later) and with cash rewards for teenage women who do not get pregnant, settling tentatively on a recommendation for continuing the current AFDC system with increased social services for young mothers (an approach that conservatives are certain to reject).

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<sup>17</sup> David L. Chambers, *Making Fathers Pay: The Enforcement of Child Support* 265-67 (1979).

<sup>18</sup> I cannot be certain whether Sugarman's proposal would provide benefits only to children who, at the point they begin to reside with a single parent (at birth or later), have an absent parent who has worked the number of quarters necessary to be eligible for Social Security. Consider, for example, the case of a newborn whose absent 20-year-old father has not worked the six quarters necessary to be a "currently insured individual" for purposes of Social Security survivors' benefits. See 42 U.S.C. §§ 402(d)(1), 414(b) (1988). It would make sense for Sugarman's proposal to permit the child to become eligible for benefits a few years later, after the father has worked the requisite number of quarters.

<sup>19</sup> Sugarman, *supra* note 7, at 2568-69.



My worst fear is that, if Congress ever did adopt Sugarman's Social Security proposal, it would simply eliminate the AFDC program altogether, leaving the families ineligible for Social Security out in the cold. In fact, the welfare bill adopted by the House of Representatives on March 24, 1995<sup>20</sup> eliminated AFDC for many children who would also be ineligible for Sugarman's Social Security benefits. The bill prohibits cash assistance for the children of the youngest unmarried mothers<sup>21</sup> and for children born when their mothers are already receiving welfare for a previously born child<sup>22</sup> and eliminates or reduces benefits for children whose mothers are unable or unwilling to identify their children's fathers.<sup>23</sup> Many of these children have fathers who will not have worked long enough to be eligible for Sugarman's form of Social Security.

## II. FATHERS AND WELFARE

### A. *The Growth of Efforts to Collect Support Under Current Programs*

The Sugarman proposal to reform the welfare system is centered around the father. Under his proposal, it is noncustodial parents' history in the workforce that entitles custodial parents to payments from an expanded Social Security system. Only children of covered noncustodial workers are eligible. In addition, the costs of the new scheme would be offset in part by support payments collected from the noncustodial parent. And, for the children whose noncustodial parent has not worked long enough to be eligible for benefits, as one possible partial solution Sugarman suggests creating jobs programs that put the fathers to work so that their earnings can be used as child support.

Thus, in the end, making fathers pay at various stages of the life cycle is about the only solution that Sugarman believes conservatives and liberals can both agree upon in reforming welfare (except perhaps making custo-

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<sup>20</sup> H.R. 4, 104th Cong., 1st Sess. (Mar. 29, 1995); see 141 Cong. Rec. H3790 (daily ed. Mar. 24, 1995).

<sup>21</sup> H.R. 4, 104th Cong., 1st Sess. § 101 (inserting § 405(a)(4) into Title IV of the Social Security Act to provide that no cash assistance will be given for out-of-wedlock births to minors).

<sup>22</sup> Id. § 101 (inserting § 405(a)(5) into Title IV of the Social Security Act to provide that there will be no additional cash assistance for children born to families receiving assistance).

<sup>23</sup> Id. § 101 (inserting § 405(a)(7) into Title IV of the Social Security Act to provide that there will be no assistance for families failing to cooperate in paternity establishment); id. § 101 (inserting § 405(a)(9) into Title IV of the Social Security Act to withhold portion of assistance for families which include a child whose paternity is not established).

dial mothers work after the child reaches a young age).<sup>24</sup> Conservatives and liberals disagree about whether cutting off welfare will motivate young women to stop getting pregnant, they disagree about whether women prefer to receive welfare rather than work in the labor force, and they disagree about the appropriateness of making taxpayers pay for other people's "illegitimate" children. They both agree, however, on the moral propriety of making noncustodial parents contribute to support the children they have conceived.

For the last 20 years, enforcement of child support has provided the one consistent theme in efforts to reform the welfare system. Major legislation in 1974, 1984 and 1988,<sup>25</sup> and minor legislation in several other years, including 1992 and 1993,<sup>26</sup> have imposed increasingly exacting requirements on the states<sup>27</sup> to collect child support from fathers in order to offset the costs of the AFDC system and to help mothers who are not welfare recipients to secure support for themselves and their children. Through these acts, Congress has pushed the state and federal governments toward greater efforts at each of the three stages necessary for high collections of child support payments: the establishment of paternity (in cases in which it is unclear), the entry of support orders in appropriate amounts, and the enforcement of orders after they are entered.

The story of the federal regulations bearing on each of these stages has been well told by others.<sup>28</sup> For our purposes, a few examples will suffice

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<sup>24</sup> See Contract with America, *supra* note 14, at 71-72; Bill Clinton & Al Gore, *Putting People First: How We Can All Change America* 165 (1992).

<sup>25</sup> Social Service Amendments of 1974, Pub. L. No. 93-647, § 451, 1974 U.S.C.C.A.N. (88 Stat.) 2337 (creating Title IV-D of the Social Security Act); Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 1984 U.S.C.C.A.N. (98 Stat.) 1305; Family Support Act of 1988, Pub. L. No. 100-485, 1988 U.S.C.C.A.N. (102 Stat.) 2343.

<sup>26</sup> Child Support Recovery Act of 1992, Pub. L. No. 102-521, 1992 U.S.C.C.A.N. (106 Stat.) 3403 (creating criminal penalty for failure to pay child support owing in another state); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 1993 U.S.C.C.A.N. (107 Stat.) 312. For a summary of the applicable provisions in the latter act, see Freya L. Sonenstein, Pamela Holcomb & Kristin Seefeldt, *Promising Approaches to Improving Paternity Establishment Rates at the Local Level*, in *Child Support and Child Well-Being* 31, 34 (Irwin Garfinkel, Sara S. McLanahan & Philip K. Robins eds., 1994).

<sup>27</sup> States can be pressured into child support collection efforts because AFDC is a joint state and federal program. States must conform to federal guidelines in order to receive full federal reimbursement for their AFDC expenditures. 42 U.S.C. § 603(h) (1988).

<sup>28</sup> See descriptions of the regulatory history in Irwin Garfinkel, Sara S. McLanahan & Philip K. Robins, *Child Support and Well-Being: What Have We Learned?*, in *Child Support and Child Well-Being*, *supra* note 26, at 1, 2 and Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, 1989 U. Ill. L. Rev. 367 (1989). See also Irwin Garfinkel & Philip K. Robins, *The Relationship between Child Support Enforcement Tools and Child Support Outcomes*, in *Child Support and Child Well-Being*, *supra* note 26, at 133, 133-34 (reviewing federal child support enforcement

to show their range and diversity. At the first stage—establishing eligibility for support—mothers of children born outside of marriage have been required as a condition of eligibility to cooperate with state officials in establishing the paternity of their children.<sup>29</sup> For their part, states have been required to extend their statutes of limitation on bringing paternity actions until children reach majority and to increase the proportion of children for whom paternity is established.<sup>30</sup> In return, the federal government has provided tens of millions of dollars to the offices of state prosecutors to bring judicial proceedings against fathers who avoid paying their judgment.<sup>31</sup>

At the next stage—the entry of appropriate dollar amounts for support—states were first required to study the costs of raising children and to devise schedules for fixing support amounts that could be applied in all cases.<sup>32</sup> Later, they were compelled to direct their judges to follow these schedules.<sup>33</sup> They have also been required to review individual support orders on a regular basis and to modify them in light of changes in the noncustodial parent's income.<sup>34</sup>

At the last stage—collections—more has been demanded than at any other point. Under the most significant provisions, also embellished over time, states must require employers to withhold support payments from noncustodial parents' earnings<sup>35</sup> and to forward them to the state or, in certain circumstances, to the other parent.<sup>36</sup> The federal government itself helps the states track down delinquent fathers through their Social Security numbers and employment information<sup>37</sup> and attaches nonpayers' federal tax refunds.<sup>38</sup> Congress has even enacted a statute under which a person who willfully fails to pay child support for a child living in another state commits a felony.<sup>39</sup>

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legislation); Sonenstein et al., *supra* note 26, at 32-34 (outlining the federal policy regarding paternity establishment); Robert G. Williams, *Implementation of the Child Support Provisions of the Family Support Act: Child Support Guidelines, Updating of Awards, and Routine Income Withholding, in* Child Support and Child Well-Being, *supra* note 26, at 93, 93-95 (discussing the requirements of the Family Support Act of 1988 relating to child support award levels and the legislation prior to passage of the Act).

