

# The Purpose of Child Support<sup>1</sup>

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What is the appropriate amount of child support to require in particular cases? How should we take account, if at all, of subsequent events such as either parent's remarriage? It seems obvious that the answers to such questions ought to turn on our purpose in requiring support payments in the first place. But while fixing the amount of child support can be politically contentious, and has attracted the attention of partisans on both sides of the gender gap,<sup>2</sup> the literature contains no

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2. The debate over the content of support rules began in earnest in the 1970's as pressure mounted to do something about the enforcement of support orders. The battle was engaged once the federal government required all states to adopt support guidelines, see Part IA of this Article, below. The approach suggested by the consultant to the HHS advisory committee, described below as the *Williams-Betson* model, came under early attack from feminist scholars, many of whom made insightful observations about its problematic policy implications. See, e.g., ESSENTIALS OF CHILD SUPPORT GUIDELINES DEVELOPMENT : ECONOMIC ISSUES AND POLICY CONSIDERATIONS, Proceedings of the Women's Legal Defense Fund's National Conference on the Development of Child Support Guidelines, 1986, Queenstown, Maryland (The Fund, 1987). Many supported what became known as the equal living standard principle, originally advocated in Judith Cassetty, CHILD SUPPORT AND PUBLIC POLICY: SECURING SUPPORT FROM ABSENT FATHERS (Lexington Books 1978). A more exhaustive and more recent effort to justify an equal living standard approach is offered in Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 Cal. L. Rev. 41 (1998). Despite these efforts of feminists, the *Williams-Betson* model came to dominate, see Part I of this article. More recently, it has been attacked by some father's advocates as unfair to support obligors, see, e.g., R. Mark Rogers and Donald Bieniewicz, *Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living*, in William Comanor, editor, THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS 60 (Edward Elgar, 2004) and Ronald Henry, *Child Support Policy and the Unintended Consequences of Good Intentions*, in Comanor, *id.*, at 128, 147-152. Neither side in these debates effectively engages the other, because they begin from incompatible premises. Feminist scholars seem often to assume that equal living standards is the only just result, while partisans on the father's rights side assume that there is some objectively correct measure of a child's "cost" upon which support amounts should be based. The first is a value judgment about which sane observers may differ. The second is simply wrong as a technical matter, see Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 University of Chicago Legal Forum 167. Garrison tries valiantly to justify the equal living standards approach. The fact that no state has knowingly adopted equal living standards suggests it is not compatible with most people's instincts as to the fair result. Neither side in the debate grapples effectively with the reality that child and

systematic examination of support rules in light of their underlying policy purpose. This article fills that gap. It shows that the federally-required guidelines that determine most support orders generally conflict with the policies they are meant to further, explains how this conflict is the unintended but inevitable consequence of the methods most states rely upon for constructing their guidelines, and offers a new method for setting support guidelines that would ensure they reflect the policymakers' purpose. This topic was not very important when compliance with child support orders was rare. Our increasing success in establishing and enforcing support orders<sup>3</sup> now requires, however, that we pay more attention to their content.

In an earlier article one of us examined in detail the conventional method employed by consultants that states usually rely upon to draft their support guidelines, and showed why it is unlikely to yield support amounts that follow from *any* policy choice the relevant state authorities might imagine they have made.<sup>4</sup> Part I of this article capsules and extends that prior analysis. Part II asks the fundamental question that current methodologies never consider: what in fact are the policy purposes we mean to further by requiring child support payments? Part III explains how states can write guidelines that implement their particular policy choices far more reliably than they can using current methods.

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custodial parent share a common household: Father's advocates object to the custodial parent deriving any benefit from child support, despite the fact that this is unavoidable, while feminist scholars often do not acknowledge any need to take account of such "hidden alimony" (as father's groups label it) in child support payments. The American Law Institute proposal, Chapter 3 in the PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION (2002), was a major step forward from this morass, and this Article draws and builds upon it.

3. Paul Legler, *Low-Income Fathers and Child Support: Starting Off on the Right Track*, Annie E. Casey Foundation 6 (2003) (finding that child support collections increased from \$8 billion in 1992 to \$18 billion in 2000). Among children living in families whose incomes fell below the federal poverty threshold, 30.8% received child support in 1996; this number increased to 35.5% in 2001. Similarly, the percentage of children receiving child support who lived in families with incomes at or up to 200 percent of the poverty threshold increased from 44.6% in 1996 to 50.1% in 2001. Elaine Sorensen, *Child Support Gains Some Ground*, The Urban Institute, 3 Snapshots of America's Families 11, 1 (2003), available at [http://www.urban.org/UploadedPDF/310860\\_snapshots3\\_no11.pdf](http://www.urban.org/UploadedPDF/310860_snapshots3_no11.pdf). These numbers are encouraging, given an apparent decrease in child support collection in the 1980's. Thomas Hanson, Irwin Garfinkel, Sara McClanahan, and Cynthia Miller, *Trends in Child Support Outcomes*, 33 Demography 483-496 (1996). Hanson, et. al, concluded that this downward trend was at partially attributable to an increase in the proportion of never-married mothers in the 1980's. In 1999, 39.8% of never-married mothers had a child support order, compared with 57.9% of divorced or separated mothers, and 63.6% of currently married mothers. Elaine Sorensen & Helen Oliver, *Child Support Reforms in PRWORA: Initial Impacts*, The Urban Institute, 16-17 (2002). However, an increasing number of orders are being entered against nonmarital fathers. Between 1992 and 2000, the number of cases in which paternity is established each year increased from 500,000 to 1.5 million. *Low-Income Fathers and Child Support*, at 6. New federal rules requiring states to attempt to establish the paternity of children born to unmarried mothers before they leave the hospital has been effective, see Ronald Mincy, Irwin Garfinkel and Lenna Nepomnyaschay, *In-Hospital Paternity Establishment and Father-Involvement in Fragile Families*, 67 J. Marriage and the Family 611 (2005). But see Nat'l Women's Law Ctr. & Ctr. on Fathers, Families, & Pub. Policy, *Family Ties: Improving Paternity Establishment Practices and Procedures for Low-Income Mothers, Fathers and Children*, 7 (2000) (finding that establishment of paternity does not always lead to child support orders).

4. Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 University of Chicago Legal Forum 167.

## I. Current Practice

### A. Background

At one time child support orders were determined case by case. Trial judges exercised discretion under statutes that left them largely free to set the award for the dollar amount they thought appropriate. Not surprisingly, the result was wide variation in the amount of child support ordered among cases whose essential facts seemed quite similar.<sup>5</sup> The few applicable legal principles were largely hortatory. It was often said the law required support amounts based upon the standard of living maintained in the intact family, but that principle was illusory. The greater expense of maintaining two post-divorce households typically requires that at least one of them experience a living standard decline, which means the real question is the proper allocation of this shortfall. Trial judges necessarily answered that question implicitly as they set support levels in individual cases, but they rarely had to explain their choice. That is why the governing rules could seem to vary between cases. Some commentators argued that orders were often too low to meet a child's minimum needs, much less maintain the prior standard of living.<sup>6</sup> Even if this were not true, the burden of making out a case for support was itself an important barrier to establishing an order, and thus to enforcement of the support obligation.

Reforming this discretionary system thus became part of the federal effort in the 1980's to improve the collection of child support. Congress conditioned federal funding for each state's welfare program on the state's creation of child support guidelines. Under rules still in effect, the Family Support Act of 1988 required that these guidelines establish, in every case, a dollar figure that is presumed by law to be the correct amount of child support. States must bind their courts to set the support order for this presumed amount, unless the judge writes an opinion to explain why that amount was inappropriate in the particular case in question.<sup>7</sup>

Although federal law requires child support guidelines, it leaves states free to fashion them as they wish. One's first thought might be to base the guidelines on the cost of children, but that can't work. A rule that guidelines should cover the children's "cost" would tell us nothing, because one cannot measure what children cost without first deciding what living standard to buy for them. That choice of living standard is a value judgment the guideline writer must make. It is a difficult judgment because the child and the custodial parent share the same living standard when they share

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5. See Yee, *What Really Happens in Child Support Award Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court*, 57 DEN. L.J. 21, 38-42 (1979); White & Stone, *A Study of Alimony and Child Support Rulings with Some Recommendations*, 10 FAM. L.Q. 75, 83 (1976).

6. Weitzman & Dixon, *Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation After Divorce*, 12 U.C.D. L. REV. 473, 494-501 (1979); Hunter, *Child Support Law and Policy: The Systematic Imposition of Costs on Women*, 6 Harv. Women's L.J. 1 (1983).

7. Pub. L. 100-485, 42 U.S.C. § 667(b) (2001).

a home. The custodial parent cannot be expected to eat noodles while feeding the child steak. And unless the two parents have infinite resources, the higher the living standard enjoyed by the custodial household, the lower the living standard enjoyed by the support obligor. Further, both obligor and custodial parent may live with a new spouse and new children who will also share the living standard consequences of any support payment. Child support awards inevitably transfer resources *from* all members of the obligor's household, *to* all members of the custodial parent's household, including the custodial parent herself. Formally, however, the law ignores this reality. It pretends that dollars are true to their label, that child support dollars benefit only the obligor's children, and alimony dollars benefit only the parent. A sensible analysis of child support policy requires abandoning that pretense. Much of this essay therefore discusses the relative situations of the custodial and noncustodial households, rather than the relative situations of the individuals within them, on the assumption that the members of a family who live together share a common living standard. Indeed, one might argue that shared financial status is one characteristic that defines the difference between a family household and a group of housemates.

Comparing the living standards of the two parental households is complicated by the fact that increasing proportions of separated parents live with a new spouse or partner, as well as additional children who are not the children of their former partner. These additional adults and children share the living standard impact of a child support award that is normally calculated without consideration of their presence, even though it adds or subtracts income from what is now their family unit. Just as significantly, the additional adults often have income that contributes to the well-being of other members of their new household. For example, the income of a custodial mother's new husband will almost always improve his stepchild's living standard, and the income of the support obligor's new spouse may improve to the obligor's living standard, and thus the obligor's capacity to pay support. Existing law usually ignores these realities as well. For now we will also ignore the complications of new household members, but will return to them in the final section of this essay.

