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IN FAMILY LAW DECISIONS:
DEVELOPING MATHEMATICAL
STANDARDS FOR CHILD SUPPORT

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The Use of Normative Standards in Family Law Decisions:

Developing Mathematical Standards for Child Support

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Abstract

In response to federal legislation, the states are using mathematical formulae for the setting and modification of child support. This paper describes and analyzes the two most commonly used formulae, the income-shares standard and the percentage-of-income standard. It focuses on the differences between the two standards and tries to assess their advantages and drawbacks.

It concludes that, although the percentage-of-income standard may appear in theory to be somewhat less equitable than the income-shares standard, in the final analysis the question of equity is very mixed and the simplicity of the percentage standard outweighs any negatives on the equity side.

The Use of Normative Standards in Family Law Decisions: Developing Mathematical Standards for Child Support

The 1980s marked an important institutional shift in American family law from the individualized judicial determination of certain issues to the use of normative standards. This change represents a major break with traditional decision-making in family law, which has been highly individualized: decisions have been made at the discretion of the trial judge, with great deference accorded the trial court's decision by appellate courts.

Probably the most visible example of this type of change is in the establishment of child support awards, i.e., the determination of the amount that a parent who does not live with a child should provide toward the support of that child. Traditionally, this amount has been set on a case-by-case basis by a judge in a judicial hearing at which both parents have the opportunity to present relevant evidence. This approach has been said to be necessary to allow the trial judge to tailor the order to the needs of a particular family. No two family situations were seen to be alike and flexibility was needed in the system to enable the judge to weigh the equities of each situation and arrive at the best solution for the family involved.[1]

Federally mandated standards have now replaced flexibility. The Child Support Enforcement Amendments of 1984 required the states to develop guidelines in the form of mathematical formulae for use by the courts in setting child support.[2] The Family Support Act of 1988 has made those formulae presumptive (i.e., courts are required to use them or to give reasons on the record for not doing so.)[3] This pioneering

effort to change the structure of decision making in the child support

area is in its initial stages. Theories on how a normative standard for

child support ought to be developed are still evolving. This paper is

an attempt to add to the growing literature on how to structure a

workable formula. It describes the policy analysis that led to the

development of the flat percentage-of-income standard, pioneered by

Wisconsin in 1983. That standard and the income-shares standard

developed by the federal Office of Child Support Enforcement are the two

most widely adopted standards. As of mid-1989, 24 states and

territories had adopted the income-shares approach,[4] 13 had adopted the

flat percentage-of-income approach[5] and another 10 had adopted a varying

percentage-of-income standard.[6]

The development of the income shares standard and the reasons for

choosing it have been described at length elsewhere.[7] This paper

compares and contrasts it with the Wisconsin flat percentage of income

standard. The objective is to provide sufficient information on the

theoretical differences between these two competing formulae to enable

the states to make informed assessments as they refine and reform their

standards.

Section I of this paper provides a brief review of the reasons

behind the trend toward normative child support standards. Section II

discusses the two major alternative philosophical approaches to child

support standards--cost sharing and income sharing--and then describes

the percentage-of-income and the income-shares standards, both of which

are based upon the income-sharing approach. Five sections focus on

critical issues on which the two standards differ: (III) examines how

to choose the percentage of income that nonresident parents[8] should transfer to their children; (IV) explores whether the percentage should vary depending on the income of the nonresident parent; (V) examines whether the percentage should depend on the income of the resident parent; (VI) asks whether the child support obligation should depend upon actual expenditures on children; and (VII) raises the issue of how simple or complex the standard should be. Section VIII is a summary and conclusion.

I. BACKGROUND

The impetus for abandoning the principle that child support amounts should be determined on a case-by-case basis came from the documented failure of the traditional approach to provide adequate support for children in single-parent households. Although problems with the provision of support for children by absent parents can be traced back at least to 1907 (when the issue had become sufficiently serious to attract the attention of the National Conference of Commissioners on Uniform State Laws, which approved a Uniform Desertion and Nonsupport Act in 1910), little effectively was done until the 1950s, when Congress became concerned about the expenditures of funds under the Aid to Families of Dependent Children (AFDC) program. AFDC is the public assistance program established by the Social Security Act in 1935 as a joint state-federal effort to provide a minimal standard of living for children who had lost their primary supporting parent. Because the bulk of single mothers then were widows, the drafters of the Social Security

Act had not envisioned the program as a measure to shore up an
inadequate system of divorce and paternity establishment that failed to
provide sufficient for children. But by 1949 the Social Security
Administration estimated that the total bill for aid to families where
the father was living but absent and not supporting was about $205
million.

In 1950 Congress enacted the first federal child support
legislation. Between 1950 and 1984, as divorce, separation, and out-of-
wedlock births increased and the costs of the AFDC program escalated,
Congress enacted a series of bills to strengthen child support
enforcement. In 1975 a congressional committee investigating the causes
of the rapidly increasing costs of the AFDC program concluded: "The
problem of welfare in the United States is, to a considerable extent, a
problem of the nonsupport of children by their absent parents."[9] As a
result, in 1975 the child support enforcement program was added to the
Social Security Act (Title IV-D). In 1984 amendments to Title IV-D
mandated that the states provide enforcement services for all children--
non-AFDC as well as AFDC recipients--and required that mathematical
guidelines be developed by all the states by October 1, 1987. The
guidelines could be used by the courts to determine child support
obligations but were not binding. The Family Support Act of 1988
requires states to make their guidelines the presumptive child support
obligation. That is, judges can depart from the guidelines only if they
justify the departure in writing.