<sup>29</sup> 42 U.S.C. § 602(a)(26)(B) (1988).

<sup>30</sup> *Id.* § 666(a)(5)(A); *id.* § 652(g) (1988 & Supp. V 1994).

<sup>31</sup> *Id.* §§ 651, 655 (1988).

<sup>32</sup> *Id.* § 667(a).

<sup>33</sup> *Id.* § 667(b)(2).

<sup>34</sup> *Id.* § 666(a)(10).

<sup>35</sup> *Id.* § 666(a)(8) (1988 & Supp. V 1994).

<sup>36</sup> *Id.* § 666(b)(5) (1988).

<sup>37</sup> *Id.* § 653 ("Parent Locator Service").

<sup>38</sup> 26 U.S.C. § 6305 (1988); 42 U.S.C. § 652(b) (1988).

<sup>39</sup> 18 U.S.C. § 228 (1994).

The newest welfare legislation pending in Congress simultaneously demotes and enriches the current child support requirements. In one sense, the bills can be seen as a retreat from the strategy of the preceding twenty years, during which Congress kept the same children eligible for assistance and sought to contain costs by collecting support, reducing fraud, and leaving the states free to set low benefit levels. Now, for the first time since the enactment of the AFDC program,<sup>40</sup> Congress' posture in the version of welfare reform passed by the House of Representatives is to save money by curtailing eligibility and grant sizes directly—by eliminating eligibility for unwed mothers under eighteen, by cutting off assistance to new children of mothers already on welfare and to all children whose mothers have received aid for five years (or, at the states' option, for two or more years), and by placing a cap on total federal expenditures for AFDC.<sup>41</sup> This new direction marks a recognition that none of the earlier cost-saving strategies, including the collection of child support, has significantly reduced welfare costs. It also portends, if these new and brutal limitations are included in the final version of the reforms, that child support collection efforts are likely to decline for the very children who will need them most: those denied AFDC under the new rules. These low-income mothers and children will need support payments more than any others, but past history suggests that many states' efforts to collect support will be ardent only when the children are receiving AFDC.<sup>42</sup>

Despite this change of direction, both houses of Congress have included in the pending legislation more aggressive child support collecting measures than ever before for those who would remain within the welfare system. The legislation requires, for example, that the Department of Health and Human Services create a national case registry of all child support orders in all states.<sup>43</sup> It also requires states to obtain Social

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<sup>40</sup> In a step that foreshadowed this new posture, Congress created a waiver program that permits states to secure permission from the Secretary of Health and Human Services to experiment with varying the requirements of federal law, including the eligibility requirements; by October 1994, for example, three states had received permission to deny assistance to children who were conceived while their mother was already receiving AFDC. See Center on Soc. Welfare Pol'y and L., Summary of AFDC Waiver Activity Since February 1993, at 7 (1994).

<sup>41</sup> See a review of the legislation in Joel Handler, "Ending Welfare as We Know It"—Wrong for Welfare, Wrong for Poverty, 2 *Geo. J. On Fighting Poverty* 3, 39-44 (1994).

<sup>42</sup> See Andrea H. Beller & John W. Graham, *Small Change: The Economics of Child Support* 25-26 (1993). According to Beller and Graham, the "concentration of state child support resources on AFDC cases may help to explain why . . . the aggregate award rate of the never-married rose faster than that of the ever-married between 1979 and 1986," *id.* at 26, as well as why child support receipt rates increased among the never-married between 1981 and 1985. *Id.* at 41.

<sup>43</sup> H.R. 4, 104th Cong., 1st Sess. § 711 (1995).

Security numbers for all applicants for professional licenses and marriage licenses<sup>44</sup> and to take substantial additional steps to aid in the enforcement of orders entered in other states.<sup>45</sup> In addition, the legislation imposes new obligations on custodial parents. Under the law in effect for the last twenty years, an unwed mother would be denied assistance for herself if she failed to cooperate with the state in its efforts to establish paternity, whereas if she cooperated but paternity was never established, she remained eligible.<sup>46</sup> Under the new legislation, no benefits will be paid to the mother or her child until paternity is actually established, unless she has provided the state with the names and addresses of up to three possible fathers and the state has failed to disprove their paternity.<sup>47</sup> Apparently, if a mother names a person as the father but cannot provide his address, she and her child will not be eligible.

In this sense, then, the pending welfare legislation continues the attentiveness to child support of earlier legislation. This comes as no surprise. What is particularly striking about the many child support provisions that Congress has adopted over time is how popular they have been with both political parties. The last two major bills and the recent legislation making nonpayment a federal crime were adopted by nearly unanimous votes in 1984, 1988 and 1992,<sup>48</sup> the last three Presidential election years, when members of Congress, also up for reelection, typically keep difficult matters off the legislative table. Presidents Reagan and Bush championed a return of power to the states but signed with enthusiasm every bill that imposed new obligations on states to collect child support, even in the nonwelfare cases that would seem less of a federal concern.<sup>49</sup> President Clinton delivered his first State of the Union Address in January 1993, the first Democrat to do so in a dozen years. When he declared, "Our next great goal is to strengthen American families," I waited to hear

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<sup>44</sup> *Id.* § 717 (1995).

<sup>45</sup> *Id.* § 721 (1995). States are required to adopt the Uniform Interstate Family Support Act approved by the National Conference of Commissioners on Uniform State Laws.

<sup>46</sup> 42 U.S.C. § 602(a)(26)(B) (1988).

<sup>47</sup> H.R. 4, 104th Cong., 1st Sess. § 101 (1995). In the same vein, the legislation requires state officials who become aware that an unwed mother is pregnant to warn her that she will be ineligible unless paternity is established. H.R. 4, 104th Cong., 1st Sess. § 103 (1995). It is not clear what function this warning is to serve. The most nearly benign function is to encourage the mother to be thinking about the need to identify the father so that paternity can be established swiftly after birth. A more sinister explanation is that early warning will encourage more abortions.

<sup>48</sup> See *supra* notes 25, 26.

<sup>49</sup> Ironically, a federal district court in Arizona has recently struck down the statute signed by President Bush making criminal the willful nonpayment of child support owed in another state, holding that Congress had exceeded its powers under the Commerce Clause. *United States v. Schroeder*, 21 Fam. L. Rep. (BNA) 1463 (D. Ariz. July 26, 1995).

something new. Then, in the next breath, he vowed, "And we'll crack down on deadbeat parents who won't pay their child support,"<sup>50</sup> and I knew we would be getting more of the same. His tone became even tougher the following year, in his second address:

We will say to absent parents who aren't paying child support, if you are not providing for your children, we will garnish your wages, we will suspend your license, we will track you across state lines, and, if necessary, we will make some of you work off what you owe. People who bring children into this world cannot and must not just walk away from them.<sup>51</sup>

Even in the debates over the current Republican welfare proposals, many Democrats who disagree with the provisions curtailing welfare eligibility have embraced the new provisions regarding child support. Indeed, some have claimed that the Republicans were insufficiently committed to the enforcement of support obligations and have proposed even more strenuous provisions, including mandating states to suspend the driver's license of defaulters.<sup>52</sup> Whenever Congress considers child support legislation, I am reminded of Governor George Wallace of Alabama in the days when he was an advocate of rigid racial segregation and vowed that he would never be "outsegged" by an opponent.<sup>53</sup> Even more am I reminded of the "War on Drugs," where Republicans and Democrats typically try to outdo each other in sounding tough. And in all these debates—on child support, integration and drug dealing—something more is at stake than meets the eye. What we have, of course, is a moral crusade.

