

Child support: the evaded obligation

By E. Uhr

One of the few topics on which social scientists, government policy makers, and the general public are in agreement is that the system of child support currently in operation in the United States is in need of drastic reform. This system for providing support for children in one-parent families does not do what it was intended to do: namely furnish a reasonable standard of living for children in a household headed by a single parent. And it does do a number of things that were not the intent of those who framed it, such as encourage the dissolution of families, aid and abet those who wish to evade economic responsibility for their children, discourage single custodial parents (in more than nine cases out of ten, women) from seeking employment, and enforce the collection of child support more stringently for those least able to pay.

Currently child support is provided through two separate mechanisms: the responsibility rests with the judiciary for establishing amounts of child support—and seeing that it is paid—in cases of divorce and legal separation; and the federal government, through its program of Aid to Families with Dependent Children (AFDC, a part of “welfare”), supplies subsistence to one-parent families whose incomes are below a minimum level. AFDC is financed by both the federal government and the states, who administer it. Therefore regulations, payments, and the treatment of individuals differ from state to state and even from community to community, with resulting inequities.

As data trickles in from empirical studies of children in households that have but one parent, it becomes apparent how shockingly inadequate the current system is. According to one estimate, approximately 40 percent of all divorced, separated, and single women have never received financial assistance from the fathers of their children. In 1965 32 percent of all poor families were headed by women. In 1972 the percentage had risen to 47.7. Child support payments were in the neighborhood of \$2000 a year per family in 1973. This amount went to support several children and supplied about half of the family’s most basic needs. In 1974 families headed by women with children had an average income of \$7000. All the figures tell the same story—that one-parent families, and the children in them, tend to be poor. A large number of them receive welfare.

Furthermore, the problem isn’t going away; just the opposite. The number of children living with a single parent is increasing for several reasons: more mothers are heading their own households who in former times would have

lived as a part of someone else’s household; an increasing proportion of the population are separated, divorced, or widowed; and illegitimacy continues to increase.

The role of AFDC

When the government program of child support started in 1935, as part of the original Social Security package, it was thought to be an interim program to support families (usually headed by widows) who would in the future be taken care of by one of the various forms of social insurance, such as Old Age and Survivors’ Insurance. Instead it has continually expanded in both cost and coverage in attempting to balance the conflicting goals of supplying adequate living standards to the needy while encouraging all who can to become self-sufficient. In the forties it was broadened to include illegitimate children, and more and more of the coverage went to the children of fathers who were not dead, but had—for one reason or another—cast off responsibility for supporting their children. (In 1960, 36 percent of children in families headed by women had no living father. In 1977 this percentage had dropped to 26.) It may be that the law itself added to the trend, that some fathers left home because—being without jobs—the only step they could take to ensure that their families were provided for was to turn those families into single-parent households, thereby making them eligible for welfare.

As deficiencies in the law became obvious, patchwork corrections were carried out. In 1961 the federal government created an AFDC-UF program, enabling families with unemployed fathers to receive AFDC in participating states. This program never received widespread acceptance (it is now operative in only 27 states), through fears that it would encourage idleness.

With the intent to eliminate idleness, Congress enacted the WIN (work incentive) program in 1967. WIN represented a changing philosophy toward women: that mothers—even those with very young children—should be encouraged to contribute to the support of their families. WIN was designed to provide training and jobs for mothers on AFDC and to arrange for them to have access to subsidized daycare centers. It further stipulated that welfare recipients would be allowed to keep a percentage of the money they earned (the “thirty plus a third rule,”

whereby employed women on welfare could retain the first \$30 they earned plus 1/3 of their additional earnings without losing any AFDC benefits). The purpose of this cut in the "benefit reduction rate" was to provide financial incentives for custodial mothers to work. However, WIN did not prove very successful in freeing mothers from dependence on welfare because there were seldom good-paying jobs at the end of the program and the women frequently had to drop out of the training in order to care for their children. In many instances, women, even when they worked, could not afford to go off AFDC. For, despite the reduced benefit reduction rate and despite deductions for work-related expenses, average AFDC benefits were still reduced by 40¢ for each dollar earned, and the value of earning another dollar was further reduced by cutbacks in food stamps, increased rent if they lived in public housing, and in some cases the loss of Medicaid—an all-important benefit for mothers of young children. So sometimes the effective tax rate on the earned income of women on AFDC was over 80 percent and it could mount to over 100 percent.