There are three reasons for this rather dramatic shift from judicial
discretion to presumptive standards in the establishment of child

support awards. The first is that the old system resulted in child support awards that were much too low. For example, the Census Bureau reports existing child support awards to resident mothers totaled nearly $10 billion in 1983, but one study estimates that if either the percentage-of-income standard adopted by Wisconsin or the income shares standard adopted by Colorado had been applied in all cases, the total would have been between $28 and $30 billion or about two and one half times the amount of existing awards.[10]

It is important to note, however, that the problem of low awards may be due as much to the failure to update awards over time as to the size of the initial awards.[11] Indeed, data from Wisconsin suggest that within that state the problem of low awards resulted in almost all cases from a failure to increase awards over time as the incomes of nonresident parents increased.[12] However, preliminary analyses of national data suggest that initially low awards as well as the failure to update account for the low level of current awards.[13]

The second reason is that judicial discretion led to inequity in child support awards. Research showed that even within the same jurisdiction, supporting parents in similar circumstances were treated very differently.[14] When the number of broken marriages and out-of-wedlock births was small, greater equity was perhaps achieved by the old individualized system. In small communities, the judge knew the parents and the circumstances, so justice was better served by taking account of all particulars. But when the number of cases is large and the system impersonal, this method breaks down. In practice, judges now do very little to tailor child support to particular circumstances.

The third reason is that in view of the existence of public programs such as AFDC, that assure a minimum income to children who are potentially eligible for child support, the public has a direct financial stake in the amount of private child support paid by nonresident parents whose children are potential recipients of public benefits. The lower the amount of support paid by nonresident parents, the greater must be the burden on taxpayers. How the support of poor children should be apportioned between the resident parent, the nonresident parent, and the public is a public policy issue more appropriate to the legislative than judicial branch of government.

II. NORMATIVE STANDARDS

Any normative standard must be based on an attempt to balance the competing values that a child support award seeks to serve. Those values are related to the three different persons involved in a child support award: the child, the nonresident parent, and the resident parent.

The child has need for an adequate standard of living and for fair treatment by the nonresident parent. This means that the child is entitled to as good a standard of living as his or her parents can provide. Current statistics show that the standard of living of nonresident parents usually increases after divorce while the living standard of children and the resident parent drops.[15] As a matter of public policy, this discrepancy in treatment should be minimized in the interest of fairness to the child.

The nonresident parent has a need for a decent standard of living and the right to pursue an independent life. Although a nonresident parent has a duty to the child to provide as adequate a standard of living as possible, this responsibility must not prevent the parent from living adequately apart from the family. A public policy that recognizes and endorses liberal divorce must acknowledge this problem.

Finally, the needs of the resident parent must be considered. That parent, of necessity, provides support for the child because he or she shares resources with the child. The resident parent, therefore, is entitled to help from the child's other parent and to fair treatment in relation to the other parent. A resident parent, for example, should not be required to be the sole support for a child because the nonresident parent wishes to parent another family.

The balancing of these values underlies the child support award structure and is implicit in the development of any normative standard.

Choosing the Basic Approach

Child support awards are based on the theory that by parenting a child, a person takes on the responsibility to share income with that child and to share in the cost of raising that child. There are two approaches to setting the amount of this share. These are cost sharing and income sharing.

Cost sharing was the traditional way of setting child support in the individualized, case-by-case system. The base for beginning calculations was the budget submitted by the resident parent. Courts reviewed the budget, sometimes adjusting it downward if particular

expenditures were found to be not in keeping with the standard of living the family had prior to divorce. Once the budget for the child was set, the court examined the nonresident parent's living costs and income to determine how much that parent was able to pay. Sometimes when the parent's expenditures were so great that nothing appeared to be left for the child, the court did not count certain types of expenditures. Basically, however, the courts operated on the premise that nonresident parents were entitled to spend their money as they saw fit, with the child receiving some of what was left over. The rationale for this gentle treatment of nonresident parents was fear that the parent would refuse to pay anything by absconding or quitting work and the child would be worse off.

When cost sharing is used as the basis for developing a normative standard, the problem becomes more complex because an individual budget is not the base point. The process now requires the establishment of a normative figure for the cost of raising a child. This causes difficulty because the cost of raising a child differs considerably depending on the income of the parent. Parents with higher incomes spend proportionately more money on their children. This difficulty in setting an amount that is not related to the income of the parents is a major problem for the cost sharing approach. None of the states has adopted standards based on a pure cost-sharing approach.

The other approach to setting the amount of child support is income sharing. The focus of income sharing is the income of the nonresident parent. If the cost of raising a child is related to the parent's income, it makes sense to look to income as a starting point.

Both of the mathematical standards discussed in this paper are based on the income sharing approach. This choice is predicated on the belief that it reflects more accurately how parents treat children in intact families. If parents with more income spend more on their children it makes good sense to develop a standard based on this sharing of income by the nonresident parent.

The Percentage-of-Income and Income-Shares Standards

The percentage-of-income standard had its roots in a system developed by the Michigan Friend of the Court, but it is now most closely associated with the state of Wisconsin. It is quite simple. Unlike the mathematical formulae used by some states, in which a variety of factors considered relevant to the child support award are evaluated, it is based on the principle that the two most important features in the determination of a child support award are the nonresident parent's income and the number of children to be supported.[16] By taking a certain percentage of the nonresident parent's income, varied by the number of children supported, it is possible to tie child support amounts to income. Thirteen states, including Wisconsin, use this form of percentage standard. Nine other states use the percentage standard, but vary the percentage, based on the income of the nonresident parent.

The income-shares standard was first used by the state of Washington and then refined and developed in a study commissioned by the federal Office of Child Support Enforcement.[17] It is considerably more complex than the percentage of income standard. The basic child support obligation is computed by multiplying the combined income of both

parents by percentages that decline with income. For example, the percentage for one child ranges from 21.5% for incomes between $5,976 and $11,800 to 11.8% for incomes over $64,250. The total child support obligation is determined by adding actual work-related child care expenses and extraordinary medical expenses to the basic obligation. The total obligation is then prorated between each parent based on their proportionate shares of income. The resident parent's obligation is assumed to be met in the course of everyday sharing with the child. The nonresident parent's obligation is payable as child support.