What principles do current state guidelines reflect? One can't tell from the aspirational statements contained in the typical state statutes or regulations because most are so vague as to be contentless. California, for example, specifies that the parents should support their child "in a manner suitable to the child's circumstances".<sup>8</sup> Such vacuity avoids the politically contentiousness that might arise from any effort to set forth a clear statement that recognized and resolved the need to decide upon the appropriate tradeoff in the financial well-being of the relevant parties.<sup>9</sup> A disinclination to confront the inevitable tradeoffs was facilitated by two studies the Department of Health and Human Services funded in the late 1980's. Meant to assist states in complying with the forthcoming guideline requirements, the studies focused on estimating how much parents in intact

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8. Calif.Fam.Code § 3900.

9. Another approach is to offer inconsistent statements that suggest different resolutions of this tradeoff. See, e.g., descriptions of the purpose of New York's child support law as contained in three different official documents described in Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 University of Chicago Legal Forum 167, 179-180. As explained *id.*, the three descriptions are mutually inconsistent, and only one of them could possibly be interpreted in a manner consistent with New York's actual guidelines.

families *spend* on their children, as a substitute for estimating how much children “cost”. The first (the *Williams* study), recognizing that “there is no absolute standard for the ‘cost’ of rearing a child”, concluded that “economic studies are able to infer the ‘cost’ . . . at a given income level only by observing the actual expenditures allocated to a child in existing households.”<sup>10</sup> The second (the *Betson* study) simply conflated the concepts of cost and expenditure. While offering a method for estimating *expenditures* on children in intact families, by parental income and family size, the study’s title and text both refer repeatedly to the *costs* of children, as if costs and expenditures were the same.<sup>11</sup> Of course they are not. But as the quote from Williams suggests, the shift from *cost* to *expenditure* (Williams endorsed Betson’s method) avoids the need to make value judgments about the appropriate living standard, judgments that would be necessary if one sought to estimate costs. It seems to get the guideline writer off the policy hook, because this method sets the guideline amounts by reference to the consultant’s estimate of the average spending behavior of parents in intact families, not by the policy judgments of the guideline writers. Essential to the illusion that this method is policy-neutral is the assumption that the task of estimating parental expenditures on children is a pure technical exercise requiring no policy choices.

Perhaps at least in part because of the appeal of a “value-neutral” methodology, the Williams-Betson method is employed by the great majority of states, and I refer to it here as the conventional methodology.<sup>12</sup> Yet once one pierces the method, it becomes clear that value judgments are not avoided by it, they are simply hidden from view. One cannot tally what parents spend on their children without first deciding what counts as a child expenditure. More than arithmetic is involved. If a couple spends the same amount on rent after having a child, as they did when childless, does that mean that none of their rental expenditure counts as an expenditure on their child? What if they move to a different rental unit, perhaps in a different location, even though for the same price? How much of the family’s utility bill is an expenditure on children? Different answers to such questions will yield different expenditure estimates, with a corresponding effect on any support guideline based upon them. There are in fact competing methods for estimating expenditures on children that yield different results because they assume, implicitly or explicitly, different answers to questions like

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10. Robert Williams, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report, p II-ii, in U.S. Department of Health and Human Services, Office of Child Support Enforcement (1987). This report was formally issued by an Advisory Panel assembled by the National Center for State Courts, but was funded by the federal Office of Child Support Enforcement.

11. This second report, by David Betson, was prepared under a contract with the University of Wisconsin’s Institute for Research on Poverty for a final report to H.H.S., *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, Institute for Research on Poverty Special Report # 51, 1990. Even though the title, as well as the text, refer to the cost of children, the report describes itself as a response to a provision in § 128 of the Family Support Act of 1988 (PL 100-485) that required H.H.S. to “detail the patterns of *expenditures* on children in two-parent families and single-parent families.” *Id* at 1 (emphasis added). And indeed, the methodology employed in fact purports to estimate those expenditures.

12. Williams founded a consulting company (Policy Studies Inc., or PSI) as the guideline era began, and that company now prepares the guideline grid in the majority of states. Early on PSI signed up Betson to provide the expenditure calculations that it uses. Even states that do not use PSI often use its methods.

these.

So the conventional method requires preliminary judgments about what counts as a child expenditure—and thus, what expenditures are included in the tally that forms the basis of the support guidelines. If expenditures on gas, electricity, telephones or a car are not counted as a *child* expenditure, then their cost will not be reflected in the support payment specified in the resulting guideline.<sup>13</sup> The “income shares” guidelines that most states employ uses the conventional method for estimating total child expenditures, and then allocates responsibility for those expenditures between the two parents in proportion to their incomes. The noncustodial parent pays his share to the custodial parent as the support order. But of course, items that are not counted as child expenditures are not part of the estimate and are thus not allocated. In that case, the custodial parent needs other income to pay for these items. What if the custodial parent does not have much other income? Does that concern mean we *should* count utilities as a child expenditures? Or should we say the utility bill is the custodial parent’s responsibility since it is not much affected by the child’s presence in the household? Or should we make an adjustment depending on the parent’s relative incomes? How we resolve this is a question of child support policy, not cost accounting. Equivalent questions can be repeated with most other expenditure categories, and the answers will determine the shape of the support guideline grid. But the child support policy choice implicit in these expenditure classifications are typically inaccessible to the state officials charged with formulating support guidelines, who usually have neither the skills nor the inclination to pierce the cloud of technical jargon to reveal them. The result is that policy decisions are not avoided by the shift in focus from *cost* to *expenditure*, they are just made opaque, often hidden from the view of the policymakers themselves. But they are there.

### B. Support Levels Called for Under Current Guidelines

I have previously examined the conventional method in great detail,<sup>14</sup> and only summarize it here. The conventional method tries to measure the additional expenditures a childless couple must make in order to retain their same living standard after children are added to their household. It assumes that these additional expenditures—marginal expenditures in economists’ language—are the correct measure of expenditures on children for the purpose of setting the dollar amount of child support orders. Prior work identifies many technical problems with the usual implementation of this marginal expenditure measure, but for now I ignore them in favor of focusing on the more

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13. This example is not fanciful. The marginal expenditure methodology employed in the Williams-Betson approach is in fact likely to lead to an estimate of expenditures on children that includes nothing, or next to nothing, for utilities, without regard to whether the custodial parent has other funds with which to pay utility bills. That is because the addition of a child to an intact household previously consisting of two adults may not *increase* utility bills by very much, if at all, and it is only such increases, not the base costs, which count as *marginal* expenditures on children. Similarly, for example, with costs for automobiles, and for the largest proportion of housing costs (since, e.g., only the additional cost of the two-bedroom apartment, over the one bedroom, would count as a marginal expenditure, with all the cost of the base apartment excluded).

14. Ellman, *Fudging Failure*, *supra*.

fundamental question: are married couples' *marginal* expenditures on their children living with them the appropriate benchmark to employ in setting the dollar amount we will require a noncustodial parent to pay the custodial parent in child support? One way to begin answering this question is to look at the child support amounts that this method yields in selected cases. Consider Table One, which sets out examples of three cases, all involving a custodial parent (CP) who lives with the couple's one child and earns \$1000 monthly. The cases differ only in the income earned by the noncustodial parent (NCP), who lives alone, and earns either \$500 monthly (Case 1), \$2500 (Case 2), or \$6000 (Case 3). The table shows the support payments called for in each case under the child support schedule currently in effect in Arizona.<sup>15</sup> Similar calculations for the guidelines of other selected states is set forth in the Appendix. Arizona is an income shares state with guidelines based on the conventional methodology, and it revised its guidelines in 2004. The required payment is shown both in dollars, and as a percent of the noncustodial parent's income. Finally, the last two columns of the table show the incomes of the custodial and noncustodial households, after the support payment is made, as a percent of the federal government's Poverty Threshold for a household of that composition.<sup>16</sup> For ease of exposition, we refer to the custodial parent in these examples as the mother, and the noncustodial parent as the father, which conforms to the actual facts in the great majority of such cases.

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15. Arizona normally reduces the support award to reflect the time spent with the support obligor under the visitation schedule. See Paragraph 11 of the Guidelines, at page 10. (The Arizona guidelines, set out in an order of the Arizona Supreme Court, may be found at <http://www.supreme.state.az.us/dr/childsup/CSG2004.pdf>.) The Table 1 figures do not include a visitation adjustment. Were it included, the support amounts reflected in this table would be lower. For example, were the support obligor to see the child between 88 and 115 days each year—a range that encompasses most cases—the guidelines would reduce the support amount for Case 1 by \$53, the amount for Case 2 by \$106, and the amount for Case 3 by \$148. On the other hand, the guidelines *allow* the court to increase the child support award to reflect the obligor's proportionate share of child care costs “appropriate to the parents' financial abilities”, and *require* an increase to reflect the obligor's share of the cost of health insurance. See the guidelines at Paragraph 9, pages 6-7.

16. The poverty threshold is set by determining the cost of the breadbasket necessary to provide a family of the specified size with a basic but nutritionally adequate diet. That amount is then multiplied by a standard constant, originally set at 3, to get an the total household income required to maintain a family of that size above the poverty level. See Gordon M. Fisher, *The Development and History of the Poverty Thresholds*, 55 Social Security Bulletin No. 4, Winter 1992, pp. 3-14. This very simple calculation has its critics, see Constance F. Citro and Robert T. Michael (editors), *MEASURING POVERTY: A NEW APPROACH* (National Academy Press, 1995). There is no doubt that it is an inapt device for comparing the living standards of households in the upper half of the income distribution. It is nonetheless a standard measure that is easy to understand and provides a useful, if imperfect, way to compare the living standards of households, especially those in the lower end of the income distribution. For more on this general topic, see the sources collected by Health and Human Services at <http://aspe.hhs.gov/poverty/contacts.shtml#f>, as well as Kathleen Short, *Experimental Poverty Measures, 1999* (October 2001), Current Population Reports P60-216, U.S. Census Bureau.

