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The Parental Child-Support Obligation

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Child Support in the Twenty-First Century

David L. Chambers

Fifty years from now, or a hundred years from now, will absent parents still be held financially liable for the support of their children? Two forces have shaped our current system of private liability. The first is a perception, wholly accurate, of large numbers of children in need, children who cannot be adequately provided for by the single parent with whom they live. The second is a moral judgment about absent parents: that they can be justly required to contribute to their children's support throughout the children's minority. Change may occur in the laws of child support if there cease to be any substantial number of children in need—unlikely, but possible—or if there are changes in the perception of the degree of moral responsibility absent parents bear for their children's support or in attitudes toward the proper role of government in assuring the needs of children.

The issues of need and responsibility may seem separate but in fact intertwine. In our society, need is a relative, not an absolute, concept. A person who has less than she or he ought is in need. Children who have lived with both parents, both working, at a high standard of living but now live with one parent at a moderate standard may be perceived as in need even if they live today at as high a standard as the mean of American children. Whether we consider them in need turns in part on whether we consider them to have moral claims on the absent parent's income. Thus, changes in either perceptions of need or perceptions of responsibility, if they occur at all, may well occur at about the same rate. What is difficult to foresee is the rate or direction of change.

Picture America in 1910. A person living in the United States who was given a sudden glimpse of life in 1980 would have gasped at the increased number of divorces, at the numbers of children whose parents never lived together at all, at the changes in attitudes toward sexuality, and at the altered role of government, especially the federal government, in meeting people's needs for income. Even President Reagan might be labeled a bolshevik.

If we could glimpse the year 2050, we would surely experience the same sensation of beholding Sodom and Gommorah. Let us nonetheless try to forecast some of the changes that may occur over time in the factors that affect the shape of systems of child support.

Trends in Factors that Affect Laws of Support*Number of Children in Financial Need*

Today most parents raising children on their own face serious economic difficulties. The great majority of single-parent children live with their mothers, and most such families are poor. In 1978, over half the children living in families maintained by women with no husband present lived below the federal poverty line, even after taking into account welfare benefits they received.¹ Even those children whose mothers earn enough to keep them above the poverty line typically have to maintain a far more frugal level of existence than they would if their fathers were living with them.

There probably will not be a decline in the number of children in need, at least in the short run. Daniel Patrick Moynihan, the senator from New York, has recently made some projections that will carry us to the beginning of the next century.² He has forecast that of all children born in 1978, roughly half will have lived in a one-parent, female-headed family before reaching eighteen and that of that group, two-thirds (or roughly one-third of all children) will receive AFDC before reaching eighteen, if eligibility standards remain comparable to today's. Those are stunning figures, each approximately 50 percent higher than the figures for children born around 1960 and reaching majority today.

Senator Moynihan's projections were based on trends in the rate of nonmarital births and in the rate of divorce and on the rates of participation of single-parent families in the AFDC system. In the short and long term, the number of children in need will also turn on other factors, many of which Senator Moynihan could hardly have tried to take into account: the nation's general prosperity, the reliability and degree of use of contraceptives, the incidence of abortion, the birthrate generally, the degree of women's participation in the labor force, the relationship of men's earnings to women's, the incidence of father custody and joint custody, and changing notions of the concept of need.

We are already beginning to see trends that may lead to a reduction in the number of children in need. For example, a greater percentage of women raising children on their own have jobs—about 65 percent in 1980.³ On the other hand, as to some other relevant factors, very little change has yet occurred, even though many have expected it. Over the past few decades, for example, little change has occurred either in the proportion of single-parent families that are headed by men⁴ or in women's average earnings as a percentage of men's average earnings.⁵

Whatever the changes over time, it seems highly probably that many children will continue to live in single-parent families; that, especially for the youngest such children, many of their custodial parents will not be

employed full time; and, more broadly, that children who live in single-parent families will in general have less income available to them than children who live in two-parent families. Some sort of income-transfer system will thus probably continue to exist. The question is whether that system will remain a mixed public and private system—the AFDC system and the child-support system—or will become more wholly public or more wholly private. The answer will turn in large part on the perceptions of future generations about the responsibilities of absent parents for their children.