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<sup>50</sup> "A New Direction," Address to Joint Session of Congress, H.R. Doc. 1, 103d Cong., 1st Sess. 4-5 (Feb. 17, 1993).

<sup>51</sup> State of the Union Message, H.R. Doc. 177, 103d Cong., 2d Sess. 5 (Jan. 25, 1994).

<sup>52</sup> See, e.g., 141 Cong. Rec. 41, H2975-76 (daily ed. Mar. 9, 1995) (statement of Rep. Hoyer). See also 141 Cong. Rec. 21, H1145 (daily ed. Feb. 2, 1995) (statement of Rep. Olver) ("I, too, rise tonight to speak about that critical aspect of the welfare reform that is overlooked by the Contract With America. I'm talking about child support."). The House-passed version of the Personal Responsibility Act of 1995, reported in the Senate on June 12, 1995, provided that "It is the sense of Congress that each state should suspend any driver's license, business license, or occupational license issued to any person who owes past-due child support." H.R. 4, 104th Cong., 1st Sess. § 765 (June 11, 1995).

<sup>53</sup> See George Wallace's Last Hurrah, U.S. News & World Rep., Apr. 14, 1986, at 7 ("Wallace once vowed never to be 'outsegged' by other politicians"). What Wallace said may actually have been slightly more vicious. See E. Culpepper Clark, *The Schoolhouse Door: Segregation's Last Stand at the University of Alabama 74* (1993) (referring to "Attorney General John Patterson's successful 1958 gubernatorial bid—the campaign that gave rise to George Wallace's now famous declaration that he would never be 'outniggered again'").

Why both sides feel this fervor for collecting support is easy to understand. Nearly everyone on the right and the left (including me) accepts President Clinton's starting point: people who bring children into this world must not walk away from them. The duty that parents have to support their children rests, in our culture, on the widely shared belief in each person's responsibility for his voluntary actions and in deeply rooted notions of what it means to be a parent. Conservatives feel additional anger when they, as taxpayers, are required to pay for children born of nonmarital relationships that they consider immoral. Liberals feel anger of another sort. They deplore the gendered nature of the problem. They know that it is men who walk away from their children, and women left in poverty who bear the burden. This may be a moral crusade, but it is one well-grounded in a range of American values.

Yet there is a darker side to the passion behind this moral crusade as well, the same darker side that lies behind the War on Drugs: race. Though most drug users and most recipients of federal public assistance (if all programs are included) are white, a disproportionate percentage of recipients are persons of color. Indeed, a majority of children receiving AFDC today are African-American or Hispanic. Both liberals and conservatives (including liberals and conservatives of color) wish that fewer children of color needed welfare and that fewer persons of color used heroin and cocaine. Still, the eagerness of conservatives to cut off young unmarried mothers and to pursue young unmarried fathers is almost certainly shaped in part by the fact that when most white Americans imagine an unmarried mother on welfare, the woman they picture is black.

### *B. The Effects of the Efforts to Collect Child Support*

Is the strategy of a huge public effort to collect child support sensible? Should we expend substantial additional efforts to improve collections in the future? The appropriate answer to both questions is "yes," if we look only at the population of children of single parents as a whole. But if we look at the subgroup of the lowest income fathers or fathers who were never married to the mothers, the answer is more uncertain. You will, I hope, leave this essay encouraged in some respects but with a sour after-taste in your mouth.

After twenty years of effort, more fathers pay more money than ever before, but over half of all children with an absent parent still receive no support.<sup>54</sup> States have come a long way but shortcomings remain at each of the three stages of the collecting process discussed above.

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<sup>54</sup> As of spring 1992, of 11.5 million custodial parents (9.9 million custodial mothers and 1.6 million custodial fathers), 6.2 million (54%) had been awarded child support from an

The largest gap exists at the stage of establishing eligibility for support. Of the nearly ten million mothers raising children with an absent father who is alive, only slightly more than half have an order for support.<sup>55</sup> Paternity is established for only about a third of the children born each year to unmarried women,<sup>56</sup> a much higher rate than a decade before,<sup>57</sup> but still a very low figure. At least as noteworthy is that many women who were married to the absent father also have no order of support. As of the end of 1991, only sixty-six percent of custodial mothers who were ever married to their child's father had a support award for the child.<sup>58</sup> Most of the married group without orders are probably women who, though separated, have never been formally divorced. In fact, among children receiving AFDC whose parents were married to each other but no longer live together, more than half have parents who have never been divorced.<sup>59</sup>

At the next stage—the stage at which an amount is entered as a child support order—the size of monetary awards has increased somewhat in most states, from very low levels in the past.<sup>60</sup> One scholar who has examined the impact of the federal requirement that states set and follow uniform guidelines for entering child support orders concludes that schedules are a “successful social innovation,”<sup>61</sup> and reports much higher awards in several states and modestly higher awards in most since the scheme became effective.<sup>62</sup> In the early years of schedules, however,

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absent parent, with 5.3 million (46%) actually having been due money in 1991. Child Support for Custodial Mothers and Fathers, *supra* note 6, at 2. Of the nearly five million mothers due support in 1991, only about three-fourths actually received payments. *Id.* Multiplying the proportion of custodial mothers due payments by the proportion who actually received payments, one can conclude that fewer than 40% of all custodial mothers actually received money from an absent father during the year.

<sup>55</sup> Approximately 56% of custodial mothers had received awards for child support as of spring 1992. *Id.*

<sup>56</sup> Seventeenth Annual Report, *supra* note 2, at 11.

<sup>57</sup> Ann Nichols-Casebolt & Irwin Garfinkel, Trends in Paternity Adjudications and Child Support Awards, 72 Soc. Sci. Q. 83, 87, 95 (1991).

<sup>58</sup> Child Support for Custodial Mothers and Fathers, *supra* note 6.

<sup>59</sup> See Characteristics of AFDC Recipients, *supra* note 2, at 34.

<sup>60</sup> See Marsha Garrison, Good Intentions Gone Awry: The Impact of New York's Equitable Distribution Law on Divorce Outcomes, 57 Brooklyn L. Rev. 621, 713, 716-17 (1991) (reporting the decreased value of average child support awards between 1978 and 1984 and the drop in the proportion of noncustodial parents' income being paid in support).

<sup>61</sup> Williams, *supra* note 28, at 126. See Jessica Pearson, Ten Myths about Family Law, 27 Fam. L.Q. 295 (1993).

<sup>62</sup> Williams, *supra* note 28, at 103-04.



other scholars found no impact of the schedules on overall collections,<sup>63</sup> in part perhaps because many parents agree to support orders lower than the support schedule would call for. Even if schedules were followed, many scholars still believe that the amounts called for are too low in relation to the earnings of noncustodial parents.<sup>64</sup> Moreover, once orders are set, most states continue to leave them in place as originally entered, seeking modifications only in a minority of cases.<sup>65</sup> For this reason, as time passes, orders typically represent a smaller and smaller proportion of fathers' earnings and children's needs.