Table 1  
 Low-Income Custodial Parent in Three Situations  
 (CP Earns \$1000 Monthly, Lives with One Child)

Case Number	NCP Income (Before Support Payment)	Support Payment (Under Arizona Guideline)	Payment As % NCP Income	CP Income, After Payment, As % Poverty	NCP Income, After Pmt, As % Poverty
1	\$ 500	\$110	22 %	107 %	50 %
2	\$ 2500	\$471	19 %	142 %	260 %
3	\$ 6000	\$781	13 %	173 %	668 %

*Note: All income figures are gross incomes (before tax calculations); poverty threshold calculations based on 2002 data.*

Case 1 is the all-too-common problem in which both parents are poor, the father earning even less than the mother. Their combined income of \$1500 cannot possibly support two households above the poverty line, and in fact it does not. The fifth column shows that after the child support payment of \$110, the child’s household income barely exceeds the official federal estimate of the amount a household of this composition requires to avoid poverty, their after-transfer income of \$1110 being equal to 107% of that poverty threshold. The child’s household is thus in relatively desperate straits. The father is even worse off, however, as the \$390 left after the support payment leaves him with an income that is half the poverty threshold for a single individual. In fact, Arizona would probably excuse this father from making more than a nominal support payment. Like most states, the Arizona guidelines provide for a “self-support reserve”. The details of these provisions vary among the states, but their general purpose is to shield obligors from support orders that would impoverish them. In Arizona, the trial court is authorized to reduce the support payment to zero if the obligor has less than \$775 in monthly gross income.<sup>17</sup> This father qualifies for that reduction, which is left to the court’s discretion.

Of course, if the court orders no support, then the child’s household will also fall below the poverty threshold of \$1037. The Arizona guidelines rightly observe that in such cases it is “evident that both parents have insufficient income to be self-supporting.” It is also evident that the guidelines’ allocation of this shortfall is not based exclusively on the child’s well-being. There is

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17. Paragraph 15 of the 2004 Arizona Child Support Guidelines, at page 14, directs the court to subtract the self-support reserve of \$775 from the obligor’s monthly income. Whenever the remainder, called the “resulting amount” in the guidelines, is less than the support order called for in the guidelines, the court is authorized (but not required) to reduce the order to this “resulting amount”. In Case 1 the resulting amount is a negative number, which means the court would be authorized to reduce the order to zero. The guidelines allow the court discretion in these cases, observing that under such facts it is “evident that both parents have insufficient income to be self-supporting.” The Arizona guidelines may be accessed at <<http://www.supreme.state.az.us/dr/childsup/CSG2004.pdf>>.

another principle also operating here, which we can call the *Earners' Priority Principle* (EPP). It is the simple idea that everyone, including parents, ordinarily has first call on their own income. That priority is not absolute—or else no support could ever be ordered—but it appears to have special force in the case of the poor obligor. That is at least the apparent message of the self-support reserve. We will return to this observation later when we consider the EPP in more detail. For now the self-support reserve provides an early example of the trade-offs in child well-being and fairness that must take place in setting child support amounts.

In Case 1 the child support system is arguably unimportant. If neither party has much money, the child's well-being depends upon finding a third source of funds, whether a new spouse, private charity, or a public income support system. Moving money around among desperately poor parties cannot contribute much to social welfare. For our purposes, therefore, Cases 2 and 3 are more interesting. While the mother's income is no different in these cases, the father has much more money and can therefore pay amounts that would make an impact on child well-being. Yet the current child support schedule may do less for the custodial household in Cases 2 and 3 than one might expect. In Case 2 the larger support payment lifts the living standard of the custodial household from 107% of the poverty threshold to 142%. Yet the father's situation improves much more, from half the poverty level to more than 2 ½ times. The father is hardly rich, but he has some degree of financial security, especially as compared to the child, who is still in a financially precarious state. It seems the child in Case 2 could benefit substantially from a larger support payment, and the father is capable of providing that.

Case 3 makes the same point more dramatically. This father is earning 12 times the amount earned by the father in Case 1—a solidly middle class income that leaves a single individual comfortably circumstanced. But the relatively modest increase in his child support payment still leaves the child's household at less than twice the poverty threshold. The father, by contrast, has nearly seven times the poverty threshold *after* making the support payment, and thus enjoys a leap in his financial well-being, as compared to Case 1. It seems unlikely the Earners' Priority Principle can justify this large disparity between the child's living standard and the father's, nor does it seem likely this disparity would seem appropriate to most people asked to balance the interests of the child and each of the parents. Because the method employed to generate these support amounts (described below in Part I(C)) does not usually present this balancing question, the state officials charged with adopting the guidelines are unlikely to address it.<sup>18</sup> The operating assumption of the current system, in Arizona as in most states, is that a guideline grid based upon the consultant's estimates of child expenditures yields generally appropriate support payments without the need to ask such questions. Table 1 shows that this operating assumption is probably not correct. In fact, the surprising results shown in Table 1 are inevitable under the conventional methodology employed for estimating child expenditures to generate support guidelines, not only in Arizona but in most states. The next section

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18. The first author served in 2004 on the Arizona committee responsible for conducting its quadrennial guideline review. The consultant's report, described in detail in *Fudging Failure, supra*, never raised this balancing question. It was discussed by the committee only because it was raised by the author, and had not been considered by prior committees.

explains why.

### C. Why Current Methods Yield These Results

As noted earlier, the conventional method assumes that support guidelines should be based upon the expenditures on children in intact families. It measures such expenditures by attempting to look at childless couple households, at various expenditure levels, and asking how much *more* an intact, two-parent household *with* children must spend for the parents to enjoy the same living standard as in the childless couple.<sup>19</sup> (Expenditure levels are then converted to equivalent income levels to actually create the guideline grid.) Put another way, the method seeks to estimate the additional expenditures—*marginal expenditures*, in economic terms—required to maintain the same living standard when children are added to the household.<sup>20</sup> The assumption that marginal expenditures are the correct measure of expenditures on children is the main reason for the results we have just observed. The impact of that assumption is then enlarged by problems in the data upon which this method must rely.

The data problems are straightforward. The only source of comprehensive data that ties expenditures to household income is the Consumer Expenditure Survey, which consists largely of interviews with consumers in which they are asked to recall their expenditures on each item in a list that the survey designers hope is a comprehensive inventory of all the categories of expenditures that consumers make. As documented elsewhere,<sup>21</sup> these expenditure data systematically undercount actual consumer expenditures in higher income families—the higher the household income, the higher proportion of the household's expenditures erroneously omitted from the expenditure tabulation. The conventional method effectively translates this CES undercount into an undercount of expenditures on children, so that as household income goes up, the percentage of household income that the

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19. Determining when households of different composition have the same living standard is fraught with difficulties, but we do not examine them here. For a full treatment of this problem, see Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 University of Chicago Legal Forum 167

20. There are many methodological choices that must be made in generating estimates of marginal expenditures, and different choices lead to very different estimates. But not only are there competing methods for estimating marginal expenditures, it is far from obvious that marginal expenditures are the appropriate benchmark anyway, and there are alternatives to marginal expenditure estimates. The most well-known alternative is the annual report by Mark Lino, *Expenditures on Children by Families: 2001 Annual Report*, U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, Miscellaneous Publication No. 1528-2001 (2002). (For a published version of the prior year's equivalent study, see Mark Lino, *Expenditures on children by families: U.S. Department of Agriculture estimates and Alternative Estimators*, 11 J Legal Econ 31, 31 (2001).) Lino argues that the Agriculture Department's approach is a better basis for support guidelines than alternative approaches using a marginal expenditure methodology. *Id.* at 35. While the debate among marginal expenditure methodologies is usually cast in technical terms, it is in fact a policy debate, as is also the choice between marginal expenditures and other methods such as Lino's. For a more complete description of the technical issues involved, and their policy implications, see Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 University of Chicago Legal Forum 167.

21. Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 University of Chicago Legal Forum 167.

method treats as spent on children declines precipitiously.<sup>22</sup> That is one important reason why most states' guidelines call for support payments that fall, as a percent of parental income, as the income rises. In the three cases in Table 1, for example, the support order ranges from 22% of obligor income, for the lowest income family, to 13%, for the highest income family. Support payments therefore do not rise proportionately with income—far from it.

But this data problem is only a sub-plot; the conventional method's focus on *marginal* expenditures is the main story.<sup>23</sup> To see why, imagine a couple who move to a two bedroom apartment, from a one-bedroom, when they have a child. Their rent increases from \$1000 a month to \$1200. A marginal expenditure analysis would find that the housing expenditure on the child is the rental difference, or \$200. A support guideline based upon a marginal expenditure methodology will therefore allocate only that \$200 between the parents. The method employed to generate most income share guidelines does not actually examine individual expenditures in this way. Instead, as explained above, it attempts to gauge the aggregate marginal expenditures on children across all expenditure categories at once, by asking how much more a two-parent households with children must spend, as compared to a childless couple, to enjoy the same living standard. The principle, however, is the same, and the method's impact is most easily understood if one imagines how it would work in the context of particular expenditure categories. In the incomes shares model used by most states, the \$200 marginal housing expenditure in this example would be allocated between the parents in proportion to their incomes. So if Mom, the custodial parent, earns \$1000, and Dad, the noncustodial parent, earns \$3000, Dad earns 75% of the parental income and his share of this marginal housing expenditure is 75% of \$200, or \$150. He pays this to Mom in child support, as his share of the child's \$200 housing expenditure.