*Changing Perceptions of the Appropriateness
of Requiring Payments from the Long-Absent Parent*

However reasonable the grounds are for assuming (and requiring) that parents who live with a child support the child, the reasons are substantially more fragile for imposing long-term financial liability on a parent who has never lived with a child or who once lived with a child but has not so lived for many years. The reasoning may seem increasingly fragile over the coming decades. Two sorts of grounds are offered today for rules imposing liability on parents for the care of their child: that they caused the child to come into being and more broadly that they are part of the child's relevant family.

Responsibility of Those Who Bring Children into Being. One jurisprudential foundation for governmentally imposed child support is remarkably simple and straightforward: parents cause children to come into being. They are capable of not causing children to come into being by merely refraining from intercourse. Having engaged in an act of their free will, they can justly be held responsible for the consequences.

Forty years from now, there will have been many developments in genetic engineering, but no doubt most children will still result from voluntary intercourse between a man and a woman. If so, the same reasoning will apply. It may nonetheless be less persuasive than it is today, at least in cases in which the parents have had no more than a dating relationship and have never lived together. How later generations will consider the children of such relationships may well turn on what changes of attitudes occur toward abortion and sexuality.

Today we are in a period of national ferment over the issue of abortion. In the United States today, three of every ten pregnancies end in abortion, yet at the same time, large numbers of people ardently believe abortion immoral. Where we will stand fifty or a hundred years from now is difficult to foresee. The nation may have adopted a constitutional amendment barring

abortion altogether. If that occurs or if attitudes toward abortion remain in as much conflict as they are today, then attitudes toward the responsibility of each parent for a child may well remain the same. On the other hand, it is possible that attitudes will have moved far to the other extreme. Abortions may carry no moral stigma whatever. It will be nearly risk free to the woman and freely available, perhaps through a nonprescription, over-the-counter pill. If that time arrives, then a pregnant woman, particularly an unmarried pregnant woman, who knows that the father has no desire to participate in the child's upbringing may be seen as making a unilateral decision to bear a child, and the responsibility for raising it may be seen as hers alone.⁶ Perhaps before such a view could develop, attitudes about intercourse, and especially extramarital intercourse, might also have to change. As long as intercourse carries the flavor of sin, many people will want to hold the male responsible regardless of the decision-making process of the woman. It seems likely that attitudes toward both sex and abortion will evolve together, but where they will both come out is hard to guess.

If attitudes toward sex and abortion do become more permissive, then it is possible that the male, in case of children born outside marriage, will eventually be seen in much the same way as the contributor to a sperm bank is considered today. Few today would wish to hold liable the sperm-bank donor, even though he is plainly the cause of a child's having come into existence because someone else's voluntary decision to bear a child is seen as the relevant decision.

Responsibility of Family Members. Changing attitudes toward abortion might alter people's sense of the appropriateness of holding a father financially responsible in a case in which he has not been living with the mother and the mother chooses to carry the child to term knowing that he has no desire to participate in raising the child. Parents involved in the common cases of divorce are in a quite different position, however. Their decisions to have had a child will be commonly viewed as joint. For them there is more than the causal link to justify holding the absent father liable; there is also the link of having chosen to live together as a family. There are many examples of laws imposing liability on one relative for another when only this link of family tie has been present.

Over the last hundred years, state laws in this country have at various times imposed financial liability on adults for their aged parents, on grandparents for needy grandchildren, and even on adult siblings for each other.⁷ These laws have rested not on a judgment of moral fault and certainly not on a person's having caused a baby to be born but rather on a strong sense that family should take care of itself. As patterns of small-town residency have changed, and the notion of core family has changed, most of these laws have been repealed.

Today, in the public mind, a child's family includes the mother and father, wherever they live, and whether they live together until majority, death, or the entry of a court order terminating parental rights. Most of us do not regard the financial responsibility of a parent who lives with a child to be markedly different from the responsibility years after moving away.

The family of the future may be viewed instead as any group of people who live together in intimacy at a given point in time, whether related by blood or marriage. So seen, a stepparent or step-sibling would be regarded as part of a child's relevant core family and the stepparent would be held financially responsible for a stepchild during the period when they reside together. On the other hand, a blood parent who never lives with a child (like many fathers of children born outside of marriage) and a parent who once lived with a child but has long ago moved elsewhere would no longer be considered part of a child's relevant family at all.