In any case the number of people receiving AFDC was not much affected by WIN. AFDC has grown steadily, from 943,000 in December of 1945 to 6,086,000 in December of 1968 to 10,325,333 in December of 1978. And as costs mounted, public displeasure also mounted, for it seemed unfair that the taxpayers should be expected to support other people's children. Even as early as 1950, the pursuit of the feckless fathers was on.

The Part D Amendment to Title IV of the Social Security Act of 1950 was the government's first attempt to collect child support from the absent parents whose families were

Selected papers

Larry Bumpass and Ronald Rindfuss, "Children's Experience of Marital Disruption." Institute for Research on Poverty Discussion Paper no. 512-78.

Maurice MacDonald, "Collecting Child Support for AFDC Mothers: An Empirical Analysis." Institute for Research on Poverty Discussion Paper no. 564-79.

Harold Watts, George Jakubson, and Felicity Skidmore, "Single-parent Households under Alternative Transfer and Tax Systems: Detailed Simulations and Policy Conclusions." Institute for Research on Poverty Discussion Paper no. 549-79.

Wendy Wolf and Maurice MacDonald, "The Earnings of Males and Marital Disruption." Institute for Research on Poverty Discussion Paper no. 504-78.

maintained by AFDC. This act required states—as a condition for receiving federal funds for welfare—to notify the law enforcement officials in all cases when a woman applied for ADC (it was Aid to Dependent Children then) and to "require" the woman to take legal action against the father of her children. (However, refusal to cooperate would not affect a woman's eligibility for welfare.) To make enforcement simpler, all states passed laws permitting absent parents to be sued for support without the suing parent having to go to the absent parent's state. This legislation was called URESA—the Uniform Reciprocal Enforcement of Support Act.

The pursuit of fathers gained momentum in 1967 with federal legislation authorizing state welfare agencies to set up units to establish paternity in cases of illegitimate children and attempt to secure support for the children from these fathers (no insignificant number; among women receiving AFDC in 1973, 31.5 percent had never been married, and this percentage rose to 33.78 in 1977).

The most recent federal legislation on child support, P.L. 93-647, was passed by Congress in 1975. This law, while broadening the scope of AFDC, set up an elaborate structure to require absent fathers to pay child support. A centralized Office of Child Support Enforcement (OCSE) was created at the Department of Health, Education, and Welfare (HEW) to synchronize all efforts toward collection. States were to be provided with technical assistance in setting up effective systems for collecting child support and establishing paternity. Courts were given authority to garnish the salaries of federal employees in arrears (this sizable group had previously been exempt). The IRS was made available to be used as a last resort to extricate payments from recalcitrant fathers of children receiving AFDC. Financial incentives were provided for state and local governments to participate in the hunt: The enforcement agencies now receive a portion of the amount they collect. States are reimbursed for many of the administrative costs of locating and collecting from the absent fathers, and the recovered money is used to reimburse both the states and the federal government for their AFDC outlay to support families made destitute by the defection of a parent. Finally a Parent Locator Service was established in HEW. This service has access to federal data files (such as those kept by the Social Security Administration, the IRS, and the Department of Defense) to provide state authorities with the whereabouts and means of delinquent fathers.

OCSE has its work cut out for it. In 1975, when it was set up, 89 percent of AFDC recipients either had no child support award or didn't receive any payments from the award they had.

The services of this agency are available—for a fee in some states—to women who are not on AFDC, who previ-

ously had no help outside of the courts to collect the child support due. In fiscal year 1978 these services helped 478,000 families who were receiving welfare and 500,000 who were not.