Yet Mom now has only \$1150. She cannot possibly rent an apartment anything like the one that the couple rented when they were together, because she does not have the *base* income that allowed the couple to rent the one bedroom apartment in the first place. The quality of housing enjoyed by both child and parents, when they were together, relied upon of course relied upon that base income, as well as the additional amount made necessary by the family's enlargement. But while the child necessarily benefitted from *all* the family's housing expenditures, this method allocates only the *marginal* expenditure of \$200 between the parents. The example shows why a method for generating guidelines that bases support amounts on marginal child expenditures will necessarily make the economic welfare of the child after separation dependent primarily on the *pre*-support-payment income of the custodial parent. If the custodial parent's own income is high, and the base is present, the child's well-being will not be endangered. If it is low, the child will suffer

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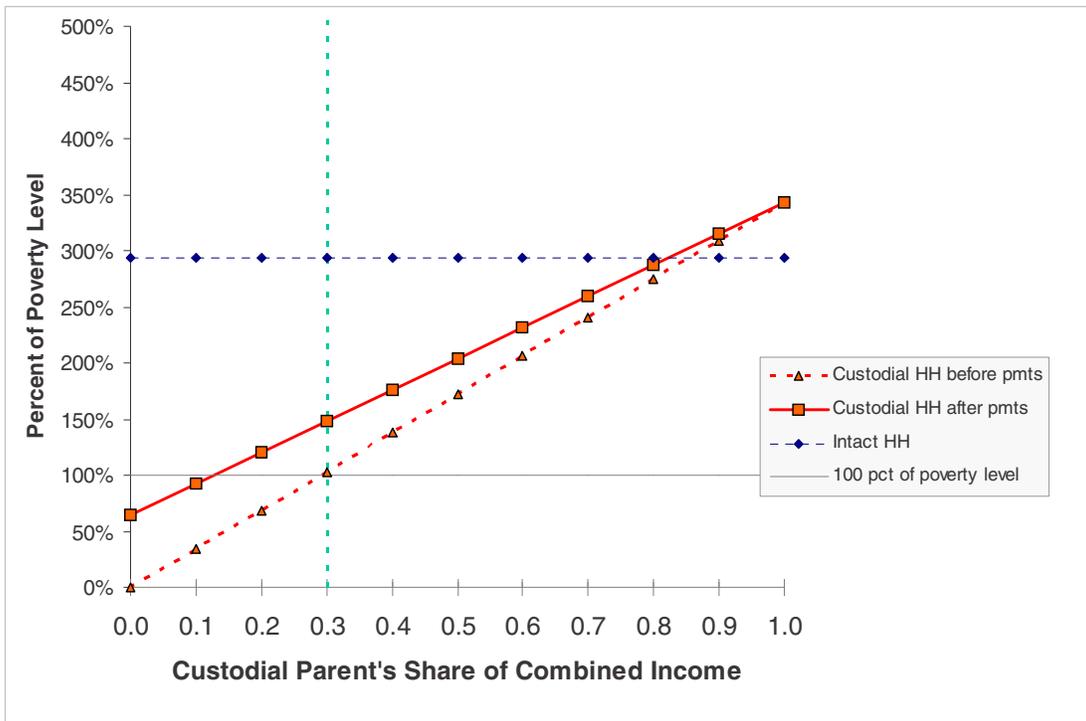
22. Of course, at very high incomes, savings rates will increase, and expenditures as a percent of income will thus indeed decline. The general trend is therefore not implausible. The CES figures, however, greatly exaggerate this reality because of the expenditure undercount at higher income levels. The CES figures could only be true if one assumed savings rates among middle class families that are far higher than anyone believes plausible. See Ellman, *id.*

23. The discussion that follows is a simplified schematic representation of the methodological points. For a more detailed and complete description, see Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 University of Chicago Legal Forum 167.

a serious economic decline. The impact of the noncustodial parent’s income on the outcome is, by comparison, much smaller. The main reason is that the child support system is allocating only *marginal* parental expenditures on children.

Table 1 gave us a window into this reality from the figures presented earlier in Table 1. To appreciate it over a wider range of situations, look at Figure One. Once again, Arizona is used here as an example. Figure 1 compares ten custodial households consisting of one parent and one child. It assumes that in all ten cases, the income of the two parents combined is the same, \$3550 per month. That income is 300% of the 2002 poverty threshold for the intact household of two parents and one child, and approximately the median income for that year of all American households. While these ten sets of parents all have the same total income, they differ in the proportion of their income earned by the custodial parent, from zero at the left end of the horizontal axis to 1.0—all of it—at the right end. The two diagonal lines plot the *custodial* household income for each of these ten households, not in dollars but as a percentage of the poverty threshold for a one parent, one child household. The upper diagonal line plots this percentage for the custodial household income *after* receipt of the support payment called for in the Arizona support guidelines, while the lower line plots

**RANGE OF CUSTODIAL HOUSEHOLD OUTCOMES  
EXAMPLE OF ONE-CHILD FAMILY WITH \$3550 COMBINED INCOME  
(MEASURED AS PERCENT OF POVERTY LEVELS)**



*Figure One*

it for the income *before* the support payment's receipt.<sup>24</sup>

Let us then compare the case in which the custodial mother earns 70% of the total parental income of \$3550—about \$2500 a month—with the more typical case in which she earns 30% of the total parental income, or about \$1050 a month. A custodial household with \$1050 monthly is barely above the poverty threshold. Receipt of the child support payment raises it to 150% of poverty threshold, certainly a help. Now consider the other case, in which Mom earns \$2500, or 70% of the same total parental income. This household is at about 230% of the poverty threshold *before* receiving any child support payment, and over 250% after. One can see that the children in our two sample cases come out very differently after divorce despite the fact that their parents earn the same *total* income as one another. This seeming discrepancy is an unavoidable consequence of the marginal expenditure method. A support guideline that allocates only the marginal expenditures on children leaves most household expenditures out of the calculation and thus out of the support payment. And so as Figure One shows, the child's living standard will depend primarily on the share of the total parental income earned by the custodial parent.

In the extreme cases, where the custodial mother earns either none or all of the parental income, the difference is enormous. The child living with a stay-at-home mother—not an entirely fanciful example with very young children—sees the child's household living standard decline from the median, 300% of poverty threshold, when the family was intact, to a catastrophic 70% of *poverty* after the separation. At the other extreme, where the custodial parent earns *all* the \$3550 of the parental income, at the right end of the chart, our two lines converge, because at that point her household income after the support payment is the same as her income before the payment—the full \$3550 of parental income. At this point the custodial household is *better off*, economically, than the pre-separation intact household. This is what one should expect, because the custodial household is smaller but has the same income as the intact household.

In sum, the conventional method produces support guidelines in which a) children's situations depend primarily upon the income of the custodial parent with whom they live, b) children with low-income custodial parents live poorly, no matter the income of their other parent, and c) dramatically different living standards for children whose respective sets of parents earn the same total income, if one lives with a parent who accounts for a small proportion of the total parental income, and the other lives with the high-earning parent. These outcomes result primarily from two assumptions that underlie the conventional method used in most states: a) that child support amounts should be based upon expenditures in intact families, as tracked in the consumer expenditure survey, and b) that only the family's marginal expenditures on children count as child expenditures, thus excluding many household expenditures that in fact confer benefits upon children. Because the method employed to generate these guidelines does not consider their impact on child well-being, these results are not surprising. Yet one might have thought child well-being was at least one reason,

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24. The support calculations reflected in Figure 1, as for Table 1, do not reflect likely adjustments for visitation, child care costs, and health care insurance. See note 15. The likely visitation adjustment for the parental incomes examined in Figure 1 is \$108.

if not the main reason, we require child support payments. More generally, it seems fair to say that in most states the current support guidelines do not reflect any systematic policy judgment about the appropriate and inevitable tradeoffs between child well-being and other goals or constraints of which the policymaker may wish to take account.<sup>25</sup> Each state's guidelines instead reflect the particular methodological choices that state's consultant made to generate the expenditure estimates.<sup>26</sup> The choice is ostensibly made on "neutral" technical grounds, which means the consultant never directly faces the child support policy questions, nor directs the policymaker's attention to them.

Policymakers must consider a fundamental shift in the method employed for constructing support guidelines. The current method looks backward, basing support orders on marginal expenditures in the intact family that no longer exists—and which never existed in an increasing proportion of child support cases. It would be better to look forward, assessing the impact of the support guidelines on both the parents and their children, in the situation in which they find themselves at the time the support order is made. But that requires a systematic evaluation of the tradeoffs implicit in any set of guidelines. How would one know when the "right" tradeoff between the two post-separation households had been achieved? To consider that question we must first identify our purpose in requiring child support.

## II. The Purposes of Child Support

Child support laws reflect the widespread belief that state support of children is appropriate only if parental support is impossible—what one might call the primacy of the parents' support obligation. Exactly why this principle is appropriate may be less clear than some may assume.<sup>27</sup>

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25. This despite the fact that the inevitability of such trade-offs was noted by Betson himself in an article he coauthored early in the guideline era. David Betson, et al, *Trade-Offs Implicit in Child-Support Guidelines*, 11 J Pol Anal & Manage 2, 10 (1992).

26. Perhaps surprisingly, given the widespread use of the Williams-Betson methodology, plugging any given set of family facts into the guidelines of the various states yields a remarkably wide range of outcomes. The variety of results yielded by various guidelines is easily seen in the reviews prepared periodically by Maureen Pirog and her coauthors. For a recent example, see Maureen Pirog, Tara Grieshop, and Brooks Elliot, *Presumptive State Child Support Guidelines: A Decade of Experience*, 12 Policy Currents No. 1 at 15 (Spring 2003). These differences appear to result from non-systematic variations in the details of the methodology (as in the choice of equivalence scale used to determine the incomes at which families of different composition enjoy the same living standard) and varying patches to the methodology that states employ, reflecting perhaps some intuition that the conventional methods unadorned results do not seem right.

27. Our rules for identifying persons as parents of a particular child, obligated to support that child, do not always take biological parenthood as the dispositive criterion for legal parenthood and its accompanying support obligation. See Ira Ellman, *Thinking About Custody and Support in Ambiguous-Father Families*, 36 Fam.L.Q. 49 (2002). The problem is highlighted when one considers that support obligations can result from involuntary parenthood (most clearly, in the case of a support order for a child conceived as a result of rape, entered against the rape victim), while the voluntary creation of a child may alone be inadequate to justify a support order where conception took place without sex (as in the consensual use of sperm for artificial insemination). But these cases, while fascinating, are matters for a

Whatever difficulty may exist, however, in justifying or explaining the primacy of the parental support obligation, there is no doubt that policymakers believe it. Yet while this principle may explain why the law requires support at all, it does not help much in determining its amount. A systematic approach to setting support levels requires a closer examination of the support order's purpose. I suggest that support awards are meant to accomplish three purposes, and that the appropriate amount of the award depends upon the particular blend of these three purposes applicable to any particular case. The three purposes are : a) to protect the well-being of the child who is the order's intended beneficiary (the *well-being* component); b) to enforce the social consensus that *both* parents have a support obligation, even if the child lives primarily with one parent (the *dual-obligation* component), and c) to limit the size of the gap that will otherwise sometimes arise between the child's living standard and the higher living standard of the support obligor (the *gross disparity* component). I elaborate below on these three components, exploring their rationales and how each contributes to determining the appropriate size of the total support award. The gross-disparity component is treated last because it is more contested than the first two. But claims arising from all three components are also limited by a general idea I call the Earner's Priority Principle (EPP). I elaborate further upon the EPP after fleshing out the three basic support components.