The two standards are similar in that they both begin with an income-sharing approach. The income-shares approach, however, has elements of cost sharing in that it considers actual expenditures for child care and medical care. Under the income-shares approach, the child support obligation declines as a percentage of the nonresident parent's income as total income increases and it varies depending on the resident parent's income. Each of these differences will be discussed below. But we begin with the most general issue of how the percentages to be shared were determined.

III. CHOOSING THE PERCENTAGES

There are two possible approaches to the problem of how much income a nonresident parent should share with his or her child. One that has intuitive appeal is to set the nonresident parent's share at a rate which would equalize income for the resident and nonresident households. This type of income sharing is known as income equalization. The

objective of such an approach is to ensure that the children maintain the same living standard as the nonresident parent. Although income equalization has been advocated by some academics, it has not been implemented anywhere. It is generally opposed because equalizing incomes in the nonresident and resident households would benefit the parent living with the children by raising that parent's standard of living along with that of the children and would entail substantially greater child support obligations for most upper-middle-income and upper-income nonresident parents than other standards. Of course any child support award benefits the resident parent because that parent lives with the children; income equalization is just the most obvious and most extreme case.

The second approach to the issue of how much a parent ought to pay in child support is to set the amount based on the proportion of their income that parents spend on their children when they all live together. This also has intuitive philosophical appeal, and it is the starting point for both the percentage-of-income standard and the income-shares standard. However, the manner in which the authors of the two standards arrived at what the child's share should be was quite different in two respects: (1) how they viewed the difficulty of estimating the percentage of income that two parent families devote to their children and (2) how they viewed the value judgments involved in translating the child's share in a two-parent family to that share in a single-parent family.

Determining the amount of their income that parents devote to their children is far more complex and difficult than it appears to be on first impression. Although there is a considerable body of economic literature on the amounts parents spend raising children, social science research has not been able to provide the exact proportions. The primary reason for this inability stems from the fact that so many expenses, such as food, housing, and transportation, are jointly consumed. Determining how these common expenditures are to be allocated among individual members of a family of differing ages and needs and decision-making capacity is the principal problem.

The architects of the income-shares approach resolve this difficulty by ultimately ignoring all but one study of expenditures on children.[18] In the 1987 report to the federal Office of Child Support Enforcement, Robert Williams, the principal designer of the income-shares standard, justified ignoring the bulk of the existing economics literature on the grounds that the 1960s data upon which these studies were based were outdated. Instead the report relied almost exclusively on the Espenshade study,[19] which was based on 1972 data. This made the task of deriving percentages for the child support standard very simple. One merely extrapolated from the estimated percentages in the two-parent family. If we follow this line of reasoning, however, we can now dismiss the results of the Espenshade study, since studies are available that use data from the 1980s. But such an argument has little scientific merit, because there are no grounds for believing that the pattern of sharing between parents and their children has shifted radically during the past thirty years.

In contrast, the authors of the Wisconsin percentage-of-income standard saw the problem as far more complex and value laden. As part of the child support research conducted by the Institute for Research on Poverty under a contract from the Wisconsin Department of Health and Social Services, Jacques van der Gaag conducted a comprehensive review of the economics literature on expenditures on children.[20] He examined a dozen studies. One of his major findings was that the range of estimates of the share of income that parents devote to their children is enormous. Even after limiting the studies to those which he judged to be the soundest from both a theoretical and methodological point of view, van der Gaag found that the estimates of the proportion of income devoted to the first child ranged from 16% to 24%. Taking the midpoint of this range, he concluded that 20% was the best point estimate. But he cautioned "other observers might easily reach a different point estimate."[21]

The other major conclusions of the van der Gaag review were that expenditures on children were proportional up to very high income levels and that the shares of income devoted to the second and third child were about half that devoted to the first. This research was used as a starting point for recommending the percentages to be used in the Wisconsin standard.

But it must be stressed that the economic analysis was only the starting point for setting the percentage used in the Wisconsin standard. The authors of that standard recognized that even if it was possible to determine the proportion of income spent on children in a two-parent household, it did not necessarily follow that the children

should receive the same proportion of parental income when the parents live apart.

For at least three reasons, the proportion of their incomes that nonresident parents devote to their children should be lower than the proportion they would have spent had they been living with the children. First, a parent derives less benefit from a child when he or she lives apart from, rather than together with, the child. Second, the nonresident parent will incur some costs for the child in the course of normal visitation. Third, child support orders that are too high a percentage of the nonresident parent's income may preclude a decent standard of living for the nonresident parent and will encourage evasion.

On the other hand, there is one important reason why nonresident parents should share more than they would have if they lived with the child. Because so many expenses, like housing, are jointly consumed when the parent and child live together, the cost to a parent of providing a given standard of living to the child is smaller if they live together. The child as well as the parent can derive the full benefits of living in a nice house, for example, at no extra cost to the parent--as long as they live together. To keep the child at the same standard of living, therefore--which is an explicit objective of nearly every child support statute in the country--requires that the nonresident share more when living apart.

None of these reasons for expecting nonresident parents to share more or less of their income with their children suggests an exact amount or percentage. Ultimately, the determination of how much the

nonresident parent should pay also depends upon value judgments about how to balance the conflicting objectives of providing well for the children, minimizing public costs, and retaining incentives and a decent standard of living for the nonresident parent. Establishing a child support standard cannot be a purely scientific exercise.

After considering the reasons for expecting nonresident parents to share more (or less) of their income with their children than if they lived with them and weighing the conflicting objectives listed above, the final decision was that the support rates for nonresident parents should be equal to 17% of gross income for one child and 25%, 29%, 31%, and 34% for respectively two, three, four, and five or more children.