The role of the courts

The judicial system has done no better than the state in enforcing the principle that both parents have responsibility for the economic well-being of their children. In order for a court to award child support, there has to be a legal proceeding: a divorce or a legal separation. Many women, because their husbands have deserted, or their children are illegitimate, or they do not have the funds to embark on this expensive course of action, do not go to court. (Until the advent of the Office of Child Support Enforcement, the government would pay the legal fees for women on AFDC, in hopes of recouping some of its welfare outlay from the father, but the woman not on AFDC was on her own.) Those who do go to court often obtain child support awards that are very low. In fact, one statistic says it all: In a given year, only about 3 percent of all families headed by women who are eligible for court-ordered support payments receive enough in child support or alimony alone to put them above the poverty level for a family of their size and composition.

A number of explanations have been offered of why child support amounts set by the court are so meager. It has been suggested that courts and district attorneys are not sympathetic to the concept of a father having to support his children after the marriage has ended. Some judges may feel that the taxpayers are better able to support many children than are their fathers. Others may feel that low amounts are more likely to be paid. In any event, there are no realistic standards that judges can use in making their awards. It is known that they take a number of factors into account: not just the present income and liabilities of the husband and wife, and their joint property, but their health, their standards of living, their earning ability, the number of children they have, the duration of the marriage, the sacrifices made by the individual partners in the marriage, the pleasure or lack of it gotten from the marriage. The final award is the result of a juggling act in which the needs of the children seem to play a very small part.

But the niggardliness of the awards is almost irrelevant, since they are paid erratically, in part, or not at all. In one study in Wisconsin it was found that whereas in the first year after the court orders, 58 percent of the fathers paid something (though one-third of them paid less than the full amount), by the tenth year 79 percent of those required to make payments were making none at all. In another study it was found that of the 44 percent of divorced and separated mothers who have support awards, only 45 percent of these receive payments regularly and 16 percent never receive anything.

In order to collect her child support, the custodial parent must take the initiative, usually by bringing a civil contempt charge against the nonpaying parent. She must prove that he "willfully failed or refused to make the payments ordered by the decree." If she succeeds he may pay, or he may refuse and go to jail. But if he claims that he can't pay because he hasn't the money (having spent it on something else), he is in the clear. The mother can get a judgment for a sum of money, which puts her in the position of being a creditor, with the various avenues open to her that are open to all creditors, such as garnishment of wages and seizure of property. But all of these legal procedures take time and money, and cannot be begun until the father is delinquent in his payments. If the father wants to avoid payment, he can move frequently, so that each time a payment is late he has to be located again before it can be collected. It is like a war that must be fought over and over every time the absent parent is in arrears, a war that can last throughout the minority of the children, causing the caretaking parent to expend her (usually limited) financial and emotional resources, and doing little to strengthen the bonds of affection between the absent parent and his children. No wonder then that many women simply give up the struggle, doing what they can to support their children at a reduced standard of living.

But even the option of giving up isn't open to the poor on AFDC. One of the injustices of the child support situation is that a woman on welfare now must cooperate with authorities in the continuous struggle to get child support from a defaulting father or lose some of her benefits. Because the government has the means to be persistent, fathers with small incomes are more likely to be pursued to pay the child support they owe than are fathers for whom the burden would not be so onerous. It is an additional irony (though perhaps unavoidable) that support payments are highly regressive: the poor pay a much greater percentage of their incomes than do the prosperous. And they must submit to paternity tests, prying, and questions of the sort that make "being on welfare" such a humiliating and destructive experience.