At the final step—when entered orders are collected—the results are again mixed. For orders actually entered, about fifty-two percent of fathers pay the full amount due, while twenty-four percent pay some but less than all of the amount due and twenty-four percent pay nothing.<sup>66</sup> Between the late 1970s and the mid-80s, there was a huge increase in the collection of child support through federally supported child support programs—from about \$600 million in 1979<sup>67</sup> to nearly \$8 billion by 1992.<sup>68</sup> Because of inflation, the declining real wages of many workers, and the increased numbers of eligible children, however, there was actually a net decline in the amount collected per child in constant dollars and no improvement in the ratio of amount received as a proportion of amount due.<sup>69</sup> As of 1991, the mean child support payment received by custodial mothers getting full or partial payments was only \$3,011.<sup>70</sup> Still, there is now increasing evidence that one tool of collection, the wage deduction,

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<sup>63</sup> Garfinkel & Robins, *supra* note 28, at 162 (finding no significant effect of numerical guidelines on key child support outcomes). See also Beller & Graham, *supra* note 42, at 190, 195 (finding that women in states with guidelines were less likely to have a child support award and that the longer the guidelines were in effect, the lower the award rates were; finding also that if the guidelines were in effect at the time of their award, however, the women had a somewhat higher rate of receipt, and that rate increased the longer the guidelines were in effect).

<sup>64</sup> See Beller & Graham, *supra* note 42, at 37.

<sup>65</sup> Williams, *supra* note 28, at 111.

<sup>66</sup> See Child Support for Custodial Mothers and Fathers, *supra* note 6, at 2 tbl. 1.

<sup>67</sup> Office of Child Support Enforcement, U.S. Dep't of Health & Human Servs., *Child Support Enforcement: Fourth Annual Report to Congress 97* (1979).

<sup>68</sup> Seventeenth Annual Report, *supra* note 2, at 52.

<sup>69</sup> See Beller & Graham, *supra* note 42, at 48-50.

<sup>70</sup> See Child Support for Custodial Mothers and Fathers, *supra* note 6, at 8.

is of great value.<sup>71</sup> This collection method has only recently been implemented in many states.<sup>72</sup>

Most scholars writing about child support, including liberals and conservatives, believe that despite this checkered past, child support collecting systems can be made to work much more effectively than they do now.<sup>73</sup> And they are almost certainly right. After all, for parents who have been married, we almost always know who should be paying. And for those parents under orders of support (whether previously married or not), payment is one of those rare behaviors, quite unlike drug use, that the state can actually monitor and enforce: when the state has provided for payments through an agency, it knows immediately when an offense has been committed (the payment did not come in) and who did it. Moreover, few of those who fail to pay live in hiding. Most work in the labor force and, with enough pressure, can be made to behave. In large part, what states need to do to increase collections is to become better at what has already been demonstrated successful. They need to establish more orders against men capable of paying, set higher orders than in the past, review and update them on a regular basis, and use wage deductions and other collection techniques already proven effective.<sup>74</sup>

There is also increasing evidence that child support makes a difference in outcomes for children. Subtle qualitative measures of the relationship between child support and emotional well-being of children are unavailable, but at the broadest level of generality, money helps.<sup>75</sup> It buys food and opportunity; it reduces stress on caretakers. The few studies that have specifically examined the effects of child support payments on chil-

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<sup>71</sup> See Garfinkel & Robins, *supra* note 28, at 160. Between 1985 and 1993, the amounts collected by states through wage deductions increased from \$300 million to \$4.7 billion. See Richard Freeman & Jane Waldfogel, *Dunning Delinquent Dads: Effects of Child Support Enforcement Policy 7-8, 20-21* (Sept. 1995) (unpublished paper prepared for conference at Princeton University on "The Effects of Child Support Enforcement on Nonresident Fathers") [hereinafter the "Princeton Conference"] (on file with the Virginia Law Review Association).

<sup>72</sup> The provisions requiring wage deductions regardless of whether payments were in arrears did not go into effect until January 1994. 42 U.S.C. § 666(a)(8)(B) (1988 ed. Supp. V 1993).

<sup>73</sup> See Beller & Graham, *supra* note 42, at 255-57; Garfinkel, *supra* note 28, at 22-24.

<sup>74</sup> Beller & Graham, *supra* note 42, at 249, 251, 255. Higher collections would also result from fixing orders as a percentage of the noncustodial parent's earnings rather than as a set dollar amount, although such orders would need to be adjusted for extrinsic factors in states that take into account the custodial parent's earnings. See Judi Bartfeld & Irwin Garfinkel, *Utilization and Effects on Payments of Percentage-Expressed Child Support Orders*, Institute for Research on Poverty Special Report 55 (July 1992).

<sup>75</sup> See, e.g., Paul Newacheck, Wendy J. Jameson & Neal Halfon, *Health Status and Income: The Impact of Poverty on Child Health*, 64 *J. Sch. Health* 229, 231-32 (1994).

dren's well-being have found that, among children with custodial parents eligible for child support, regular receipt of support during childhood correlates with positive outcomes in school—higher grade point averages for older children, fewer school problems for both older and younger children, and more years of school attendance.<sup>76</sup> The suggestion of these studies is, in fact, that each dollar of child support has a greater positive effect than a dollar from other sources.<sup>77</sup> Thus, if we look at the child support system as a whole, states can make it work better and have strong reasons for trying.

### C. Two Large and Worrisome Groups

When we move from looking at the child support system as a whole, however, and examine its various parts, some parts of the whole are disturbing. Congress began trying to collect child support because it was concerned about the increasing costs of the AFDC program. Today, after twenty years of effort, the federal government collects much more than it once did in these cases,<sup>78</sup> but still expends hundreds of millions more than it nets in return for the federal treasury.<sup>79</sup> The states, taken collectively,

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<sup>76</sup> See John W. Graham, Andrea H. Beller & Pedro M. Hernandez, *The Effects of Child Support on Educational Attainment*, in *Child Support and Child Well-being*, supra note 26, at 317, 343 (noting strong correlation between child support payments and more schooling); Virginia W. Knox & Mary Jo Bane, *Child Support and Schooling*, in *Child Support and Child Well-Being*, supra note 26, at 285, 307 (noting positive effects of child support payment on educational attainment); Sara S. McLanahan, Judith A. Seltzer, Thomas L. Hanson & Elizabeth Thomson, *Child Support Enforcement and Child Well-Being: Greater Security or Greater Conflict?*, in *Child Support and Child Well-Being*, supra note 26, at 239, 249 (stating that higher grades and fewer school problems corresponded to increases in child support).

<sup>77</sup> E.g., Graham et al., supra note 76 (“[I]ncreases in child support payments appear to have stronger effects than equal increases in other sources of income”). Why the relationship exists between support dollars and success in school is uncertain. See, e.g., Knox & Bane, supra note 76, at 308. See also Garfinkel et al., supra note 28, at 24 (stating that the extent to which the strong positive association between higher child support payments and child well-being is causal remains ambiguous). Child support could be an indirect indication of higher actual paternal involvement in children's daily lives; if so, probably it is this involvement that is valuable. Or it could be that the payments simply have positive symbolic value to the child or to the mother. It is also possible that there is no causal relationship—that men who pay support tend to have children who do better and would continue to do better even without the support.

<sup>78</sup> As of 1992, states collected child support from absent parents of AFDC recipient children in amounts equal to about 12% of total AFDC payments. See *Seventeenth Annual Report*, supra note 2, at 54.

<sup>79</sup> In 1992, federal child support collecting programs suffered an overall direct loss of about \$170 million. *Seventeenth Annual Report*, supra note 2, at 10. The losses to the

do experience a net gain from efforts to collect in AFDC cases,<sup>80</sup> and AFDC recipient parents experience some gains from government efforts to collect. Still, the federal government operates at a financial loss.

