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Child Support

From Debt Collection
to Social Policy

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The Federal Government and a Program of “Advance Maintenance” in the United States

David L. Chambers

Israel and several European nations including Austria, Denmark, Sweden, and West Germany, have adopted programs of “advance maintenance”—programs under which, in varying forms, the state advances to a custodial parent the child support owed by an absent parent and then seeks to reimburse itself by collecting from the absent parent. The programs differ widely—on the maximum that the government will advance to any one family, on the number of years an order of advance payments can remain in effect, on the efforts, if any, that the custodial parent must have made to collect from the absent parent—but all have in common two attributes that make them different from almost all programs in the United States. One attribute is that the program is available to all custodial parents entitled to receive child support regardless of their income. The other is that in each it is the national government that makes the payments.

In this country, a program of “advance maintenance” of sorts exists for recipients of public welfare but not for others. The program of Aid to Families with Dependent Children (AFDC) is this country’s primary program of income assistance for low-income children. Its funds come from both the states and the federal government and it largely serves female-headed families with minor children. AFDC families receive a prescribed amount each month from the state, whether or not the absent parent is contributing to the child’s support; the government takes responsibility for collecting from the absent parent and keeps whatever it collects (except for the new \$50 monthly disregard described in Chapter 2). For non-AFDC families, however, neither state nor the

federal government advances payments of support. A custodial parent who lives just above the income level entitling her (or him) to AFDC but who is unsuccessful in collecting support payments from the other parent must simply do without. Large numbers of women with children are ineligible for AFDC because their earned income slightly exceeds their state's AFDC grant but still live in poverty because AFDC grant levels are low and the father of their children fails to make the payments due. To be sure, state governments, under prodding from the federal government, have done much in recent years to improve their systems of collecting support on behalf of parents not receiving welfare, but with the exception of Wisconsin, neither they nor the federal government has moved, as these European nations have, toward guaranteeing a floor of support for all children with absent parents.

The Wisconsin program is described elsewhere in this volume. What I wish to do, in this brief essay, is to imagine a national "advance maintenance" scheme for this country, and note how far away and yet how close we are to such a system in this country.

Imagine the following program for the United States, borrowing elements from the Wisconsin program and the European programs: Upon divorce or the entry of a paternity order, a federal statute would impose on the noncustodial parent an order of support framed in terms of a percentage of the noncustodial parent's gross income—say 17% of the income for the first child, 25% for two children, and 29% for three children.¹ Simultaneously with the entry of the order, a wage deduction of an equal percentage would be imposed on the earnings of the noncustodial parent. The noncustodial parent's employer would be obliged to deduct the ordered amount from the parent's wages and forward the amount to the federal government. Self-employed persons would be required to make periodic payments to the federal government in much the same way that they are required to make periodic payments of estimated taxes. At the same time, and without waiting for moneys to be received from employers or the self-employed, the federal government would begin making payments to the custodial parent. The amounts advanced would equal the amount of the order (based on the absent parent's last known earnings) up to some maximum, say \$400 per month for a custodial parent with one child. As money was actually received from the absent parent, any amount collected above the \$400 would also be sent to the custodial parent. The federal government, that is, would become the guarantor of the first \$400 of support per month for the one-child family and the intermediary for amounts above \$400.

Irwin Garfinkel's essay about Wisconsin describes a comparable program operated by a single state and argues that such a program would be wise as a matter of policy. A federal program of advance-maintenance payments and automatic wage deductions would offer all the advantages to the custodial parent of a state program and some additional advantages from the point of view of reimbursement. The principal advantage would be that the federal government, unlike any state government, can compel employers throughout the United States to honor a wage assignment, thus easing the task of recovering payments advanced by the government in the common situation in which a noncustodial parent has moved away from the state that entered the order of support. My purpose in this essay, however, is not primarily to extol the virtues of a federal advance maintenance program, but rather to use the proposal to shed some light on the role of the federal government in family matters in this country.

In at least two respects the advance payments proposal appears to depart radically from the federal government's accustomed role in family matters in the United States. At the same time, I think we will see that in each of the ways that the program appears radical, the federal government has already moved a long way toward accepting the role this program would prescribe.

The first seemingly radical departure in this proposal is that the federal government would be directly defining the obligations of parents toward their children. In this country, laws prescribing the conditions and incidents of marriage and divorce have always been state laws. It is state laws that have created obligations of child support and state laws that have prescribed the amounts of child support a parent owes. There is no federal divorce law. No federal court holds hearings when a parent fails to make support payments. The Supreme Court of the United States speaks of domestic relations as an area of the law that "has been regarded as the exclusive province of the states."² A federal statute prescribing obligations of support would appear to usurp a venerable state prerogative.

Yet, would a federal statute prescribing obligations of support and amounts of support be so radical after all? Congress is already more deeply involved in defining family obligations of support than many Americans realize. As stated above, the program of Aid to Families with Dependent Children is America's basic welfare program for single parents with minor children. Under this program, if a state creates a program of payments to low-income families that meets federal

guidelines, the federal government reimburses the state for a large portion of its costs. In the early years of the program, from the 1930s to the 1960s, the federal guidelines were few and the states retained considerable flexibility in defining the scope and details of their programs. In recent years, as the program has become more costly, Congress has exerted more and more control over the content of state AFDC programs. Congress has been particularly explicit about details of the state child-support programs. In fact, federal law now prescribes that, to qualify for full reimbursement of its welfare costs, a state must have a system for automatic wage deductions closely similar to that proposed here. The only difference between the program I suggest and the current federal program is that, under mine, the federal government would itself directly create the obligations of support and directly oversee their enforcement. Under the current law, states are in theory free to decline to adopt an AFDC program at all and hence free to ignore the federal child-support requirements.