This paper's goal is not philosophical, but sociological. My claim is that one's judgment about the appropriate level of support depends upon how one measures each of these three components, how one weights them in relation to one another, and how one balances them against the counter-consideration of the EPP. The purpose is to identify the factors that influence people's judgment about when a child support award is fair. This effort is necessarily tentative because the available social science data are limited. Indeed, a principal conclusion of this essay is that policymakers need better data on how people think about child support, because the setting of child support awards involves the kinds of trade-offs among people's interests that is unavoidably political in nature. An empirical study to gather such data is currently underway.<sup>28</sup>

The discussion that follows makes two simplifying assumptions. First, that the custodial household contains only the custodial parent and the children who are the intended beneficiaries of the support order, and that the noncustodial parent lives alone in a household of one. This simplifying assumption is probably wrong in many if not most actual cases, yet it is the implicit assumption of existing law (which treats additional household members as largely irrelevant to the support calculation), and we initially take existing law on its own terms. We will later consider how

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different essay. For a useful review of the arguments that can be offered for the support obligation, see Scott Altman, *A Theory of Child Support*, 17 *International Journal of Law, Policy and the Family* 173 (2003). For a provocative examination of the basis of paternal obligation where women retain sole control over the abortion decision, see Sally Sheldon, *Unwilling Fathers and Abortion: Terminating Men's Child Support Obligations?*, 66 *Modern L. Rev.* 175 (2003).

28. A pilot study, using members of the jury pool in Pima County (Tucson) Arizona, has already been completed, with promising results that, while tentative and incomplete, seem consistent with the analysis offered here. This empirical study is being conducted by the author in collaboration with two social psychologists, Professor Sanford Braver of the Psychology Department at Arizona State University, and Professor Rob MacCoun of the Goldman School of Public Policy, and the Boalt Hall School of Law, at the University of California at Berkeley.

the principles we develop in this simplified context apply to claims that the support amount should be altered to reflect the presence of additional persons in either household. Our second simplifying assumption is that the child lives primarily with one parent, and that the child's well-being is therefore affected primarily by the environment in that custodial household, and is not importantly affected by the environment in the other parent's household. This assumption is also wrong in some cases. While the principles developed here could also be extended to joint custody cases, we defer that exercise to another day.

### A. *The Child Well-Being Component*

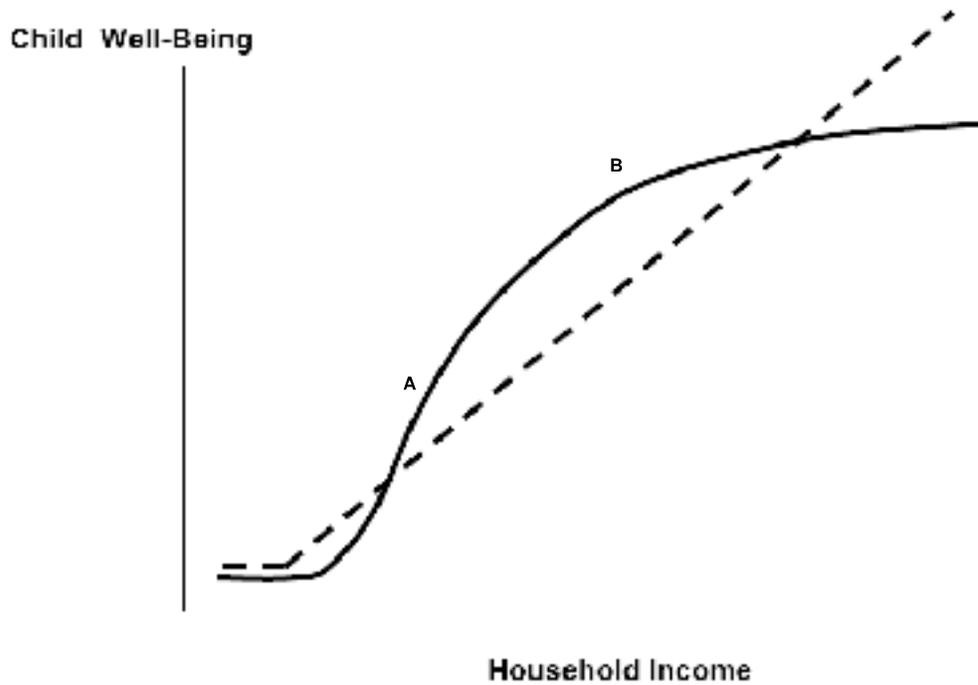
As money is added to a household, does child well-being improve? We cannot offer an empirical answer to that question without first defining what we mean by child well-being. Physical health is certainly one component of child well-being, but there are others as well. We might measure the child's academic success, by considering school performance, or the child's scores on various standardized tests. We might measure a child's psychological well-being with standardized tests, or through interviews with the child's parents, counselors, teachers, or medical personnel. We might ask the child if he or she is happy. We might take these measures when the child is a toddler, a primary school student, or an adolescent. If we look at the child as an adolescent, we might want to add questions to our inquiry: does the child smoke? Abuse alcohol or other drugs? Engage in anti-social or criminal activity, or self-destructive behavior such as casual sex? Finally, we can decide that we care only, or primarily, about the *long-term* impact of money on children, so that our primary measure of the well-being of children should be their well-being as adults. We could look at outcomes as adults with many of the measures we consider for them as children, but we can also consider other measures: how much education did they finally complete? What is their income and socio-economic status? Have they established, as adults, a stable and satisfying family life?

Not surprisingly, the answer we get depends upon the question we ask: the impact of money on child well-being varies with the measure of well-being.<sup>29</sup> The existing literature suggests that family income has a positive effect on children's cognitive outcomes and educational attainment, and thus their eventual socioeconomic status as adults. There are many studies that find results consistent with this suggestion, whether they measure children's scores on various tests of cognitive functioning, children's school performance, the years of education they complete by adulthood, and their income as adults. While the effect is found across many studies, there is variation in the effect size. The overall impression is that the effect size is smaller than many people would assume, but not trivial, nor an artifact of inquiry's design or of chance fluctuation. The effect of income on children's psycho-social well-being, in contrast to their cognitive functioning or ultimate socioeconomic status, is less clear. There is evidence that lower income increases parental stress, which is associated with parental conflict in two-parent families, which is in turn associated with less favorable psycho-social outcomes for children. The relevance of such data to single-parent families is, however, unclear. Finally, consider that any effort to relate income to some aggregate measure

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29. The observations made here summarize the findings in Preethy George and Ira Ellman, *A Review of the Literature on the Relationship Between Income and Child Well-Being*, which is set out here as Appendix B.

of well-being requires weighting the relative importance of these various well-being measures, and that exercise requires value judgments about which people may disagree. Nonetheless, measuring the relationship between income and child well-being necessarily requires value judgments as well as data.



*Figure Two: Household Income and Child Well Being (Illustrative)*

Most methodologically sophisticated studies examine primarily low-income families that fall close to the poverty line, and one cannot necessarily extend their findings about income's effect to middle or upper class families. In general, however, there is more evidence for a positive impact of money on children's well-being when the additional funds are added to low-income families, than when they are added to families with higher incomes. There is also some evidence that child support dollars have a greater positive impact on children's outcomes than dollars from other sources, although the methodological challenges are particularly great with studies of this kind.

Figure Two offers a schematic representation of relationships that might exist between an unidentified measure of child well-being, and household income. (For this purpose, we assume that household income and household expenditures rise and fall together, and therefore use the terms interchangeably.) The dotted line represents the case in which child well-being is poor at very low income levels, and remains unchanged until household income reaches a threshold level. Above the threshold, additional income has a simple linear relationship with child well-being: every additional

dollar of income yields an equivalent increase in child well-being. The solid line represents a different case in which the relationship above the threshold is not linear. Initial dollars above the threshold buy larger increases in child well-being than do later dollars. The higher the household income, the smaller the impact of additional income on child well-being. Data limitations, as well as the conceptual complications involved in aggregating well-being measures into some overall index, make it impossible to offer a definitive description of the well-being/income function that relates specified dollar amounts to aggregate well-being. But the available evidence does suggest that 1) at least some important aspects of child well-being are affected by income, and 2) the relationship between income and these aspects of child well-being is better represented by the shape of the solid line, rather than the dotted line. The data are less helpful in locating Points A and B on the solid line—the income level at which returns to additional dollars begin to decline (Point A), and the income level at which returns to additional dollars become small enough to ignore, for policy purposes (Point B). One study of both cognitive functioning and behavior problems in three-year olds located Point A at the poverty threshold, and Point B at five times the poverty threshold.<sup>30</sup> For a family of four in 2002, the year in which these data were collected, the poverty threshold was \$18,400, and five times that amount is \$92,000. By way of comparison, the median income in the United States for a family of four in 2002 was \$67,732, ranging from \$87,000 in New Jersey to \$46,000 in New Mexico.<sup>31</sup> Clearly, given the quantity and quality of available data, as well as the conceptual problem of choosing measures of child well-being and of aggregating them into a single weighted measure, these numbers are at best suggestions. Nonetheless, child support guidelines are written and revised somewhere every year, reflecting explicit or implicit judgments about the importance of money to child well-being. Given that reality, it is probably useful to offer policymakers information of this kind to supplement the intuitions that would otherwise form the sole basis for their judgments.