A cynic might look at these efforts in AFDC cases and remember yet again the War on Drugs. Congress and the states pump more and more money into the effort to stop drug use. They authorize more law enforcement, raise the sentences for drug sellers, build more prisons, pay for spraying poison on more fields in foreign lands and, in the end, have very little to show for it. The analogy has some bite but not a lot, for Congress has a better basis for believing that it can eventually gain from efforts to collect child support than it has for believing it can win the War on Drugs. Some men whose children receive AFDC earn substantial income and can afford to contribute significant sums for their children's support. Moreover, the figures about the net losses suffered by the federal government are misleading. Federal law requires that the first \$50 collected each month from an absent parent of children on AFDC be given to the other parent.<sup>81</sup> In 1992, for example, \$352 million was distributed to AFDC families under this provision.<sup>82</sup> Many mothers on AFDC receive an extra \$600 each year that they would not otherwise have seen—and that should be counted as a gain.

Whether or not the federal government shows a net decline in welfare expenditures for its collection efforts is, in the end, of less concern to me than the impact of the collection efforts on the human beings involved in the process. For two groups of cases that overlap substantially with AFDC caseloads, expanded efforts to collect may have negative effects that we should consider worrisome. They are the cases involving the poorest fathers and the cases involving custodial parents who wish to have no continuing relationship with the noncustodial parent. I am uncertain whether these concerns are worrisome enough to suggest a fundamental change of strategy, but they deserve more attention than they currently receive from either policymakers or scholars.

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federal government, after sharing revenues with the states, rose annually from 1988 through 1992. *Id.* at 68.

<sup>80</sup> The federal government matches 66% of the costs incurred by states in the administration of child support programs carried out under federal guidelines and makes some additional incentive payments. States are then permitted to retain up to 50% of AFDC related support dollars that they collect. Seventeenth Annual Report, *supra* note 2, at 8-9.

<sup>81</sup> See 42 U.S.C. § 657(b) (1988).

<sup>82</sup> Seventeenth Annual Report, *supra* note 2, at 53.

### 1. *Poor Children, Poor Fathers*

Nearly half of all children living with a single parent mother live in poverty.<sup>83</sup> Today, as it actually operates, the child support system pulls few children back above the poverty line. Indeed, a recent census bureau study concludes that even if parents received *all* the child support due to them under current orders, the percentage of families whose income level would exceed the poverty line would not rise significantly.<sup>84</sup> On the other hand, more adequate payment of child support could make some difference for poor families. Irwin Garfinkel, Sara McLanahan and Philip Robins have calculated, for example, that if the system worked even better than the census supposition—if all absent parents were under orders, if the orders were actually set at guideline levels, and if all those ordered amounts were actually paid—as much as a quarter of the poverty gap (the gap between current incomes and the poverty line) could be closed.<sup>85</sup> Moreover, even though such perfection is, of course, unattainable (and, I argue later, undesirable), as a group, absent fathers of children in poverty have the capacity to pay substantially more than they currently do. These children need more income than they have, and child support payments (if actually transmitted to the children) would improve the quality of their lives more than it would for children living above the poverty level.<sup>86</sup>

All this suggests the desirability of increasing enforcement efforts on behalf of the poorest children. Yet there are reasons for pause. Not surprisingly, a high proportion of the poorest children in this country also have poor fathers.<sup>87</sup> Poverty is particularly high among absent fathers who do not pay child support. A recent study by Irwin Garfinkel, Sara McLanahan, and Thomas Hanson has estimated that about thirty percent of nonpaying fathers had incomes below \$8000, the current poverty line

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<sup>83</sup> Robert Moffitt, *Incentive Effects of the U.S. Welfare System: A Review*, 30 J. Econ. Lit. 1, 14 (1992) (stating that among female heads of families with children under age 18, 40% have incomes below the poverty line, half are on AFDC, and more than half receive Medicaid benefits).

<sup>84</sup> "Approximately 24 percent of custodial parents due child support were in poverty in 1991, a figure not significantly different from that derived had all payments been made (21 percent)." *Child Support for Custodial Mothers and Fathers*, *supra* note 6, at 9.

<sup>85</sup> See Garfinkel et al., *supra* note 28, at 4.

<sup>86</sup> Even though the dollar amount of child support received by poor mothers who got some support was only 58% of the amount received by nonpoor mothers (\$1,922 versus \$3,331), child support payments represented a much higher proportion of poor mothers' total money income (34% versus 15%). *Child Support for Custodial Mothers and Fathers*, *supra* note 6, at 9.

<sup>87</sup> See Hernandez, *supra* note 4, at 310-11.

for a single person.<sup>88</sup> Twenty percent had incomes below \$4000.<sup>89</sup> And, although figures do not seem to be available on the incomes of nonpaying noncustodial mothers, it is highly likely that even more than thirty percent of them have incomes below the poverty level. It is the effects of increased efforts to enforce child support on such nonpaying poor persons that seem problematic.

An initial troubling question to ask about parents who earn at or below the poverty level is whether they ought to be required to pay any support. The question has no easy answer.<sup>90</sup> The child has a strong moral claim to a part of the absent parent's income, no matter how small that income is. Even the poorest absent fathers seem to agree that they are obliged to support their children.<sup>91</sup> On the other hand, even if all absent parents have an obligation to pay support, poor parents have claims of a different order. Their claims are against the state.<sup>92</sup> They too are in need. A decent state would be concerned with their welfare as well. In a rich society such as ours, every person should be given an opportunity to earn a minimally decent standard of living; yet millions of Americans work full-time but remain in poverty.<sup>93</sup> Governments today are fervent about pressing private obligations, but are moving rapidly away from accepting any public obligations to the poorest among us—to the children, to their mothers, and to their absent fathers.

Still, even if one is sympathetic to the plight of noncustodial parents who live in poverty,<sup>94</sup> requiring at least a small payment from them is morally justified as a recognition of their duty to their child. It may also

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<sup>88</sup> Irwin Garfinkel, Sara S. McLanahan & Thomas L. Hanson, *A Portrait of Nonresident Fathers 20-21* (Sept. 1995) (unpublished paper prepared for the Princeton Conference, *supra* note 71) (on file with the Virginia Law Review Association) ("The income distribution of non-payers indicates that a very large minority of these fathers are quite poor. Thirty percent have incomes below \$8000!").

<sup>89</sup> *Id.* at 20.

<sup>90</sup> A fine paper on this subject, *How Should We Think About Child Support Duties?*, was presented by Martha Minow at the Princeton Conference, *supra* note 71.

<sup>91</sup> See Frank Furstenberg, *Daddies and Fathers: Men Who Do for Their Children and Men Who Don't*, in *Caring and Paying: What Fathers and Mothers Say About Child Support* 34, 37 (Frank Furstenberg, Kay Sherwood & Mercer Sullivan eds., 1992).

<sup>92</sup> See, e.g., Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* 64-94, especially at 78-82 (1983).

<sup>93</sup> See Handler, *supra* note 41, at 10.

<sup>94</sup> A study of young unwed fathers, for example, found that a major problem was unemployment or underemployment, yet "there are very few special programs designed to provide these young fathers with the skills and/or work-oriented attitudes and behaviors necessary to enter and remain in the work force." Jacqueline Smollar & Theodora Ooms, *Young Unwed Fathers: Research Review, Policy Dilemmas and Options*, Summary Report 41 (1987).

have utilitarian value both because it brings psychic benefits to the child and because, if the parent later earns substantially more, as he probably will,<sup>95</sup> he may have established an earlier, sturdy habit of payment.