One final note: none of the studies reviewed by either van der Gaag or by Williams takes into account the foregone family income in a two-parent family that results from a parent--usually the mother--not working or taking a job that pays less than she can command in the market in order to have time to care for the children. As van der Gaag shows, this implicit cost of a child may be larger than the explicit costs of a child that are included in the studies of expenditures on children. Ignoring this cost raises questions about even those standards that make the modest claim that the share of income that children would have received if the parents lived together is a reasonable starting point for determining how much child support should be paid. For standards that make the claim that the child should get the exact share that he or she would have enjoyed if the parents lived together, ignoring this cost makes the exercise a mockery.

To summarize: whereas both the percentage-of-income standard and the income shares standard take as their starting point the proportion of family income that the child would receive if the parents lived together, the architects of the income shares model proceed as if it is a simple scientific exercise to ascertain how much of their income two-parent families spend on their children. In contrast, the architects of the Wisconsin percentage-of-income standard stress both the large range in estimates of how much of their income parents spend on their children and the inescapable need to make value judgments in determining child support obligations.

IV. SHOULD THE PERCENTAGES VARY WITH THE INCOME OF THE NONRESIDENT PARENT?

As noted above, one of the critical differences between the percentage-of-income standard and the income-shares standard is that in the former, the percentage of income that the nonresident parent pays in child support is the same irrespective of income; whereas in the latter, the percentage declines substantially as income increases. This section explores the grounds for determining whether a proportional or regressive structure of sharing rates in child support standards is preferable.

Both the proportionality of the Wisconsin percentage-of-income standard and the regressivity of the income-shares standard were originally justified by their architects as reproducing the pattern of income sharing when both parents live with the children. As noted above, van der Gaag's review concluded that the proportion of income

devoted to children was relatively constant up to very high income levels.[22] In contrast, the federal report concluded that the proportion of income that parents spent on their children declined as income increased.

The evidence presented in the federal report is unconvincing. Of the five studies the report reviews, only Espenshade's supports its conclusion. Of the other four, three fail to examine how the costs of children varied with income and the other finds the costs to be roughly proportional. One of five is hardly solid evidence for rejecting the proportionality assumption. Moreover, the report's technical argument for preferring the Espenshade study is neither directly related to the proportionality issue nor supported by the weight of professional economics opinion.[23]

On the other hand, neither the evidence reviewed by van der Gaag, nor the work published since then presents convincing evidence that the costs of children are proportional to income. Although all of the studies show that expenditures on children increase with income, most indicate that expenditures as a proportion of income decline as income rises. Van der Gaag notes, however, that one common approach to estimating the costs of children builds in this result.[24] Moreover, of the studies he reviewed, the two which found rough proportionality-- including one by van der Gaag--also appeared to be superior on methodological grounds to most other studies.[25] Furthermore, as noted above, none of the studies reviewed takes account of the indirect costs of children that arise from the mother of the child giving up or reducing market work and earnings in order to care for the child.

Finally, it is worth noting that none of the studies on the costs of children is concerned primarily with the issue of whether expenditures on children increase in proportion to income.

In short, before either flat or declining percentages of income in a child support standard can be satisfactorily justified by appeal to the proportion of income that children would receive if both parents lived together, more research is warranted.

The absence of reliable scientific evidence on child expenditures by income class may be a blessing in disguise in that it makes acutely clear that value judgments are required to design a child support standard. We suspect that once the value judgments implicit in the two standards are made explicit, the flat percentage-of-income standard will have wider appeal than the declining percentages in the income shares standard. It is hard to justify state legislation that requires a working-class nonresident parent to contribute a much larger proportion of his income to his children than a middle-income nonresident parent and requires the middle-income nonresident parent to contribute a much larger share of his income than the upper-middle-income nonresident parent. Regressive taxes are widely perceived to be unfair. A regressive child support standard is unlikely to command greater support. In contrast, a proportional child support standard like the Wisconsin percentage of income standard is likely to be perceived as equitable.

V. SHOULD CHILD SUPPORT DEPEND ON THE INCOME OF THE
     RESIDENT PARENT?

Probably the most controversial aspect of the percentage-of-income
standard is that it does not take into account the income of the
resident parent. In this it represents a complete break with past
practice. In the traditional family law of child support, the financial
resources of the resident parent played a critical role. That law, as
stated earlier, was based on a cost-sharing approach and was framed
around two issues: the needs of the child and the ability of the
nonresident parent to pay. It was assumed that the more income the
resident parent had, the more of the child's needs were already being
met with this income and, therefore, the less was needed child support
from the nonresident parent.

The income-sharing approach to establishing child support
obligations assumes that both parents have an obligation to share their
income with their children. The percentage-of-income standard does not
consider the income of the resident parent at all in setting the amount
the nonresident parent should pay. It excludes the custodian's income
for three reasons. Two follow from the income-sharing principle itself.
First, to parent a child is to incur an obligation to share income with
the child. Conditioning the obligation on the income of the resident
parent undermines this principle.

Second, the child is entitled to a share of both parents' incomes.
When the parents live together, the child shares the benefits (and bears
some of the costs as well) if both parents work. There is no evidence
that the share of income the child receives from the father declines if

his or her mother goes to work. Indeed, as conventionally measured, the proportion of total family income devoted to the child will actually be higher when both parents work because of child care expenses. A child in a single-parent household with two income-producing parents should enjoy the advantages that situation brings, just as if the family lived as one unit.

Third, the income of the resident parent will depend in large part upon how much he or she works. But the more the resident parent works, the greater child care costs will be. If resident parent income is to be counted in the determination of the nonresident parents child support obligation, child care expenses cannot be ignored. Not surprisingly, the income-shares standard does take into account child care expenditures. But as discussed below, doing so weakens the income-sharing principle by inserting an element of cost sharing and substantially complicates the determination and updating of child support awards.