Looking at this data, a policymaker might conclude that if the purpose of child support is to advance child well-being, then we can justify requiring support that raises the income of a custodial household whose income would otherwise fall short of a point somewhat above the median family income, because it seems likely that non-trivial gains in child well-being result from adding income to custodial households within this range. The data also suggest that payments are especially

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30. In Mistry, R., Biesanz, J., Taylor, L., Burchinal, M., & Cox, M., *Family income and its relation to preschool children's adjustment for families in the NICHD study of early child care*, 40 *Developmental Psychology* 727-745 (2004), the researchers found a relationship between cognitive functioning and household income in children 36 months old. They also found a relationship between household income and behavior problems, as reported by the mother, that appeared to result from the impact of income on maternal health and on the mother-child relationship. To compare the impact of income across households of different size and composition, Mistry et al. used a "needs" ratio for each of the 1300 families in their sample by dividing the family's actual household income by the appropriate poverty threshold for the family—essentially equivalent to reporting their income as percentage of the poverty threshold. They found the impact of income on these well-being measures began to decline when household income rose above poverty level, and largely disappeared for families above 500% of the poverty threshold—about \$92,00, for a family of four, in 2002, the year in which Mistry's data was collected. Median household income that year, for a family of four, was \$67,732. For a more complete survey of the relevant literature, see Appendix B.

31. These numbers, provided by the Census Bureau at <http://www.census.gov/hhes/income/4person.html>, are used by the Department of Health and Human Services (HHS) for the Low Income Home Energy Assistance Program and are published annually by HHS in the Federal Register.

important to child well-being at lower levels of custodial household income. These conclusions may seem obvious. Yet what we learned in the Section I tells us that current support guidelines in most states are inconsistent with them, because they set support payments to low-income custodial households at levels that leave them well short of maximizing child well-being. Of course, there may be other relevant principles that explain and justify these results. The principles developed in later sections will help decide if that is true. This section asks what child support levels should be like if our only concern was child well-being.

Consider Figure Two again. Let us call Point B in Figure Two the “well-being maximum”—shorthand for the idea that when the custodial household income reaches this level, the further advances in child well-being that might be realized from additional dollars are too small to justify imposing child support obligations. All child support guidelines unavoidably, even if only implicitly, assume *some* value for the well-being maximum, because they generally do not require support payments that continue to rise with income no matter how high the income level.<sup>32</sup> The question is where one should locate this point. Guideline committees, like policymakers generally, must usually act on imperfect information. For the purpose of this discussion, let us assume our best guess is that the well-being maximum is reached at about the 75<sup>th</sup> percentile in family household income. That means that whenever the custodial household income is below the 75<sup>th</sup> percentile, child well-being can offer some justification for requiring support. The power of the justification, however, will gradually decline as the 75<sup>th</sup> percentile is approached, so that countervailing policy factors (like the EPP, as we discuss below) become correspondingly more important. On the other hand, we will see that the gross disparity and dual-obligation components may justify awards even when the well-being component does not.

While the well-being component gradually declines in justificatory power as the 75<sup>th</sup> percentile is approached, data and intuitions combine to suggest it has compelling importance at lower levels of custodial household income. Because child well-being falls off particularly steeply below Point A, the well-being component has its greatest force in this income range. Let us assume that Point A is located at 150% of the poverty threshold, an income characterized by the American Law Institute as providing the “minimum decent standard of living.”<sup>33</sup> Given that all child support awards impose tradeoffs between the obligor and obligee households, it is especially important to distinguish cases in which additional support dollars are very important to child well-being, from cases in which they are less important. Points A and B in our curve locate these boundaries. It is of course a tricky business to make interpersonal comparisons of well-being, and surveying the considerable literature on that question is beyond this essay’s scope.<sup>34</sup> So long as families have finite resources, however, such tradeoffs cannot be avoided in setting support levels.

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32. See note 39.

33. The Institute identifies two main claims of the child that the support system should take account of: (a) a minimum decent standard of living when the combined income of the parents is sufficient to achieve such result without impoverishing either parent, and (b) a standard of living not grossly inferior to that of either parent. purposes of American Law Institute, *Principles of the Law of Family Dissolution*, § 3.04(1).

34. For a collection of writings on this problem that includes leading commentators of various persuasions, see Jon Elster and John Roemer, editors, *Interpersonal Comparisons of Well-Being* (Cambridge University Press 1991).

Principle 1 summarizes this discussion of the child well-being component:

*Principle 1.* Protecting child well-being, an essential purpose of child support, has particular force when the income of the custodial household would otherwise deny the child a minimum decent living standard (located at Point A in Figure Two). The impact of additional dollars on child well-being then declines gradually as custodial household income increases, until additional dollars have too small an impact on measurable child well-being to be of public policy importance. This upper income bound, Point B in Figure Two, can be called the well-being maximum. Policymakers cannot avoid judgments about the location of Points A and B despite their inevitably imperfect knowledge.

*Comment:* We can assume for discussion purposes that Point A is located at 150% of the poverty threshold for a family of the size and composition of the custodial household. While a reasonable working assumption for this discussion, it is hardly inevitable. The key is to locate the income that a family of a given size would require to provide a child with the necessities without which the child's chances in life will be importantly compromised. Whether that is best understood as a certain percentage of poverty level is certainly debatable, depending, among other things, on how one defines poverty level, a question of continuing debate.<sup>35</sup> Policymakers constructing support guidelines will need to decide what they believe a child must have to be at Point A, as well as the cost of that living standard in their local environment. Consultants can assist with the determination but cannot make it, because the choice of living standard for Point A is necessarily a value judgment that, among other things, involves deciding upon the best choice in the face of unavoidably imperfect knowledge. Point B is, if anything, even less well-defined than Point A. At what income level does a family have sufficient funds so that additional income will not add very much to the child's development, well-being and happiness? Some may believe that no matter how much money one has, more money is always better for the child. Most people, however, probably believe there is an income level above which more money will add only very limited gains, and that is their Point B. Once again, consultants can assist with locating Point B but cannot alone make this determination because value judgments are unavoidable in making use of the limited data that is available on this question. The working assumption of this paper, for the purposes of discussion, is that Point B lies above median household income but no higher than the 75<sup>th</sup> income percentile (for two-parent families with the same number of children as the custodial household).

### *B. The Dual-Obligation Component.*

A second function of child support laws is to enforce a societal consensus that both parents have a moral obligation to support their children, even if the child lives primarily with one parent. The dual-obligation component is one reason why states require support payments to custodial households whose income already exceeds plausible estimates of the value of the well-being maximum (Point B on our curve). In such cases the explanation is not the child's well-being, which will be ensured whether or not any support is paid. The explanation is instead society's determination

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35. See footnote 16, *supra*.

to make sure the noncustodial parent contributes his fair share to the child's support. Who is entitled to receive this contribution? The custodial parent, who would otherwise shoulder all the cost of providing for the child. The two support components we have thus far considered have different underlying public policies and protect different private interests. The public policy underlying the first is to ensure the child's well-being (the well-being component), and the public policy underlying the second is enforcement of the support duty (the dual obligation component). The private interest protected by the well-being component is the *child's*, in maximizing his or her cognitive, psychological, and social development. The private interest protected by dual-obligation component is the *custodial parent's*, in not shouldering an unfairly disproportionate financial burden in order to provide for the child's well-being.

If the custodial household is above the well-being maximum before any support payment, then the support payment consists entirely of the dual-obligation component (unless it also includes a gross disparity component, considered in the next section). If custodial household income does not reach the well-being maximum even after the support payment is included, then the entire support payment consists of the well-being component. Where the custodial household income alone approaches, but does not reach, the well-being maximum, the support award may consist of both a well-being component (which is the additional income needed to bring the custodial household up to the well-being maximum) and a dual-obligation component (consisting of the additional amount required if the well-being component alone does not cover the noncustodial parent's fair share of the custodial parent's expenditures on the child, a result one gets if the increment above the custodial parent's income necessary to reach Point B is smaller than the noncustodial parent's fair share of the custodial parent's expenditures to reach Point B).

The dual-obligation component of a child support award is important not only because we believe both parents must contribute to the child's support. It may also be essential to maintaining the noncustodial parent's social status as parent. Certainly, excusing the noncustodial parent from *any* support obligation might cast doubt on his legitimacy as a parent. But neither this concern with parental legitimacy, nor the determination to require both parents to provide support, helps identify the appropriate *amount* of the dual-obligation component. Even nominal awards may be sufficient to satisfy both concerns. The dual-obligation principle therefore provides a less compelling justification for any particular amount of support than is provided by the well-being principle. That means it may yield to counter-considerations more easily than would the well-being component, at least insofar as the *amount* of support required to vindicate it. This point is explored more fully below when we consider the principal counter-consideration, the EPP. But some immediate discussion of how to calculate the dual-obligation component is necessary to give it more substance.

The dual-obligation component should ensure that the noncustodial parent pays his fair share of expenditures incurred by the custodial parent, up to the point at which the custodial household reaches the well-being maximum (Point B). The wealthy custodial parent may spend beyond the well-being maximum, but the other parent has no obligation to share the cost of that excess. The location of Point B is thus the first value required to calculate the dual-obligation component.

The second required value is the noncustodial parent's share of expenditures up to Point B. Here we must note a crucial difference between the dual-obligation component and the well-being component. The well-being component arises only in cases in which the custodial household, by itself, does not have sufficient resources to reach the well-being maximum. The support payments are intended to bring the custodial household closer to that level. But because members of a household generally share a living standard, child support payments will necessarily confer benefits on the custodial parent (just as other sources of custodial parent income, including, e.g., alimony, will necessarily confer benefits on the child). The policymaker must determine the appropriate trade-off in choosing between a higher award, which invites obligor objections to the benefits it unavoidably bestows on third parties like the custodial parent, or a lower award, which can compromise child well-being. No similar tradeoff arises, however, in determining the dual-obligation component. By definition, the dual-obligation component arises only when the income of the child's household puts it at or beyond the well-being maximum. The payment's purpose is not to push child well-being past this point, but to reimburse the custodial parent for his or her outlays on the child's behalf that bring the child to this point. So long as the noncustodial parent is asked only to pay his or her fair share of those outlays, there can be no objections to conferring benefits on the custodial parent. Put another way, the dual-obligation component should cover the noncustodial parent's share of the additional (marginal) expenditures the custodial parent must make on account of the child's presence in the household (but ignoring expenditures exceeding the well-being maximum, which high-income custodial households will likely make).