Some Americans would view this difference as an important difference of principle. They would cling to a distinction between the federal government encouraging the states toward a certain scheme of regulation by promising them federal funds if they adopt it and the federal government taking over an area of regulation altogether. And, on the surface, there is an important distinction, for when the federal government merely encourages the adoption of programs, the states remain free to impose on their citizens different forms of support obligations or no obligations at all. The new federal program now in effect in the United States has nonetheless been developed in a political context in which the reimbursement of welfare costs that the federal government offers to the states are so substantial that the states, as a practical reality, have no choice about adopting whatever laws the federal government demands as the price for getting the funds. If the federal government directly created and enforced the support obligations that it now insists the states create and enforce, it would alter little the political realities. Such direct federal initiative would also make more honest the relation of the federal government to the states by abandoning the hypocrisy that states have real choices about their welfare laws.

The second radical difference between my proposal and current federal law is that, in its provision for making advances of child support on behalf of people who are not poor, it places the federal government in the business of providing direct income support to the middle class. A custodial parent earning \$20,000 a year, or \$30,000 a year, whose former

wife or husband was a high-earning salesperson or physician would, under my program, receive advances of support from the government and would keep the advances, even if the federal government was unsuccessful in securing reimbursement from the noncustodial parent. This feature of guaranteeing the support for middle-class parents is also a feature of the European programs, but the feature does not seem so radical there. In these countries, the national government, through such programs as children's allowances and governmentally underwritten medical care, has long been seen as involved in assuring the economic security and health of all its citizens. In this country, by contrast, during the administration of President Reagan, the federal government has sought to reduce its role in assuring income security even for low-income citizens. The President preaches the virtues of self-reliance and, for those who cannot be self-reliant, the virtues of returning to the states the responsibility for care. The federal role would be limited to a "safety net" for the "truly needy," with an increasingly constricted view of what it means to be "truly needy."

Even for most states, a proposal such as that described here—one in which the government advances moneys to middle-class parents and children and ends up bearing some part of the cost of their support—would seem quite radical. And, in truth, the financial burden for either the states or the federal government of supporting the middle-class might be quite high, higher than in the European countries with advance maintenance programs. The expense will be high both because child support orders seem to be higher in this country as a proportion of the earnings of support-owing parents than they are in most other countries and because a higher proportion of American children live in single-parent families than in any of these countries. Administrative costs would also be substantial. If adopted as a federal program a substantially increased federal bureaucracy would be needed to administer the program at a time when the President strives to pare the number of federal employees.

And yet again the proposal is somewhat less radical than it appears. The new federal legislation already requires the states to take new and major steps to improve collections of support not only in the cases of people receiving public welfare payments but for all children owed support. Moreover, the federal government has agreed to help reimburse the states for 70% of the costs of collecting, even in nonwelfare cases in which the federal government itself stands to gain nothing from the moneys collected from the absent parents.³ President Reagan supported

and signed the new legislation despite the fact that the legislation's implicit assumption—that the federal government has a stake in the economic well-being of the children of the middle class—is not wholly consistent with the tone of the President's rhetoric about the appropriate role of the federal government. Consistent or not, by this legislation the federal government has signified its concern for assuring the economic well-being of all children. It has even said it will back that concern with federal money (for the costs of collection). Thus the question of whether the federal government should go further and adopt a program of advance payments raises no new questions of the appropriate role of the federal government in family affairs. The question merely becomes how much the federal government wants to back its new principles with cash.

In short, an "advance maintenance" program adopted by the United States Congress would mark a dramatic additional commitment by the federal government to the welfare of children—one likely to cost billions of dollars each year—but would constitute less radical a departure from existing policies than might at first appear. The critical decisions of principle have already been implicitly accepted by the Congress and signed into law by the President.

In Robert Bolt's majestic play about Sir Thomas More, *A Man for All Seasons*, Richard Rich, an ambitious young man about court appears disheartened after accepting a fine governmental post in compromising circumstances. His benefactor, Cromwell, the King's counsel, chides him, "It's a bad sign when people are depressed by their own good fortune." "I'm lamenting," Rich replies, "I've lost my innocence." "Ah," reassures Cromwell, "you lost that some time ago. If you've only just noticed, it can't have been very important to you." Exactly so with the federal government and the support of children.

The fact that a program of advance maintenance would not mark a radical departure from current movements in federal policy does not itself demonstrate that it would be a wise program to adopt. Such a program would not, in fact, be first on my list of programs for the federal government to adopt to assure the well-being of children. Before adopting a program of advance maintenance for children with absent parents under orders of support, the federal government should take steps to assure the economic well-being of some even needier children who would not be reached by such an advance maintenance program at all. Currently there is no general federal program of income maintenance for even the poorest children living in two-parent families with both parents still in the home. To be eligible for federally supported AFDC

benefits in most states, a child must have one parent who is absent or totally disabled. On the other hand, if the AFDC program were expanded to provide such a federal floor of support for all poor children, a program of advance maintenance would appropriately support the needs of large numbers of children whose needs are also not adequately met today.

Notes

1. These percentages are borrowed from the Wisconsin program. See Garfinkel, *supra*.

2. *Sosna v. Iowa*, 419 U.S. 393, 404 (1975); *Zablocki v. Redhail*, 434 U.S. 374, 398 (1978); (Powell, J., concurring).

3. 42 U.S.C. Sections 654(6) and 655(a).