Under the income shares standard, the child support obligation of the nonresident parent declines as the income of the resident parent increases. But this is only an accidental byproduct of the fact that the percentages in the standard decline as income increases. If the percentages in the income-shares standard were constant rather than declining, the income of the resident parent would play no role in determining the obligation of the nonresident parent. Indeed, if it happened to be the case that the percentage of family income spent on children increased with family income, the income-shares standard would lead to the absurd result that the higher the income of the resident

parent, the greater would be the child support obligation of the nonresident parent. This is not generally perceived and therefore is worth explaining.

Recall that under the income shares standard, the child support obligation is computed by multiplying the combined income of both parents by percentages that are determined by how much of their income two parent families spend on their children. The obligation is then prorated between each parent based on their proportionate shares of income. The resident parent's obligation is assumed to be met in the course of everyday sharing with the child. The nonresident parent's obligation is payable as child support.[26]

Now suppose that research showed that two parent families spent 20% of their income on one child at all income levels. Consider a case in which the nonresident father has a $20,000 income and the resident mother has a $10,000 income. Their total income is $30,000. The total child support obligation is $6,000. His share is two-thirds of the total, or $4,000. Now suppose that the resident mother's income is $20,000. Total income is now $40,000. The total obligation is $8,000. But the father's share is only one-half the total, or once more, $4,000! Resident-parent income would be irrelevant in determining the child support obligation in the income shares standard if the percentages were constant rather than declining. What if research showed that families with incomes below $40,000 spent 20% on their children while those with $40,000 or more spent 25% of their income on their children. In this case, as the income of the resident mother increased from $10,000 to

$20,000, the child support obligation of the nonresident father would increase from $4,000 to $5,000.

There may, of course, be arguments for taking resident-parent income into account when setting the amount of a child support award. For example, failure to consider it leads to what some consider to be inequitable results, especially in extreme cases. The argument is that while it is fair for a nonresident parent earning $20,000 to pay $3,400 in child support if the resident parent has no income, it is unfair to expect the nonresident parent to pay the same amount if the resident parent earns $60,000. It is up to public policy makers to decide whether these circumstances overcome the income sharing principle of child support, which suggests that there is nothing inequitable about nonresident parents paying a constant share of their income irrespective of the income of the resident parent, thus enabling the child to benefit from two income-producing parents. But taking resident-parent income into account in the unsatisfactory manner that the income-shares standard uses is certainly not the answer.

VI. SHOULD CHILD SUPPORT DEPEND UPON EXTRAORDINARY EXPENDITURES?

Under the income-shares standard, child support obligations depend upon actual child care expenditures and extraordinary medical care expenditures. These expenditures are irrelevant in the Wisconsin percentage-of-income standard.

There are numerous objections to basing child support obligations on actual expenditures. To begin with, as mentioned earlier, the practice

is inconsistent with the income-sharing principle underlying both the income shares and percentage-of-income standard. Furthermore, simply adding a prorated share of these costs to the basic child support obligation violates the claim of the architects of the income-shares standard that the child support obligation is designed to secure for the child the same portion of the nonresident parent's income as the child would have enjoyed if the parents lived together. The expenditure data used to derive the proportion of their income that two-parent families devote to their children includes expenditures on child care and medical care. If the percentages reported in the Espanshade study were correct, adding a prorated share of these expenses to the percentages makes the total child support obligation too high. Child care and medical care expenditures are being counted twice.

How much the resident parent spends on child care will depend upon both the kind and amount of care purchased. The amount needed will depend primarily upon how much the resident parent works. What is the justification for increasing the child support paid by the nonresident parent in response to increases in work by the resident parent? It is difficult to think of one. After all, the more the resident parent works, the more income she will have. More generally, it seems inappropriate to base the child support obligation of the nonresident parent on lifestyle choices of the resident parent.

The argument for adjusting the child support obligation in response to truly extraordinary medical care expenditures is more convincing precisely because such expenditures are presumably involuntary. Furthermore, in the rare cases when medical catastrophes occur, the

average medical care cost incorporated in a child support standard will obviously be totally inadequate. It is hard to make the case that the resident parent should bear the entire cost of a medical catastrophe. On the other hand, it is hard to make the case that any family should bear the entire cost. The real problem is our failure to institute a national health insurance system. This creates pressures to twist the child support system out of shape to compensate for a broader social problem.

Finally, basing the child support obligation upon actual child care and medical care expenditures further complicates the determination of child support. Such expenditures change substantially from year to year. Should this year's child support be based upon last year's expenditures? Or, upon anticipated expenditures during the year? As will be discussed in more detail in the next section, every complication makes it more costly and difficult to update child support awards.

VII. THE COSTS AND BENEFITS OF SIMPLICITY

The Wisconsin percentage-of-income standard is designed to maximize simplicity. The child support obligation is equal to a percentage of the nonresident parent's income. The percentage depends only upon the number of children owed support. The income shares standard is more complex: the percentages of support owed vary with the income of the nonresident parent and also depend upon the income of the resident parent and expenditures on child care and medical care.

Simplicity itself may be a virtue because it enhances public understanding and eases the burden on the courts. Simplicity facilitates understanding. Most people who have either read or heard about the Wisconsin percentage-of-income standard understand that in most cases child support would equal 17% of the nonresident parent's income. Parents who enter the court system in Wisconsin have no difficulty in assessing the dollar magnitude of their entitlements or obligations.

In contrast, even though the income shares standard is simpler than others and indeed entails only a few more variables than the Wisconsin standard, it is far more difficult to understand. The addition of even a few more variables increases complexity and thereby deters understanding. The reader can readily test the relative complexity of the two standards by attempting to calculate what his or her own obligation or entitlement would be under each standard.

The simplicity of the percentage standard also aids the courts. It is easy to administer because (1) it requires that only a very limited amount of information be provided the court (the income of the parent and the number of children) and (2) the process for determining the amount of the award is the simple one of multiplying the income by the percentage set for the number of children entitled to support.