But current efforts are more ambitious, seeking more than mere token amounts. What will be the effects of efforts to coerce the lowest-income men to pay at substantial levels? Recall Congress' strategy for absent parents. The goal is to force the states to set support orders in nearly all cases of children born in or outside of marriage, to encourage support awards at ever higher levels in relation to men's incomes, to update the orders over time, and to put into place efficient and effective methods of collection—most notably, deductions of payments from wages. This strategy seems plausible for employed men with an enduring stake in their jobs. Most workers care about retaining their employment both for the earnings and for the social and psychological benefits that attach to work in our culture. Most would probably stay at their jobs even if, under revised child support schedules (and routine modifications), twenty-five to thirty-five percent of their pay were withheld every pay period for the support of their children.

But as collection efforts become more effective, will that same strategy work for men who have much lower incomes? Until the recent past, many states have not bothered seeking orders from the lowest-income men because they thought it would be useless.<sup>96</sup> By the same token, many single mothers have said that they have no order of support because the fathers cannot afford to pay.<sup>97</sup> If states do exert much more substantial efforts to collect support, they will probably achieve their goal in many instances; some unemployed men will find jobs in the legitimate economy and continue at the jobs even though twenty-five percent of their minimum-wage paycheck is withheld.

But is it not also highly probable that a tightening web of enforcement will drive many other nonpaying men out of the legitimate economy or into legal but off-the-book jobs? Perhaps the answer is no. A very recent study finds no relationship between increased child support enforcement

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<sup>95</sup> See Marsha Garrison, *Child Support and Children's Poverty*, 28 *Fam. L.Q.* 475, 495 n.107 (1994) (reviewing Andrea H. Beller & John W. Graham, *Small Change: The Economics of Child Support* (1993) and Donald J. Hernandez, *America's Children: Resources from Family, Government and the Economy* (1993)). In her review, Garrison cites a study by Elizabeth Phillips & Irwin Garfinkel, *Income Growth Among Nonresident Fathers: Evidence from Wisconsin*, 30 *Demography* 227 (1993).

<sup>96</sup> See Beller & Graham, *supra* note 42, at 258 ("For many poor and never-married and poor and black mothers, awards are low or nonexistent because their children's fathers are also poor."). Apparently states are beginning to enter fewer zero dollar orders in cases of unemployed fathers than was previously the case. See Pearson, *supra* note 61.

<sup>97</sup> *Child Support for Custodial Mothers and Fathers*, *supra* note 6, at 12 tbl. F.

efforts and labor force participation.<sup>98</sup> Its results may suggest that my fears are groundless. Still, this study is necessarily reporting on current effects in a world in which enforcement systems are porous, and many men still find it possible to work at mainstream jobs and not pay. It is not certain what will happen if support levels are set much higher, and enforcement becomes much more difficult to evade.

A substantial number of nonpaying low-income fathers are minority urban men with weak attachments to the labor force.<sup>99</sup> Many seem unlikely to respond to increased pressure by taking jobs subject to wage deductions. To be sure, if these fathers are not presently paying, driving them underground may seem unlikely to lead to any greater dollar loss in the future than would otherwise occur if we left them alone. Still, at least some of these men are partial payers today, and their small payments may be lost when states demand much more.<sup>100</sup> More significantly, losses aside from a decline in dollars collected are plausible. We have other reasons for bringing into the mainstream economy as many workers as possible. We are already losing a generation of young black urban men, who feel alienated and despised. Huge numbers are already treated as outlaws today—in prisons, on probation, on parole.<sup>101</sup> In addition, some of these unemployed and marginally employable men who are not supporting their children have informal relationships with their children that the mothers applaud and that might be lost if they are turned into fugitives.<sup>102</sup>

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<sup>98</sup> The only research that I can find on the employment market effects of current enforcement programs is in preliminary draft form; it finds “no evidence that state child support enforcement activity is associated with reductions in the employment of noncustodial fathers.” Freeman & Waldfogel, *supra* note 71, at 23-25.

<sup>99</sup> Summarizing qualitative studies of nonresident fathers, Irwin Garfinkel, Sara McLanahan and Thomas Hanson concluded: “Nearly all of these studies focus on young black inner city fathers. The portraits that emerge from these studies are of men who are weakly attached to the labor force and who lack the resources necessary to make regular child support.” Garfinkel et al., *supra* note 88, at 7.

<sup>100</sup> A quarter of all men who actually pay support pay only in part. See *supra* text accompanying note 66.

<sup>101</sup> For example, according to a 1992 study by the National Center on Institutions and Alternatives, on any given day in 1991 in the District of Columbia, 42% of young black men aged 18 to 35 were incarcerated, on probation, on parole, awaiting trial or being sought for arrest. Keith Harriston, *Going to Jail is ‘Rite of Passage’ for Many D.C. Men*, Report Says, *Wash. Post.*, Apr. 18, 1992, at B3. Another Washington research and advocacy group, the Sentencing Project, found in 1990 that nationwide, nearly one in four black men aged 20 to 29 were in prison, on probation, or on parole. *Id.*

<sup>102</sup> See Carol B. Stack & Herbert B. Semmel, *The Concept of Family in the Poor Black Community*, in Staff of the Subcomm. on Fiscal Policy of the Joint Economic Comm., 93d Cong., 1st Sess., *The Family, Poverty, and Welfare Programs: Household Patterns and Government Policies* 275 (1973).



Stephen Sugarman tentatively offers one approach for obtaining support from these unemployed fathers. He suggests that states provide them with jobs, "force the fathers to work and then to pay child support out of their earnings."<sup>103</sup> This is not a new idea. President Clinton has suggested, as though speaking to nonpaying fathers, "if necessary, we'll make some of you work off what you owe."<sup>104</sup> Sugarman himself refers to a more elaborate proposal by a staff member of Senator Daniel Patrick Moynihan.<sup>105</sup> Indeed, a decade ago, Senator Moynihan himself made the following suggestion: "And for the too-much-pitied unemployed teenage male there would be nothing wrong with a federal work program—compulsory when a court has previously ordered him to support his children—with the wages shared between father and mother."<sup>106</sup>

Creating job programs for unemployed fathers has obvious attractions. Most obviously, some of them would like to have the work. Further, finding or creating employment for them is a way to reintegrate them into an American economy that makes little room for them today. Moreover, as Sugarman appropriately observes,<sup>107</sup> it is anomalous that both the Democrats' and the Republicans' welfare reform proposals create job requirements of various sorts for the caretaker mothers of small children, for whom a case can be made that they should be permitted to stay at home, while no such requirements are imposed on fathers who typically have no child care responsibilities. Responding to these attractions, a few states are trying pilot jobs programs for nonpaying fathers. In Springfield, Massachusetts, for example, the Fair Share Program provides job training for noncustodial parents whose children are on welfare, and judges are requiring nonpaying fathers to participate.<sup>108</sup>

Despite their attractions, however, I have doubts about these ideas. First, I doubt that job creation programs for young fathers are politically feasible on a substantial scale. Much like job creation programs proposed for welfare mothers, they would probably cost much more to operate

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<sup>103</sup> Sugarman, *supra* note 7, at 2571.

<sup>104</sup> State of the Union Message, *supra* note 51, at 5.

<sup>105</sup> Sugarman, *supra* note 7, at 2551-52.

<sup>106</sup> Daniel P. Moynihan, *Family and Nation* 180-81 (1986).

<sup>107</sup> Sugarman, *supra* note 7, at 2550-51.

<sup>108</sup> Andrea K. Walker, *Welfare Plans Take Fathers into Account: Pilot Programs Help Men Work, Learn, Support their Children*, *Boston Globe*, June 18, 1995, at 6; see also Earl S. Johnson & Fred Doolittle, *Low-Income Parents and the Parents' Fair Share Program: An Early Qualitative Look at Low-Income Noncustodial Parents and How One Policy Initiative Has Attempted to Improve Their Ability and Desire to Pay Child Support* (unpublished paper prepared for the Princeton Conference, *supra* note 71) (on file with the Virginia Law Review Association) (describing Fair Share Program in seven cities).

than they would reap in child support dollars collected.<sup>109</sup> Moreover, many policymakers are likely to reject a jobs program for young men for which the ticket to eligibility is that the men must first get a woman pregnant and then fail to support the child.