Will such a change of view come about? Some forces point in this direction, and a few other forces point toward keeping current views—and financial responsibilities—in place. What points in the direction of a change? The principal force is not something new. It is the response of absent parents, typically fathers, to obligations of child support and rights of visitation. Without substantial prodding, most fathers who have never lived with their children never pay support at all, and even divorced fathers who have lived with their children typically pay regularly for only a short time, then pay less, and then pay nothing.⁸ Neither love nor a sense of moral responsibility induces them to pay as much as they could. Current patterns of visitation are similar. Little statistical information exists on visitation by noncustodial fathers of illegitimate children, but every study of divorced, noncustodial fathers confirms patterns that are somewhat comparable to their patterns of support payment: visits begin with frequency and then typically taper off within a few years.⁹

Many people attribute men's low rates of payment to a general moral degeneracy. It is nonetheless possible to ascribe a more sympathetic cause than immorality for declining feelings of responsibility over time. A sense of responsibility grows from attachment nurtured by warm interaction. Although a significant minority of divorced, noncustodial fathers sustain a vital relationship with their children years after separation, more commonly fathers who see their children no more frequently than every other week gradually feel less and less a part of their children's lives.¹⁰ Especially if a mother remarries, but even if she does not, most fathers inevitably participate less in the tiny events important to the sense of family, the events that impart the sense of being the child's protector, teacher, and companion. They would still say that they loved their children, but their feeling is not the same as it was. Under such circumstances, child-support orders are often experienced as a form of taxation without representation.

Over the coming decades, we can expect divorced noncustodial parents to become even more detached from their children by a previous marriage than they are today. What will affect them—so subtly that they will be unaware of it—is the ever-increasing incidence of children living with only one of their parents. We have seen a great change in the last thirty years from a view of divorce as a form of social pathology that breeds juvenile delinquency to a view of divorce as simply an unpleasant fact of twentieth-century life. In 1960, about 22 percent of all children under eighteen in the United States lived in a home without one or both of their biologic parents. By 1978, the figure had risen to 32 percent, and by 1990, according to estimates of the Bureau of the Census, the figure will rise to around 41 percent.¹¹ Shortly after the year 2000, half of America's children may be living with neither parent or with only one. When that day arrives, it seems likely that family units of a mother and children and, possibly, family units of a father and children will more and more be seen as family unto itself, a family that is in no sense incomplete. If a single parent and child living alone are family, then the long-absent parent is even more likely to regard his financial responsibilities as diminished or ended, and his perceptions of his responsibilities are more likely to become accepted as reasonable.

There are nonetheless reasons why legislatures might never accept the absent parent's point of view. One of these is that many children in single-parent families will remain in financial need, and taxpayers will remain disinclined to provide support through the welfare system without some contribution from those absent parents who can afford to pay.

Another reason exists: even if absent parents become increasingly disengaged from their children, such disengagement may nonetheless be unfortunate for children's emotional well-being. Adults may view the single-parent family as complete, but children, at least children of divorce, will still view their family as broken. Several recent studies of divorced children living with their mothers suggest that one factor strongly related to children's emotional health and development after divorce is the quality of their continuing relationship with their fathers.¹² It is at least clear that several years after divorce, children who rarely see their fathers still think about them a lot and yearn to see more of them.¹³ If we decided that it is important to encourage continued contact between children and their absent parent, compulsory child support may possibly be an instrument for sustaining absent parents' sense of a stake in their child. If further studies indicate that children derive substantial benefits from visiting with their absent parents and that these parents are more likely to continue visiting if they are successfully prodded into maintaining payments of support, then good reasons would exist for resisting changes in the law.

The Issue of Gender

Today the overwhelming majority of children who live with only one of their parents live with their mothers. The anger that many such mothers feel when fathers fail to pay is often directed not merely at the moral laxity of individual men but also at the social position in which they view themselves as having been placed by men in general.

To appreciate the place of gender in the child-support process, one need only picture the different position today of a man with custody of his children. As an initial matter, we typically view him as being in his position by choice. Society has not prescribed child rearing as his lot in life. Few would depict him as a deserter if he had failed to fight for custody of his child when he divorced. The father with custody also typically stands in a different position economically. Upon becoming a single parent, he is far less likely to be entering the labor market for the first time and far more likely to have substantial seniority in his job. If women today were in the position men are—able in general to provide support for their children, regarding themselves as custodians by choice—there would be far less public concern about enforcing support against absent parents.