Whether simplicity promotes or sacrifices equity is a more complicated issue. To the extent that equity depends upon tailoring child support awards to the unique circumstances of each case, obviously simplicity is the enemy of equity. No one seems to be arguing this position now, however. Indeed, the country has adopted the position

that equity is better served by the rough average justice produced by numerical child support standards. The tax reform and simplification act of 1986 was also based upon the notion that simplicity promotes equity. The foregoing suggest that perhaps the presumption should be that simplicity promotes equity.

Yet a general presumption is no substitute for an examination of the consequences for equity of the specific differences in simplicity between the two standards. The Wisconsin standard is simpler in that it uses a constant rather than a declining percentage, ignores the resident parent's income, and takes no account of expenditures for child care and medical care. Based on our analysis in previous sections, we conclude: (1) having one constant percentage is more equitable than having declining percentages; (2) ignoring the income of the resident parent may in some extreme cases entail some sacrifice in equity; (3) ignoring child care costs entails no sacrifice in equity and probably promotes it, although ignoring catastrophic costs for medical care entails a sacrifice in equity. In terms of the specifics, therefore, the verdict on the relationship between the greater simplicity of the Wisconsin standard and equity appears mixed. To the extent that the simplicity of the Wisconsin standard facilitates updating of child support awards, however, the relationship between simplicity and equity is substantially strengthened.

Recall that one of the widely perceived problems with the old child support system was that child support awards were too low. Recall as well that a large part of the problem of low awards is attributable to the failure to update awards over time.

Why are modifications of child support awards so rare? One answer
is that most state laws in the past have adopted practices and
legislation that discourages parents from seeking modifications of child
support orders. The Uniform Marriage and Divorce Act suggests a
modification, "only upon a showing of changed circumstances so
substantial and continuing as to make the terms unconscionable."[27] But
to say that laws and regulations discourage modifications begs the
question. What is the rationale for this discouragement? The answer is
that under the old system of individualized determinations of child
support awards, modifications were quite costly in terms of court time.
In essence, updating a child support award is equivalent to reopening
and rehearing the case. If the average child support case has a ten-
year-obligation life, annual modification or updating under the old
system would increase the burden on the courts tenfold.

Numerical child support standards reduce the burden on the court
system of both establishing the initial child support award and
modifying or updating the award over time. But the reduction in burden
is directly related to the simplicity of the standard. The more complex
the standard, the more information the court must obtain, verify, and
process. Even in this modern age of computers, obtaining, verifying,
and processing information is costly.

To appreciate the difference in the costs of updating a child
support award derived from the Wisconsin percentage-of-income standard
and one derived from income shares standard, it is useful to consider
what actions a child support agency would have to take under the two
standards. Consider the most common case wherein both the nonresident

and resident parents are employed wage earners with no unearned income. Under the Wisconsin standard, the child support agency notifies the nonresident parent's employer of the percentage of income to be withheld and forwarded to the agency.[28] As the income of the nonresident parent increases (or decreases) over time, the child support withheld and paid changes automatically as well. The only additional action the child support agency must take is to verify the income tax returns of the nonresident parent each year to ascertain if he or she has received additional earned or unearned income.

Even though the income shares standard has only a few more variables than the Wisconsin percentage-of-income standard, updating awards entails a substantially greater administrative burden. Each year the child support agency must collect income tax returns from both the resident and nonresident parent as well as information from the resident parent on the costs of child care and medical care. Some method of securing and verifying these expenditures will have to be developed. The records of the two parents must be linked. Each year a new child support obligation must be calculated. Because only the child support agency has all the data upon which the revised child support obligation is based, each year, the agency will have to notify the employer, the resident parent, and the nonresident parent of the new obligation.

Updating of the income-shares standard is feasible but will be substantially more costly than updating the Wisconsin standard. Consequently, it will at the very least delay implementation of updating. It is even conceivable that the extra administrative burdens imposed by the income shares standard will permanently discourage

updating. That may seem difficult to imagine in view of the current strong political support for strengthening child support enforcement, but the political euphoria for child support enforcement may not last indefinitely. In view of the importance of updating to the adequacy of child support awards, this makes the simplicity of the Wisconsin percentage-of-income standard especially attractive.

VIII. SUMMARY AND CONCLUSIONS

This paper has attempted to add to the information available to the states on how to develop a numerical child support standard as required by federal legislation. It has compared and contrasted the two most popular types, the percentage-of-income model and the income-shares model.

Both standards begin with the philosophical premise of income sharing--that to parent a child is to incur a responsibility to share income with the child and that the child's share of the nonresident parent's income should be based upon the proportion the child would receive if the parent lived with the child.

The standards depart from one another in application, however, both because there is a wide range of estimates of the extent and nature of income sharing in two parent families and because a host of other value judgments must be made to derive child support orders. Under the income shares approach, the child support obligation declines as a percentage of the nonresident parent's income as income increases, and consequently the obligation decreases as the resident parent's income increases.

Moreover, the obligation also depends upon expenses for child care and medical care. In contrast, under the percentage-of-income standard, the obligation is a flat percentage of the nonresident parent's income and depends neither upon the resident parent's income nor upon expenses for child care and medical care.

Economic research on expenditures on children in two-parent families provides mixed evidence on whether the percentage of income spent on children declines as income increases. Moreover, while the proportion of income that would have been spent on the child if the parents had remained together is a useful starting point for determining the proportion of income that a nonresident parent should provide for his child, value judgments are involved as well in determining the size of the child support award. Our own values are such that we think a proportional child support standard is more appealing than one that is regressive.