Of course, in basing estimates of the dual-obligation component on marginal expenditures on the child, we mimic the conception that lies behind the conventional method currently used to generate the entirety of support guidelines, which also uses marginal expenditures, and which was criticized on that account in the first part of this chapter. But while a marginal child expenditures measure is not properly the *entire* measure of child support, it is the appropriate measure of the dual-obligation component, whose purpose is partial reimbursement of the custodial parent, not child well-being.<sup>36</sup>

What we have not yet considered here is how to determine the noncustodial parent's fair share of the custodial parent's marginal expenditures on their child. The conventional income shares system of support would assume that the parental shares should be proportional to the parental incomes. We accept that assumption now but revisit it below when we consider the Earner's Priority Principle.

Principle 2 summarizes this discussion of the dual-obligation component.

*Principle 2:* Where the custodial household has sufficient income to enjoy a living standard at or above the well-being maximum, a support award is justified to ensure that the other parent contributes his or her fair share to the expenditures required to bring the custodial household to (but

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36. The conventional method, of course, looks at marginal expenditures in the mythical intact that does not exist at the time of the support order. The argument here suggests looking at the marginal expenditures the custodial parent will incur on the child's behalf in the one-parent household that exists at the time of the order.

not beyond) that level. The appropriate award is the obligor's fair share of the marginal expenditures made necessary by the child's presence in the custodial household, comparing the expenditures required for the custodial household to live at the well-being maximum, with the expenditures required to provide the same living standard to a household without the child. Where the custodial household has sufficient income to approach but not quite reach the well-being maximum, the support award will have both a well-being component and a dual-obligation component.

*Comment.* For cases in which the custodial household approaches but does not reach the well-being maximum, the combined effect of the well-being and dual-obligation components may be calculated through the method noted in the margin.<sup>37</sup>

### C. The Gross Disparity Component.

The first two principles seek to ensure, respectively, that a) the custodial household has the income necessary to ensure measurable child well-being, and b) that the obligor contributes his proportionate share of these well-being expenses, even if the custodial household has sufficient income to meet them on its own. We now consider a third group of cases involving noncustodial parents whose income well exceeds what's required to provide for measurable well-being. For the purpose of this discussion, let us continue to assume that Point B in Figure 1—the well-being maximum—is reached at family incomes at the 75<sup>th</sup> percentile, which was about \$60,000 in 2000.<sup>38</sup>

Some states cap awards so they do not increase beyond specified income levels, while others allow judicial discretion above specified income levels. But the typical state guideline calls for awards that continue to rise with obligor income well beyond the point at which the custodial household reaches the 75<sup>th</sup> income percentile.<sup>39</sup> The question is why. Evidence of popular views is

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37. Assume that  $M$  = the marginal expenditure rate—the percentage of total household expenditures made necessary by the presence of the child or children in the household. Assume that  $P$  = the noncustodial parent's fair share, equal at first cut to the noncustodial parent's proportionate share of total parental income. Assume  $B$  is the income or expenditure level at which the well-being maximum is reached for the number of children in question in a one-parent custodial household. Assume  $C_p$  is custodial parent income. Then,

(1) where  $C_p > B$ , the award consists entirely of the dual obligation component, and equals  $MPB$ .

(2) where  $C_p < B$ , the award equals the sum of the appropriate well-being and dual-obligation components, or  $P(B - C_p) + MPC_p$

These preliminary computations do not take account of adjustments we may wish to make in  $P$  on account of the EPP: at noncustodial parent incomes that are absolutely low, or low relative to the custodial parent income, we are likely to set  $P$  at a level below his or her proportionate share of total parental income. This is considered below.

38. Yong-Seong Kim and Frank P. Stafford, *The Quality of PSID Income Data in the 1990's and Beyond* (2000), Table 3 (University of Michigan Institute for Social Research, available on the internet at [http://psidonline.isr.umich.edu/Guide/Quality/q\\_inc\\_data.html](http://psidonline.isr.umich.edu/Guide/Quality/q_inc_data.html).)

39. For example, Arizona provides a statutory cap when "the combined adjusted gross income of the parties is greater than \$20,000 per month, [in which case] the amount set forth for combined adjusted gross income of \$20,000 shall be the presumptive basic child support obligation." Ariz. Rev. Stat. § 25-320(8) (2005). The court may consider the parties' arguments that a higher award is warranted, on a case by case basis. *Id.* The Massachusetts statutory cap is set where the parties' combined gross income is \$135,000, or where the non-custodial parent's income exceeds \$100,000. In those cases, the minimum presumptive level of support for the \$135,000 or \$100,000 income group is to be awarded, though "[a]dditional amounts of child support may be awarded at the judge's discretion." Mass. C.S.G. II(c)

largely unavailable. The few studies we have find respondents favoring support awards that increase with obligor income, but these studies do not typically ask about incomes above the 75<sup>th</sup> percentile.<sup>40</sup> The American Law Institute recommends that once the custodial household has been assured a minimum decent living standard, additional support amounts are appropriate to provide the child “a standard of living not grossly inferior to that of either parent.”<sup>41</sup> This clause, which by its terms becomes applicable only when the support obligor’s income exceeds both the custodial parent’s, and the level needed to ensure the child a minimum decent living standard, would also explain support awards that raise custodial household income above the well-being maximum. The ALI position could be described as a compromise between fully honoring the child’s claim to living as well as the financially comfortable noncustodial parent, and fully honoring the support obligor’s objections to providing support beyond that needed to ensure measurable child well-being. But is such a claim for the child valid, and is such a compromise appropriate?

The law does not require parents in intact families to provide a child with more than basic needs. That rule, however, is not based on a considered judgment that basic needs are all the child is entitled to. It is rather a particular instance of the law’s more general reluctance to intervene in intact families. The law therefore defers to a very wide range of parental choices concerning expenditures on their children: almost any parental choice that does not threaten the child’s health

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(2005). In New York, where the combined parties’ income exceeds \$80,000, the court is given discretion to order support after considering “the factors set forth in paragraph (f) of this subdivision [pertaining to the parties’ and the child’s financial status and living standards] and/or the child support percentage.” N.Y. Dom. Rel. Law § 240(1-b)(c)(3) (2005). Oklahoma’s guidelines provide that when the parties’ “combined gross monthly income exceeds Fifteen Thousand Dollars (\$15,000.00), the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars (\$15,000.00) and an additional amount determined by the court.” Okla. Stat. tit. 43, § 119(B) (2005). In South Dakota, where the parties combined income exceeds [\$10,000 monthly], “the child support obligation shall be established at an appropriate level, taking into account the actual needs and standard of living of the child.” S.D. Cod. Laws § 25-7-6.9 (2005). Wisconsin sets no statutory cap, but the court may “modify” the child support award if “the court finds . . . that use of the percentage standard is unfair to the child or to any of the parties” after a consideration of various financial factors including the parties’ incomes and living standards. Wisc. Stat. Ann. § 767.25(1m) (West 2005).

40. A 1985 telephone survey of randomly chosen Wisconsin residents presented them with a variety of vignettes with varying incomes: the noncustodial fathers in their examples earned from \$500 a month to \$5000, and the mothers from nothing to \$1500. The respondents favored support amounts that increased with the obligor-father’s income through this entire range. Nora Schaeffer, *Principles of Justice in Judgments About Child Support*, 69 *Social Forces* 157 (1990). It appears that the same survey data are also presented in Corbett, Garfinkel and Schaeffer, *Public Opinion About a Child Support Assurance System*, in GARFINKEL, McLANAHAN, AND ROBINS, *CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN* 339-364 (1992). They indicate that some respondents were asked to identify the appropriate support amount in dollars, while others were asked to identify it as a percentage of the father’s income. The average response (for a one-child family, across all income amounts) of those who answered in dollars, when converted to percentages, was 21.4%, while the average for those who answered directly in percentages was 24.7%. There was a drop-off in the *percentage* of the father’s income that respondents thought he should be required to pay in support, as paternal income reached the highest amounts respondents were asked about, but the dollar amount of the award continued to go up with paternal income. These surveys also found considerable dispersion in the answers given by respondents, making the group means less meaningful.

41. American Law Institute, *Principles of the Law of Family Dissolution*, § 3.04(1).

or safety is accepted. Similarly, the law never concerns itself with the parental choice about where the child should live, other than rare and extreme cases in which the parents needlessly expose the child to a dangerous environment. In separated families, however, when the parents do not agree, the law cannot defer to parental choice because the parents present competing choices. The law must therefore pick between the conflicting (and potentially self-interested) parental choices, even when both lie within the ordinary range of reasonableness. This can happen in the context of custody (should the child live with the competent and loving mother in California or the competent and loving father in New York?) or here, in the context of support (should parental expenditures on the child be limited to those that have a demonstrated impact on measurable well-being, or should the child be more fully protected from avoidable reductions in living standard?).

Embedded in this public policy choice is a reasonable debate over whether additional household income beyond the well-being maximum can be justified as serving any interest of the child's. Award proponents might argue that standard well-being measures simply fail to capture real well-being gains contributed by additional dollars in the higher-income range. Certainly, even affluent adults welcome additional income. The relationship between income and one's subjective sense of well-being (SWB) is not linear, and research clearly suggests that additional income has more impact on SWB at lower income levels than at higher levels. But studies also find a positive correlation between income and happiness at higher income levels even after correcting for other factors, such as age, gender and health, that also influence such self-reports.<sup>42</sup>

One likely reason for the income-SWB connection is that additional income promises greater choice and control in one's life, and people like choice and control. Indeed, there is evidence that a sense of control contributes to human health as well as happiness.<sup>43</sup> Additional income may offer the same amenity to children, even if the increased choice is not entirely theirs to make, but must be shared, or even made, by their parents (or their custodial parent). For example, people may see value in a wider choice about where the child lives or what school the child attends, even if there are no studies demonstrating that such wider choice has an important positive impact on measurable child well-being. So greater choice and control is one reason people may favor transfers to custodial households with income beyond the measurable well-being maximum.

A second possible reason is associated with the mounting evidence that, as economists have increasingly recognized, *relative* income is what people care about most of all.<sup>44</sup> That is because income is important not only for the intrinsic value of the particular amenities that additional dollars may purchase, but also for the improved social status that accompanies an advance in one's position in the overall income distribution.<sup>45</sup> People's sense of how well-off they are is strongly affected by their position relative to those immediately around them. Protecting this sense of relative well-being

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42. See the studies described in Bruno Frey and Alois Stutzer, *HAPPINESS AND ECONOMICS* 81-85 (2002).