To be sure, many divorcing men today also see themselves as victims of their gender, discriminated against with regard to custody and subject to eviction from the home for which they strained for years to earn enough to pay. Moreover, men may resent being viewed as privileged for their position in the labor force. A life repairing streets, tightening bolts on an assembly line, or washing cars is not all fun. But as to child support, it is women who are justly perceived as the principal victim. Before a change will come about in perceptions about the duty of absent parents to support their children, changes may also have to occur in the comparative economic and social position of men and women in our society and in attitudes toward women's obligations to be the principal caretakers of young children.

Implications for Public Policies

The increasing numbers of children living with single mothers may inspire different reactions in social policy in the short run than in the long run. In the long run, as I have forecast, the support-enforcement system may shrink if men and women approach the labor market and parenting more nearly as equals and if a family is seen as the unit that lives together at a common point in time. But in the short run—the next twenty to twenty-five years—the state and federal governments are likely to engage in ever more

ardent efforts to collect money from absent fathers. Ironically, one of the techniques most likely to be used in the future may lay the groundwork for undoing the current private system of support.

Today in most states, parents under orders of support receive their paychecks and then are expected to write a check for part of it to the former spouse. When they fail to pay, agencies or lawyers send warnings and threaten them with jail. If the Treasury depended on a comparable system for the collection of income taxes instead of relying on employers to withhold the amount due, the nation would be bankrupt. In this book, we have read of a plan for the state of Wisconsin to build the child-support system into a tax-withholding system through wage deduction by employers for all parents under orders of support. Eventually the federal government might participate in such a system. If such a system were created, it would pose many risks for individual privacy. Imagine a federal computer with records of everyone's failed marriages and illegitimate children. But there is little doubt that it would lead to vastly greater collections of support than are currently achieved.

If such wage-deduction systems were developed, the current one-to-one relationship between dollars paid in by absent parents and dollars received by their children might gradually disintegrate. Beginning perhaps with the federal government making payments for children as soon as it is notified that a wage deduction has gone into effect (and without awaiting the actual receipt of deducted payments from the employer), the federal government, over the very long term, might alter either the social security system or the AFDC system to serve as guarantor for more and more children being raised by single parents. The degree to which children's needs ever came to be met out of general public revenues would turn on both future income-earning capacities of custodial parents and on the perceived degree of moral responsibility of absent parents for their children. Somewhat ironically, the creation of a universal wage-deduction scheme could be motivated by a desire to implement more effectively a system wholly premised on notions of individual responsibility but plant the seeds for more public participation over time.

Any change in attitudes toward the responsibilities of long-absent parents is likely to be gradual. One change in the law, recommended by others in this book, would require courts to take custodial parents' earnings into account to a greater extent than they do today in fixing child-support awards.¹⁴ Today in most states, child-support awards are fixed in terms of a percentage of the noncustodial parent's income at divorce. The percentages used—say, 30 percent of the noncustodial parents' earnings in the case of a couple with two children—impel custodial parents to work full time if they wish to approximate their former standard of living. In this important sense, custodial parents' earnings are already taken into account in fixing

child-support awards. In most states, however, orders are fixed without reference to the custodial parent's actual earnings. She can earn as much as she is able without any decrease in the size of the child-support award. A change in the law that might occur would be that support orders would be fixed as they are today for the first few years of an order but that thereafter a tax would be imposed on the custodial parents' earnings—for example, by reducing the child-support award by one dollar for every three dollars the custodial parent earned above a certain base. In this way, in most families, the noncustodial parents' compelled contribution would decline after a few years.

A later metamorphosis in the law that seems plausible to expect is that at some point, states would change their laws to reduce altogether the number of years of financial liability of an absent parent. Today orders run throughout a child's minority. In most cases of divorce, orders today last longer than the marriages they follow.¹⁵ In many cases of paternity orders, the orders run nearly as many years into the future as the young parents have lived up to this point themselves. In the system forecast, orders of support might run for only three or four years after their entry. Court-ordered visitation might also expire at the same point. After that time, parents would have to hammer out their own informal arrangements. For some families in this future world—more families than today—parents at the point of divorce would devise joint custodial plans with small transfers of income that might continue after the three-year period. In others, the mother would retain custody, but the father would continue to pay support voluntarily in much the same manner that they do in many states today where support is barely enforced. But in many other families, all links between the absent parent and his children would end.