Similarly, whether the income of the resident parent should affect child support obligation of the resident parent is principally a value judgment. While counting the income of the resident parent is consistent with the old cost-sharing approach to determine child support obligations and has an intuitive appeal on the grounds of equity, ignoring the resident parent's income is consistent with the income-sharing philosophy which underlies both standards. Moreover on closer inspection, the equity case is not clear. In a two-parent family, if both parents work, the child shares the monetary fruits along with the parents. Why should it be any different when the family is separated?

The income-shares model accepts this line of reasoning in principle, but because obligations as a percentage of income decline as income increases, in practice obligations decline as the resident-parent's income increases. If the income-shares standard were proportional instead of regressive, the income of the resident parent would be irrelevant.

Adjusting the child support obligation to take account of child care and medical care costs departs from the income-sharing philosophy underlying both standards and complicates the standard.

One of the most attractive features of the Wisconsin percentage-of-income standard is its simplicity. Simplicity promotes public comprehension, is at least consistent with equity, and facilitates updating of awards. The latter function may be the most important single consideration for the states in the future in constructing mathematical child support standards. Failure to update awards is a major source of inadequate child support awards. A scheme to provide quick and efficient updating is an essential tool for child support enforcement.

Notes

[1]Historically, statutes authorized courts to set child support in
their discretion with only very general guidelines, such as an amount
"deemed just and reasonable." In the 1970s, concern about the need for
more determinative standards arose and there was a proliferation of
legislative and administrative guidelines setting forth laundry lists of
factors to be considered by the court in establishing the amount of a
support award. See, for example, Doris Freed and Timothy Walker,
"Family Law in the Fifty States: An Overview," Family Law Quarterly 20
(1987):550-551.

[2]Child Support Enforcement Amendments of 1984, Public Law No. 98-
378.

[3]Family Support Act of 1988, Public Law No. 100-485 § 103, 102 Stat.
2343, 2346, codified as 42 USC § 667 (b)(2), effective October 14, 1989,
provides: "There shall be a rebuttable presumption, in any judicial or
administrative proceeding for the award of child support, that the
amount of the award which would result from the application of such
guidelines is the correct amount of child support to be awarded. A
written finding or specific finding on the record that the application
of the guidelines would be unjust or inappropriate in a particular case,
as determined under criteria established by the State, shall be
sufficient to rebut the presumption in that case."

[4]Alabama, Arizona, Colorado, Florida, Guam, Kansas, Kentucky, Maine,
Maryland, Michigan, Missouri, Montana, Nebraska, New Jersey, New Mexico,

Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Vermont, Virginia, and Washington.

[5]Alaska, Connecticut, Georgia, Idaho, Illinois, Louisiana, Mississippi, Nevada, New Hampshire, North Carolina, Tennessee, Texas, and Wisconsin.

[6]Arkansas, California, District of Columbia, Iowa, Massachusetts, Minnesota, New York, North Dakota, Puerto Rico, and Wyoming.

[7]Robert G. Williams, "Guidelines for Setting Levels of Child Support Orders," Family Law Quarterly 21 (1987):281.

[8]The terms "residential" and "nonresidential" are used to clarify who has physical custody of the child, as distinguished from legal custody.

[9]Staff of Senate Committee on Finance, 94th Cong., 1st Sess., Child Support Data and Materials 88-89 (Committee Print 1975).

[10]I. Garfinkel and D. Oellerich, "Noncustodial Fathers' Ability to Pay Child Support," Demography 26 (May 1989):219-233.

[11]It should be noted, however, that the problem is also caused in part by the failure to obtain child support awards. Awards are obtained in only 60% of the cases. Most serious is the failure to obtain awards in more than 80% of the cases of out-of-wedlock births. (U.S. Bureau of the Census, Current Population Reports, Series P. 23, No. 152, Child Support and Alimony: 1985 [Washington, D.C.: U.S. Government Printing Office, 1987]). In a large percentage of the out-of-wedlock cases, the

failure to establish paternity precludes the possibility of establishing
a child support award.

[12]The data indicate that initial child support awards during the
period 1980-1983 prior to the publication of the Wisconsin percentage-
of-income standard were almost identical to the percentages of the
noncustodial parents' income called for by the Wisconsin percentage of
income standard. See I. Garfinkel, "Utilization and Effects of
Immediate Income Withholding and the Percentage-of-Income Standard: An
Interim Report on the Child Support Assurance Demonstration." Institute
for Research on Poverty, Special Report #42, University of Wisconsin-
Madison, 1986.

[13]I. Garfinkel, P. Robins, and D. Oellerich, "How Important Is It to
Update Child Support Awards?" Institute for Research on Poverty
Discussion Paper, forthcoming.

[14]The two most frequently cited empirical studies on this point are
K. White and R. Stone, "A Study of Alimony and Child Support Rulings
with Some Recommendations," Family Law Quarterly 10 (1976):83; and L.M.
Yee, "What Really Happens in Child Support Cases: An Empirical Study of
the Establishment and Enforcement of Child Support Awards in the Denver
District Court," Denver Law Quarterly 57 (1979):21.

White and Stone studied 532 cases in Orange County, Florida, between
July 1, 1971, and the end of 1974. Nine variables were identified that
were considered to cover all essential factors in determining the amount
of a child support award. These were estimated financial needs of wife,
estimated financial needs of husband, total assets, total liabilities,

number of children, age of children, net income of husband, net income of wife, and duration of the marriage. For all 532 cases, the rank ordering of seven of the variables was (1) net income of the husband, (2) estimated financial needs of the wife, (3) number of children, (4) estimated financial needs of the husband, (5) net income of the wife, (6) total assets, and (7) total liabilities. However, when an analysis was made of the cases decided by each of the nine judges involved (the number of cases handled by the judges ranged from 28 for two judges to 72 for one judge), the ranking of the variables was quite different. For example, for three judges the most important variable was the income of the husband; for two, the estimated financial needs of the husband was the most important variable; the other four judges each had used another variable as the most significant (needs of the wife, duration of the marriage, the number of children, and the net income of the wife). The conclusion was that although each judge was consistent as to his own model, there was no uniformity among the judges. To obtain consistency, the researchers suggested that a model be developed to be followed by the courts in setting child support and alimony. The researchers though that in addition to ensuring more equitable treatment, considerable judicial time would be saved.