The ability to pay

Despite the fact that most people agree that parents have an obligation to support their children, it has been assumed that most absent fathers do not have the wherewithal to pay child support, that "you can't get blood from a stone." But a study by Judith Cassetty of one small sample revealed that the overwhelming majority of absent spouses (86 percent) were better off than their former wives and children, and even for many of the officially poor mothers in the sample, enough money was available to raise them above the poverty level without causing the

fathers either to fall below the poverty line or to reduce their income below that of their families. It appears that only a tiny minority of absent fathers are unable to contribute anything toward the support of their children, and most contributions can be much, much larger than has been believed possible. According to Cassetty, "there appears to be an enormous untapped source of funds that could be used to improve the economic status of children in female-headed households."¹

Obviously ability to pay depends to a large extent upon enforcement procedures. If the IRS were to collect taxes only from those people who had money left over after meeting other obligations, few taxes would be paid.

Improving the system

In a study of the process of support collection currently in use for AFDC mothers, Maurice MacDonald found that where collection services were used, they were effective in locating absent fathers, establishing paternity, and arranging voluntary child support agreements. However, he found that these services were used in fewer than half of the AFDC cases in 1975. He also discovered that voluntary child support agreements were much more likely to be met than were court-ordered payments (half of the voluntary agreements were met, one-fourth of the others). He therefore recommends expanding the AFDC program that provides assistance in the collection of child support to encourage greater use of voluntary agreements. In addition, MacDonald considers the effects of redesigning the benefit structure of the AFDC program to provide economic incentives for custodial parents to help find absent fathers and collect from them. In most states every dollar of child support income results in a corresponding one dollar reduction in the AFDC payment. However in those few states where the benefit reduction rate on child support is substantially less than this 100 percent rate, mothers seem to work more effectively with the AFDC program to get greater support income. Nevertheless MacDonald adds that "new compulsory collection strategies seem necessary for obtaining support from fathers unwilling to pay voluntarily."²

Changing the system: two alternative plans

The Watts, Jakubson, Skidmore proposal

Other plans for child support are more far-reaching, such as that of Harold Watts, George Jakubson, and Felicity Skidmore, who presented their program for child support as a part of a paper given at the Conference on Universal vs. Income-Tested Programs at the Institute for Research on Poverty in March 1979.³

Their child support plan is part of a larger welfare reform proposal which would do away with welfare and the income tax as we know them, substituting a credit income

tax—a universal system for transferring money from the wealthy to the poor. To this basic plan they would add the following child support stipulations:

Official standards. Normative standards of child support would be set up (perhaps by a commission) to guide public policymakers and family courts in deciding what would be equitable in sharing resources between parents and providing support for the children. Such standards would promote fairer settlements than are now made by the courts and see to it that one-parent households had as high a standard of living as two-parent households.

Implicit in their proposal is the assumption that disposable income be equalized, relative to needs, across split households. This division of income was first suggested by Isabel V. Sawhill, who has done much of the seminal research on the workings of the child support system. However, the actual amounts of child support would be determined, as now, on a case-by-case basis by the courts.

Social insurance. A child support insurance program would be set up to assure that any child not living with both parents would receive at least a minimum support payment, paid to the custodial parent. This amount would be received irrespective of whether support payments were made by the absent parent. It would be reduced by about 70¢ for every dollar of child support paid by the absent parent up to some break-even point, at which the insurance benefit would become zero, and the custodial parent would receive only the child support paid by the absent spouse.

Enforcement. Because this plan is based on an income tax structure that would require every adult to file a yearly return, it would be fairly straight-forward to add to the return an affidavit of compliance with support standards. Compliance would entail living with and sharing a household with the child, or paying support based on a court-approved agreement, or making payments equal to the minimum support standard, or some combination of these.

Inability to pay would not be an acceptable justification for noncompliance, any more than it is now for nonpayment of taxes. Those who could not—for any reason—meet their child-support obligation would be required to pay a surtax on their taxable income. Thus it would be in the interest of the noncustodial parent to pay the surtax only if that amount was less than the cost of the child support. This surtax would see to it that even the poorest of absent parents would not be able to evade altogether the cost of procreation.