Orders of shorter duration would respond to the problem of the psychological disengagement over time of most absent parents from their children. It would also respond to the most pressing financial needs of children, since, in this envisioned future economy, the difficulties custodial parents face in providing adequate income through their own earnings will typically be urgent only when the children are infants or, in cases of divorce, in the period immediately after separation. After a period of a few years, say three or four, the vast majority of custodial parents would have full-time, decently compensated jobs or remarry a full-time worker, or both. A law reducing the years of liability would closely resemble a change that is occurring in judicial practice regarding alimony. It is apparently becoming less common for courts to enter orders of long-term support for wives even after twenty- or twenty-five-year marriages and more common to enter orders to provide support and money for schooling or training for a fixed period of years.¹⁶

A final value of the termination of liability after a few years is simply that limiting the length of liability would remove government earlier from coercive involvement in people's lives. Americans today decry big government but are quick to use it to suppress undesired behavior. Child-support laws today fix for men and women the terms of their relationship many years after their lives have settled into other patterns. They are doing so on an increasingly vast scale. Half of the children born in the United States today can expect to be eligible for an order of support for their benefit during their childhood. Half can later expect, as adults, to be either the payor or payee of an order of support for their own children. The child-support system will reach perhaps two-thirds of all Americans born this year either as children or as adults.

Across the country, the web of court orders tying parents to children looks today like a map in an airline magazine showing all the places the airline flies. It will be even more eye dazzling in forty years. So long as children's basic needs can be met, I would prefer a world in which a few years after separation, adults worked out voluntarily the terms of their relationships just as we permit them to do today in nearly all matters when they live together. To be sure, it is distasteful to contemplate adults trading support for visitation with a child threatened with receiving neither after the bargain. But the current mechanisms for enforcing support are also distasteful. Maybe public-policy decision makers in later generations will make different choices than we are making today.

Notes

1. Chart 27, in *American Families and Living Arrangements*, Current Population Reports, Special Studies, Series P-23, No. 104 (May 1980).
2. D. Moynihan, *Children and Welfare Reforms*, 6 J. Inst. Socioeconomic Stud. 1 (Spring 1981).
3. *American Families and Living Arrangements*, *supra* note 1, chart 20.
4. *Id.*, chart 16.
5. U.S. Department of Labor, Bureau of Labor Statistics, *Handbook of Labor Statistics*, Table 60, at p. 118 (December 1980).
6. See chapters 5 and 6.
7. H. Clark, *Domestic Relations* 212-218 (1968).
8. D. Chambers, *Making Fathers Pay* (1979), ch. 5.
9. W. Goode, *Women in Divorce* (1955); J. Wallerstein and J. Kelly, *Surviving the Breakup: How Children and Parents Cope with Divorce* (1980); E. Hetherington, M. Cox, and R. Cox, *Stress and Coping in Divorce: A Focus on Women*, in J. Gullahorr, ed., *Psychology and Women: In Transition*; J. Fulton, *Parental Reports of Children's Post-Divorce Adjustment* 35 J. Social Issues 126 (1979).

10. Wallerstein and Kelly, *supra* note 9.
11. *American Families and Living Arrangements*, *supra* note 1, chart 16.
12. J. Wallerstein and J. Kelly, *supra* n. 9 at 171-172, 203, 217-219; Hess and Camara, *Post-Divorce Family Relationships as Mediating Factors in the Consequences of Divorce for Children*, 35 J. Social Issues 79 (1979).
13. J. Wallerstein and J. Kelly, *supra* n. 9; M. Hetherington, M. Cox and R. Cox, *supra* n. 9.
14. See chapters 7 and 9.
15. In a study of divorced couples with children in Genesee County, Michigan, the average age of the couples' youngest child was 3.3 years at separation. Thus a support order would be expected to last over 14 years. On the other hand, the average length of the marriages to the point of separation was 7.7 years. See Chambers, *Making Fathers Pay*, Table 31, p. 311 (1979).
16. The Uniform Marriage and Divorce Act, parts of which have been adopted in many states, directs courts in fixing the amount and duration of alimony (which the act calls "maintenance") to consider "the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment" (Section 308).