Whether politically feasible or not, it is the compulsory aspect of these proposals (“we’ll make you work off what you owe”) that is troubling. We have become familiar with the idea of job programs for custodial mothers on AFDC. Under these programs, the stick used to induce the mothers to work is that failure to work will lead to a loss of part or all of their welfare grant.<sup>110</sup> In this regard, welfare mothers are put in the painful position of other workers in a market economy: no work, less income. On the other hand, no one who suggests a jobs program for noncustodial parents seems to acknowledge that this same prod will be unavailable for them: they are not getting a welfare grant that we can cancel. The only technique to coerce these men into employment is to threaten them with something worse if they refuse to work. And in our culture, when we cannot threaten to take away money, the something worse is—think about it—nearly always jail or prison. In Springfield, Massachusetts, it is jail that the judge offers to fathers who decline to participate in the Fair Share Program.<sup>111</sup> I observed comparable mixes of jail and work when I studied child support enforcement in Michigan in the 1970s, including programs under which men were kept in jail at night and on weekends for many months and worked off their child support arrearages in jobs in the community during workdays.<sup>112</sup>

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<sup>109</sup> See, e.g., Handler, *supra* note 41, at 19-27 (reviewing several state and federal welfare programs and concluding that most do little to help AFDC recipients become less dependent on welfare); James J. Heckman, *Is Job Training Oversold?*, Pub. Interest, Spring 1994, at 91, 111-15 (reviewing several job training and workfare programs and concluding that most either are not cost-effective or produce few results).

<sup>110</sup> See 42 U.S.C. § 602(a)(19)(G) (1988 & Supp. V 1994).

<sup>111</sup> See Walker, *supra* note 108. A father, self-employed as a construction worker, balked at an increase of his weekly support payments from \$50 to \$75. He was offered a choice between going to jail and joining the Fair Share Program. He joined the program. *Id.*

<sup>112</sup> In the 1970s, many Michigan counties already had a “jobs program” of sorts. Nonpaying fathers were arrested and brought before a judge; if they claimed to be unemployed, they were either sent to jail because the judge found that they could have been employed (a retroactive jobs program) or given a suspended sentence with the promise of jail if they failed to find a job within a few weeks. See Chambers, *supra* note 17, at 3-9, 174-77. An alternative, more elaborate work program was also used in some counties. Men who were behind in their child support payments were sentenced to six-month or one-year jail terms during which they were released during workdays to work at a job, with their wages used to reduce their arrearage to their former wives or the welfare department. *Id.* at 220-21.

In my view, one of the encouraging aspects of child support programs of the last decade has been an increasing reliance on effective but nonpenal techniques for collecting support, most notably, of course, wage deductions. In the future, if an ever higher proportion of the nonpayers are fathers with the most tenuous ties to the labor force, I fear forced labor programs or, worse, the creation of penal workcamps as a major tool of enforcement. I hope that states reject such approaches—such gulags for the deadbeats. On the other hand, if they do reject them, we may have to accept that, in the end, no program that most of us would tolerate as minimally civilized will obtain support from many of the lowest-income men.

I am not certain of the wisest course. The most just course would probably be to require the poorest parents to pay only a token level of support (at least until such time as governments or our economy provide better opportunities than either does today for earning a decent living) and then enforce those token amounts earnestly. In the current world, the fitting token, it seems to me, would be an order of \$50 per month, the amount that a custodial parent and child on AFDC are permitted to keep each month out of a paying parent's contributions.

## 2. *Children Who Would Do Better With No Relationship With Their Fathers*

Of the millions of children in this country who live with a single-parent mother, only about a quarter see their father as often as once each week.<sup>113</sup> In fact, about a third of those whose parents were married to each other and about half of those whose parents were not married see their father not at all or no more than once a year.<sup>114</sup> Many people who write about children of divorce deplore this pattern.<sup>115</sup> And most children who have ever lived with their father want very much to keep in touch with him.<sup>116</sup>

What will be the effects on visitation and on interparental conflict of more ardent programs for collecting support? Several studies have found that fathers who pay child support visit more regularly with their chil-

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<sup>113</sup> See Judith Seltzer, Relationships between Fathers and Children Who Live Apart: The Father's Role after Separation, 53 J. Marriage & Fam. 79, 86 (1991) (reporting on data from the 1987-88 National Survey of Families and Households).

<sup>114</sup> *Id.*

<sup>115</sup> See, e.g., Ross A. Thompson, The Role of the Father After Divorce, *The Future of Children*, Spring 1994, at 210.

<sup>116</sup> See Judith S. Wallerstein & Joan B. Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce 122, 132-44 (1980).

dren,<sup>117</sup> though the causal relationship between paying and visiting has never been fully clear. It nonetheless seems plausible that increasingly successful efforts at collection will mean that many formerly nonpaying fathers will begin to visit with their children. That, on the whole, would be a fine idea. Still, for some children—and perhaps for a significant number of children—increasing efforts of collection may cause harm.

Consider two plausible relationships between child support and conflict between parents.<sup>118</sup> In many families, higher payment of child support almost certainly reduces conflict. The mother, pleased at the support received, is supportive of the father's desires to visit with the child. The child, in turn, benefits both from the father's visits and from the mother's support for the visits. Children of divorce are reported to fare best when they have interactions with both parents, and the parents' relationship is cooperative. It may be this benefit that we are seeing in studies suggesting that children who receive child support perform better in schools than those who do not.<sup>119</sup>

In other families, however, fathers who pay may expect more control over the child or more involvement in the child's life or the mother's life than the mother wants, and this involvement may produce stress for the mother and adverse consequences for the child.<sup>120</sup> One recent study of support enforcement forecasts that if more never-married fathers were forced to pay than do so currently, there would be an increase in tension between the parents, and children would be worse off.<sup>121</sup>

These forecasts are consistent with the responses to census questions asked of mothers who do not have child support orders in place for their children. In 1986, of mothers without support orders who had never been married to their child's father, forty-three percent said that they did not

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<sup>117</sup> See Judith A. Seltzer, Nora Cate Schaeffer & Hong-Wen Charng, *Family Ties after Divorce: The Relationship between Visiting and Paying Child Support*, 51 *J. Marriage & Fam.* 1013 (1989) (summarizing earlier research and reporting a positive association between payment of support and visitation).

<sup>118</sup> See McLanahan et al., *supra* note 76, at 239, 248.

<sup>119</sup> See *supra* notes 76-77 and accompanying text.

<sup>120</sup> For the harms to children of conflict between parents after separation, see Janet Johnston, *High Conflict Divorce, The Future of Children*, Spring 1994, at 165 (stating that children with parents in high conflict after separation are two to four times more likely to be clinically disturbed than other children).

<sup>121</sup> McLanahan et al., *supra* note 76. This study, by a group of researchers generally supportive of greater efforts to collect support, predicts that "[f]or children born to married parents, it appears that forcing more fathers to pay may benefit children. . . . For children born to unmarried parents, the outlook is less optimistic. The numbers suggest that an increase in payments may increase parental conflict and reduce children's well-being." *Id.* at 254.

want an order.<sup>122</sup> Many of the reasons mothers might have for not wanting an order are ones the state should honor. We should care about mothers who wish to avoid manipulative or abusive relationships with men who had never before shown an interest in caring for their children. We should also care about mothers who decide that their children will not benefit from a relationship with the particular man who got them pregnant and then moved on. It is, after all, these women who have to raise the children, largely on their own. I have no way of knowing how many mothers believe that aggressively pursuing support from the father would lead to undesirable interactions for them or their children, but the numbers may be quite substantial.