The Garfinkel proposal

Another plan, in some respects even more radical, has been outlined by Irwin Garfinkel, Director of the Institute for Research on Poverty.⁴ His plan is also part of a

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broader welfare reform proposal which begins with a modest credit income tax. To this he adds a social child support program in which all single adults caring for one or more children would be eligible for a public payment that would depend only on the number of children for which care was being provided. The payments would be financed by a tax on the absent parent, equal to a proportion of that parent's income for each child not living with him. The parent with the children would receive the standard minimum or the amount paid by the absent parent—whichever was larger. Child support would thus be taken out of the courts altogether. All the complicating factors now inaccurately quantified in determining the amount of child support—the earnings of the wife, whether or not she remarried, the increasing expenses and responsibilities of the father (for example if he fathers another family)—would be disregarded. Only the income of the father and the number of absent children would determine the amount of his liability.

Garfinkel does not suggest equalizing income across the two households. He sees such a policy as both unenforceable and unfair. He proposes that the amount of support an absent parent should pay be determined by first ascertaining the proportion of their income that married couples spend on their children. Garfinkel assumes that it is a good deal less than 50 percent: perhaps 10 percent for the first child and 4 percent for each additional child. He further suggests that the tax rates on absent parents be somewhat higher than the amount spent by parents who live with their children, since parents who live with their children can provide a higher standard of living at lower cost than can parents who live in separate establishments. This extra cost of separation would serve as an incentive to families to stay together.

Garfinkel proposes a number of possible means of enforcement. Among them is the possibility of adding this tax to the income tax and having the benefits administered by the Social Security Administration. Even if a credit income tax were not employed, it would be extremely simple to collect the absent parent's support payments using the current withholding system and collecting from the poor and the self-employed in those years when they paid taxes. Those who failed to pay their child support would face the same penalties as those who fail to pay other taxes. However, there are clearly drawbacks in using the personal income tax, itself in need of reform, as the vehicle to enforce the collection of child support.

Child support and human behavior

Both the Watts, Jakubson, Skidmore plan and the Garfinkel plan contain the essentials of an equitable child sup-

port system: an adequate guaranteed income for all children in households that contain a single parent; elimination of the dual system by which the courts determine child support payments for some and the states and federal government determine payments for others; and an impartial enforcement of the obligation of child support. The question then arises, What impact will such a system have on our society?

Public policy invariably has its effects on the behavior of individuals, but it is not easy to predict what these effects will be. It has been suggested that rigorous enforcement of child support payments will reduce the divorce rate by making it impossible for men to escape economic responsibility for their children by leaving home: it should be cheaper to stay married. Enforcement may discourage absent parents from remarrying. And it may restrain those who do remarry from producing a new family, for doing so will no longer excuse them from the obligation of maintaining their former family. It will clearly limit the freedom of men. Guaranteed child support payments may have the opposite effect on women. It will certainly encourage those women to seek divorce whose only reason for staying married is the awareness that they—and their children—will be a good deal worse off economically should they leave. How great this “independence effect” will be is one of the many unknowns yet to be calculated.

Future directions

A team of researchers at the Institute, led by Garfinkel, is now developing a proposal to study the existing child support system, evaluate alternative proposals to reform the system, and ultimately design and draft legislation for a new program. They are seeking funding from foundations and federal and state agencies to carry out this work.

Reform of the child support system is a matter of great urgency. Until recently it was assumed that the institution of marriage served to protect children. But marriage is no longer a permanent and inviolable commitment. Some other means must be devised to ensure that children are not the victims of changing times and changing ways.

¹Judith Cassetty. *Child Support and Public Policy* (Lexington, Mass.: Lexington Books, 1978), p. 82.

²Maurice MacDonald, “Policies for collecting child support for AFDC mothers: An empirical analysis” (in press), p. 31.

³Harold W. Watts, George Jakubson, and Felicity Skidmore, “Single-parent Households under Alternative Transfer and Tax Systems: Detailed Simulations and Policy Conclusions.” Institute for Research on Poverty D.P. 549-79.

⁴Irwin Garfinkel, “A Proposal for a Universal Child Support Program: First Thoughts on Program Design.” Mimeographed.