Yee examined a random sample of 135 cases handled in the Denver, Colorado, district court between January 1, 1977, and September 30, 1978. Unlike the other studies, which focused on divorces, this one was limited to support actions brought under the Uniform Reciprocal Enforcement of Support Act (URESA).

Yee selected six items as possibly affecting the amount of the child support award: the income of the noncustodial parent, the judge who heard the case, the presence or absence of an attorney for the noncustodial parent, the pattern of conduct by the district attorney's office, the fixed living expenses of the noncustodial parent, and the time of year at which the case was heard.

Yee found great variations in the amount of child support awards. For example, one judge ordered child support payments of $120 in one case and $60 in another, although both cases involved two children and fathers who had net monthly incomes of $450. Furthermore, that same judge ordered another father of two children to pay only $50 a month child support, although his net monthly income of $900 was twice that of the other fathers.

Yee concluded that none of the six factors she looked at--some of which rationally ought to relate to the amount of the award, although others ought not affect it--adequately explained the wide variations in amounts of awards. She further concluded that there was no consistency between judges and individual judges and were erratic as to the amount of the award.

[15]See Greg Duncan and Saul Hoffman, "A Reconsideration of the Economic Consequences of Marital Dissolution," Demography 22 (1985):485; Lenore Weitzman, The Divorce Resolution: The Unexpected Social and Economic Consequences for Women and Children in America (New York: The Free Press, 1988), Chapter 10.

[16]A study of 236 randomly selected cases in Wisconsin revealed that

the number of children, the income of the supporting parent, and the couple's estimated net worth accounted for almost 50% of the variation in the amount of child support [M. Melli, H. Erlanger and Elizabeth Chambliss, "The Process of Negotiation: An Exploratory Investigation in the Context of No Fault Divorce," Rutgers Law Review 40 (1988): 1164ff.

[17]Advisory Panel on Child Support Guidelines and Robert G. Williams, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report to U.S. Office of Child Support Enforcement (National Center for State Courts: Williamsburg, Va.: September 1987); Isabel V. Sawhill, "Developing Normative Standards for Child Support Payments," in The Parental Child Support Obligation, ed., Judith Cassetty (Lexington, Mass.: Lexington Books, 1983).

[18]Advisory Panel on Child Support Guidelines and Williams, Development of Guidelines.

[19]Thomas J. Espenshade, Investing in Children: New Estimates of Parental Expenditures (Washington, D.C.: Urban Institute Press, 1984).

[20]Jacques van der Gaag, "On Measuring the Costs of Children," in Child Support: Weaknesses of the Old and Features of a Proposed New System, Vol. III, ed. Irwin Garfinkel, Marygold S. Melli, et al., Institute for Research on Poverty Special Report No. 32C, University of Wisconsin-Madison, 1982, pp. 1-44.

[21]Ibid., p. 21.

[22]The architects of the Wisconsin standard recommended that the flat percentages apply only to the first $50,000 or $60,000 of income in 1980

dollars. In part, the recommendation was based on the van der Gaag finding of proportionality only up to very high incomes. Another consideration was that the public interest in assuring children a share of their parents' income declined at very high income levels. The Wisconsin Department of Health and Social Services rejected the idea of an income cap to the standard, but the legislature was more flexible. As adopted, the statute allows the court to depart from the standard when it finds that use of the percentage standard is unfair to any of the parties. Presumably this would cover cases in which the noncustodial parent's income is unusually high. See Wis. Stat. § 767.25 (1M) (1987-88).

[23]Williams's argument for Espenshade is that, among the studies using the most recent data available, Espenshade uses the share of expenditure spent on food rather than the share of expenditure spent on adult goods (such as tobacco, alcohol, and adult clothing) as the measure of the standard of living. The former is a larger, more stable, and more reliably reported share of total consumption.

Williams ignores the van der Gaag and Smolensky study, which used the same data set as Espenshade, but followed a more general approach for measuring the standard of living, one preferred by many economists (see van der Gaag and Eugene Smolensky, "True Household Equivalence Scales and Characteristics of the Poor in the United States," Review of Income and Wealth, Series 28, no. 1 (1981): pp. 17-28).

Use of the food share as a measure of welfare is only appropriate when children's needs for food relative to all other goods and services

are the same as adults' needs. Two of the most prominent economists in the field have recently argued that it is more plausible to assume children need more food relative to other goods than adults (see Angus Deaton and John Muellbauer, "On Measuring Child Costs: With Applications to Poor Countries," Journal of Political Economy, 94 [1986], 720-744). If their contention is true, the food share method overestimates child costs. (Deaton and Muellbauer would prefer the adult goods method if expenditures of adult goods were accurately measured.)

[24]Van der Gaag, "On Measuring the Costs of Children," p. 21.

[25]Ibid., p. 40. Van der Gaag recommends that future research expand upon the direct approach to measuring the cost of children. See Anne R. Gordon and Irwin Garfinkel, "Child Costs as a Percentage of Family Income: Constant or Decreasing As Income Rises?" Institute for Research on Poverty Discussion Paper No. 889-89, University of Wisconsin-Madison, 1989.

[26]To simplify we ignore child care expenses and extraordinary medical expenses.

[27]Uniform Marriage and Divorce Act § 316, 9A U.L.A (1979).

[28]This example assumes that the initial child support order is expressed in percentage terms rather than in dollar terms, which is as yet true in only a minority of cases in the state. Most of the courts have been reluctant to issue percentage orders because no mechanism is in place to verify the gross income of the noncustodial parent and

thereby to ascertain that the amount being withheld and forwarded by employers is correct.