Though it was once otherwise,<sup>123</sup> today neither scholars nor governmental bodies pay much attention to these possible negative consequences of fervent child support enforcement.<sup>124</sup> The annual reports of the Department of Health and Human Services' Office of Child Support Enforcement tout the advantages of enforcement to the child but none of the possible costs.<sup>125</sup> To be sure, even if one acknowledges and takes seriously the possibilities of harms to children, it is difficult to take those possibilities into account when shaping enforcement policies. Most children, after all, are helped both financially and psychologically by better enforcement.

The traditional way in our culture to protect children from harms that may accrue to them in growing up is to leave decisions about their protec-

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<sup>122</sup> Beller & Graham, *supra* note 42, at 20-21. Beller and Graham also report that 42% of ever-divorced mothers who do not have orders of support say that they do not want them. *Id.* at 21. However, since far more ever-divorced than never-married mothers have orders of support for their children, the proportion of all never-married mothers who do not want support orders must be substantially greater than the proportion of all ever-divorced mothers who do not want an order. *Id.* at 20.

<sup>123</sup> See Stack & Semmel, *supra* note 102, at 293-95 (asserting that forced participation may have more negative financial and emotional consequences than positive ones). See also Stephen D. Sugarman, *Roe v. Norton: Coerced Maternal Cooperation*, in Robert H. Mnookin, *In the Interest of Children: Advocacy, Law Reform, and Public Policy* 365 (1985) (describing early resistance to requirements that mothers receiving welfare benefits cooperate with efforts to seek child support from the fathers of their children).

<sup>124</sup> But cf. Sara S. McLanahan, *The Consequences of Single Motherhood*, *Am. Prospect*, Summer 1994, at 48, 57 (recognizing that "[a] stricter child support system has its risks"); Sara S. McLanahan & Gary D. Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* 147-52, especially at 149 (1994) (urging much more aggressive enforcement of support but acknowledging that "the fact that child support encourages contact between the parents means that parents will have more opportunities to express their anger and hostility").

<sup>125</sup> See, e.g., *Seventeenth Annual Report*, *supra* note 2, at 7-8 (outlining the financial, emotional, and medical benefits to children of establishing paternity and collecting child support).

tion to their caretaking parents. In this context that would mean entrusting the custodial mother with the power to decide whether to pursue an order of support and whether to seek enforcement of it. Most would want an order and want it enforced, but some would not.

States effectively accord such control today to nonpoor mothers of children born outside of marriage. Many nonpoor women in this country give birth to children outside of marriage, never live with or cease to live with the father, do not apply for welfare and choose, for reasons they consider sufficient, not to seek child support from the father. No one forces them to behave otherwise. The father might seek an order to recognize his paternity, but very few do. It is only unmarried mothers on welfare who are forced into enduring financial relationships with the father that may carry unfortunate consequences for them and their child.

Much the same is also true for parents who were married to each other. In all states, the formerly married noncustodial parent has a clear right to visitation with his child (in the absence of demonstrated probable harms), and many men care a lot about such rights and protect them vigorously. But, in other cases, men visit rarely, and some custodial mothers are pleased that that is so. Some mothers forgo enforcing support hoping in return for less contact with the father. States accept such private decisionmaking for mothers who are not on welfare,<sup>126</sup> but the formerly married woman on welfare is required to assign her support rights to the state, which pursues the father without regard to her wishes or her fears.

To be sure, the mother receiving welfare does stand in a different relationship to the state and to taxpayers than the single mother not on welfare. Only the welfare mother imposes a burden on the taxpayer when child support is not collected. Moreover, if mothers on welfare were given a completely free choice about whether an order of support should be sought from the father, they might often decline for reasons that taxpayers would appropriately resent: they might refuse to pursue payments not to avoid a relationship that they believe would be harmful to themselves or their children, but because most of the fathers' payments would be used to reimburse the state, not to increase the mothers' incomes.

In the end, I am uncertain about the most sensible policy. The evidence remains thin about the degree of harm to children and mothers from aggressive policies of seeking support from the fathers. I am, however, dubious of the direction that Congress continues to pursue. To be

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<sup>126</sup> Federal law now requires that wage deductions be imposed in all cases upon the entry of a support order, but provides for an exception in non-AFDC cases when both parents agree on direct payments. Such agreements permit parents to make deals exchanging no support for no visitation.

eligible for assistance, once-married mothers must permit the state to enforce their support rights against the father. And unmarried mothers must identify the child's father and cooperate in establishing support, unless, in very narrow circumstances, they can demonstrate good cause for refusing.<sup>127</sup> It is not mothers' judgments about harms but Congress' and an agency's that control. In the welfare legislation recently passed by the House, the rules for once-married mothers remain, and Congress substantially increases the pressure on poor unmarried mothers to secure support orders from the fathers. The good-cause exception seems to have been eliminated altogether, and unmarried mothers are denied eligibility for AFDC unless, with a few exceptions, an order of paternity is established.<sup>128</sup>

If we really cared greatly about the well-being of children, would it not be preferable to give mothers on welfare control over whether an order of support is to be sought or enforced? We could then *encourage* them to cooperate in seeking support by educating them about the advantages McLanahan and others expect for their children and by letting them keep more of the money paid by the father (up to the point, for example, at which their child support plus their AFDC benefits and food stamps brings them to the poverty line or to some significant percentage of it).<sup>129</sup>

Such a policy of maternal control might not work acceptably. It might impose too much additional cost for taxpayers while producing too little gain in the well-being of mothers and children. It is also possible that many abused mothers who really do want child support would decline to seek it unless they could tell the fathers that they had no choice. Some others would surely commit fraud, claiming that they did not want support from the father while accepting unreported money from him.<sup>130</sup> But I am less concerned here with what the right policy should be than with making the point that the possible harms to mothers and children should count in framing policy; currently, they are rarely given serious consideration by policymakers. For too many policymakers, saving money is more important than saving women or children.

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<sup>127</sup> 42 U.S.C. § 602(a)(26)(B) (1988).

<sup>128</sup> See text accompanying *supra* note 47.

<sup>129</sup> For recommendations that custodial parents be permitted to keep more of the child support collected from fathers, see Beller & Graham, *supra* note 42, at 254; Krause, *supra* note 28, at 380.

<sup>130</sup> See, e.g., Kathryn Edin & Christopher Jencks, *Reforming Welfare*, in *Rethinking Social Policy: Race, Poverty, and the Underclass* 204, 208 (1992) (reporting on a group of welfare mothers in Chicago, some of whom received unreported income from a resident or absent father).

Even liberal advocates of programs for collecting support typically give little weight to the possible negative consequences of enforcement over mothers' objections. Andrea Beller and John Graham, for example, report in their fine study on collecting child support the high proportion of custodial mothers who say that they do not want an order,<sup>131</sup> yet end their book recommending more and more assertive efforts to establish paternity, to increase the size of support orders for never-married mothers, and to collect support for them, without ever addressing the bearing on their recommendations of the mothers' contrary wishes.<sup>132</sup> They recommend letting mothers keep more of the child support that is collected,<sup>133</sup> but do not seem to value choice for these mothers regarding whether support is pursued at all. I fear that their thinking, too, has been poisoned by the politics of welfare. In fact, I think that all of us who work in the field have been poisoned by the inevitable consequences of welfare—poisoned by what we come to demand of those who accept our charity.

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<sup>131</sup> Beller & Graham, *supra* note 42, at 20.

<sup>132</sup> *Id.* at 253-58. See Garfinkel et al., *supra* note 28.

<sup>133</sup> Beller & Graham, *supra* note 42, at 254.