43. For a description of the experimental evidence on the impact of control, with references to the primary literature, see DANIEL GILBERT, *STUMBLING ON HAPPINESS* 20-23 (2006).

44. See the studies described in Bruno Frey and Alois Stutzer, *HAPPINESS AND ECONOMICS* 86-90 (2002). See also ROBERT FRANK, *LUXURY FEVER: WHY MONEY FAILS TO SATISFY IN AN ERA OF EXCESS*, The Free Press, 1999.

45. Frank, *id.*

may not seem a very compelling social concern, as a general matter. It is different, however, when the question is the child's living standard relative to the noncustodial parent's, and especially when the child and the noncustodial parent previously lived in the same household and shared a living standard. In that case the support obligor's living standard is a more natural benchmark against which to judge the child's. And the gap may be more salient to the child when it is not only a gap as compared to the absent parent's current household, but also as compared to the child's own prior household. A living standard decline is experienced as a decline in well-being, even if the new and reduced living standard is above the societal median. Those who have advanced to the median enjoy a greater sense of well-being than those who have fallen to it. Finally, the expected process of accommodation to new circumstances may not work as well for the child who experiences a living standard decline from divorce, if the child is regularly re-exposed to the gap between his current living standard and that of the noncustodial parent he visits. Indeed, if the noncustodial parent has new children living with him, who share that parent's superior living standard, the salience of the gap may be increased further.

Some will be less persuaded than others by the foregoing arguments for a gross disparity component in support. All the components of a child support award are limited by the earner's priority principle, discussed more fully in the next section, but the gross disparity component is especially sensitive to this counter-consideration. The gross disparity component is easy to minimize or reject if one sees it as a claim to provide an already adequately-circumstanced child non-essential amenities, because the natural conclusion is that the support obligor is entitled to give himself priority in the use of his own earnings to provide such amenities. That conclusion is strengthened by the reality that it is not possible to ensure the child a living standard close to the support obligor's without providing it to the custodial parent as well, an inevitable but unintended (and some would say undeserving) beneficiary of the support payment. The skeptic's conclusion might then be that while we must tolerate this unavoidable diversion, so to speak, of the support payment when the child's measurable well-being lies in the balance, we should not tolerate it to provide the child non-essentials.

People clearly vary in their resolution of these questions, and in the end the guideline writer must make a value judgment about it. That judgment could be aided considerably by systematic information about the public's intuitions. They could reveal, for example, that the child's claim to share the absent parent's living standard is viewed sympathetically, but is ultimately rejected because of strong objection to the custodial parent's sharing the benefits of higher payments. One might then find wider support for the gross disparity component if all or some portion of it were required to be deposited into an segregated account that may only be applied to expenditures conferring benefit on the child alone, including perhaps expenditures we would not ordinarily require of the obligor, such as the cost of college or of private school.<sup>46</sup>

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46. There is evidence that one consequence of divorce is a reduction in financial contributions of noncustodial parents to their children during their later adult years. Furstenberg, Hoffman, and Shrestha, *The Effect of Divorce on Intergenerational Transfers: New Evidence*, 32 *Demography* 319 (1995). This kind of program might be seen as an appropriate corrective to that tendency.

Principle 3 summarizes our discussion of the gross disparity component.

*Principle 3.* Child support awards may include a component intended to protect children from declines in their living standard that leave them at a level below, and grossly disparate to, the living standard of the support obligor, even if the child's household already enjoys an income exceeding the well-being maximum, or will exceed it if this component is included in the award. In determining the extent and nature of such awards, guideline writers should be assisted by scientifically valid surveys of public views about the appropriate way to balance the conflicting claims that arise in connection with this component, including provision for the segregation of such funds in separate accounts that might be applied to provide the child with beneficial goods or services beyond those included in the standard support order.

#### D. The Earner's Priority Principle

The *earner's priority principle* is a pompous name for an entirely obvious idea, that everyone gets to keep what they have in the absence of some very good reason to take it from them. While the EPP always applies, its power in the child support context varies with both the earner's circumstances and the child's, and is thus a factor to account for. The EPP explains, among other things, why income shares states sometimes depart from their usual rule allocating the support burden between the parents in proportion to their incomes.

1. *Obligors Cannot Be Impoverished.* The self-support reserve, included in most state guidelines, shields impoverished obligors from onerous support obligations. It is more than a child support analog to progressive taxation. Progressivity could explain the self-support reserve if it merely shifted most or all the support burden from the impoverished noncustodial parent to financially self-sufficient custodial parent. But most states also allow application of a self-support reserve when *both* the custodial household, and the support obligor, are financially stressed. That practice cannot be explained by a progressivity principle. Concerns about the practicality of collecting support obligations from the impoverished may contribute to practice, but the entire explanation probably includes the belief that while the failure to provide funds to alleviate custodial household poverty is bad, taking funds from the impoverished obligor is even worse. The earner's priority principle is strongest when the earner has the least.

2. *Obligors Are Entitled to Retain Some Priority in the Use of Their Own Income.* The EPP can matter even when the obligor is not impoverished. No state knowingly requires an obligor who is financially more comfortable than the custodial household to pay child support in amounts that would leave him worse off than the custodial parent, even if doing so would improve child well-being and would not impoverish the obligor. So the EPP also means we do not intentionally require an obligor to make the child financially better-off than himself. This is perhaps the minimal statement of the principle. A more aggressive version allows the earner to retain at least some of any living standard advantage he may enjoy over the custodial household. The American Law Institute supports this more aggressive version, once the custodial household is assured of a minimum decent

living standard: once the child is above that threshold, it requires additional support only to ensure that the child's living standard not be "grossly inferior" to the obligor's. And in fact, rules requiring awards that establish equal living standards in the CP and NCP households, though long urged by some, have never knowingly been adopted, and the reason is surely, at least in part, objection to equalizing the living standard of the two parents under the child support rubric. Equity theory teaches that people believe that outcomes should be related to inputs, and feel distress when they are not, even if they are the beneficiary of the inequity.<sup>47</sup> The benefit to the custodial parent seems in this circumstance to constitute such an inequity. Some custodial parents will have claims in their own right to share the other parent's post-separation income, but alimony is the rubric under which such claims are supposed to be considered. If custodial parent has no valid claim under that legal regime, realizing its equivalent from child support payments seems to many an unjustified windfall for the custodial parent and an unjustified injury to the child support obligor.

Every child support award requires compromise between justified claims a) on behalf of the child, certainly for the funds necessary to well-being but also to share the obligor's living standard, and b) on behalf of the obligor, to resist coerced contribution to the custodial parent's living standard. The less compelling is the child's claim, the more powerful is the obligor's objection. The child's claim is most compelling when there is evidence that the child's well-being would be endangered by lower levels of support. But as we move from awards protecting child well-being, to awards ensuring the child a living standard comparable to the support obligor's, the EPP becomes relatively more weighty.

*3. The Questionable Dual-Obligation Exception.* There is one group of cases in which most support guidelines seem to require results inconsistent with protecting obligors from support obligations that bring them below the custodial household living standard. These are the cases in which the obligor's living standard is below the custodial household's *before* any support payment. The particularly striking cases involve obligors living far below the custodial household standard. So for example, all support guidelines would require more than symbolic payments by a noncustodial parent earning \$25,000 annually, to a custodial parent earning \$65,000. Yet any payment will reduce the obligor's living standard even further below the custodial household's. This result seems to conflict with the EPP, and is especially difficult to defend when the custodial household is near or above the well-being maximum before any payment is made. Awards in these cases consist entirely of a dual-obligation component, a less compelling rationale for overriding the EPP than is concern about the child's well-being. A nominal award seems more appropriate in such cases, as sufficient to serve the symbolic purpose of confirming the legitimacy of the noncustodial parent's status as parent, and to uphold the principle that both parents must contribute to the child's support.

In fact, actual practice appears to conform to this recommendation favoring nominal awards, even if the formal guidelines do not. Both family law practitioners and judges observe that when the proposed obligor earns significantly less than the custodial parent, the parties usually agree to reduce or even waive the award called for by the guidelines. Guidelines should probably be revised to

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47. See Elaine Walster, G. William Walster, and Ellen Berscheid, *EQUITY: THEORY AND RESEARCH* (Allyn and Bacon 1978).

conform to this practice, which is also consistent with the analysis here.

Principles 4 and 5 state conclusions that follow from this discussion of the EPP.

*Principle 4.* Child support awards should ask no more than nominal amounts from impoverished obligors, and should avoid reducing obligor income below poverty levels. Operationalizing this Principle requires establishing the poverty level to employ. Guidelines should specify a gradual transition from nominal awards to more meaningful awards as obligor income rises above the specified poverty level.

*Principle 5.* Where possible without sacrificing important interests of the child, support awards should leave the higher-earning obligor with some advantage in living standard over the custodial household. However, ensuring the impoverished custodial household a “minimum decent living standard” (Point A) is a sufficiently important interest to override this usual preference, and in such cases the award may equalize the household living standards rather than leaving the obligor with a living standard advantage. Operationalizing this principle requires establishing a benchmark for the minimum decent living standard. No interest of the child is normally sufficient to justify an award reducing the obligor’s living standard below that of the custodial household. Where the obligor’s living standard is substantially below the custodial household before any child support transfer, the amount of the required support payment is appropriately reduced from the level that would otherwise apply.

### III. Constructing Guidelines Consistent with Policy

The combined impact of all five Principles is represented in Figure Three, a 16-cell matrix considering four levels of Custodial Parent Income, going from Low to High as one proceeds vertically downward through the rows, and four levels of Noncustodial Parent Income, going from Low to High as one proceeds to the right through the columns. One can imagine the support award consisting of a base amount that is the dual-obligation component, with upward or downward adjustments to that base amount to reflect the requirements of the well-being component, the gross disparity component, and the EPP. Figure Three thus presents an overall view of how these principles interact. It can also help direct attention to patterns that can help a policymaker choose the trade-offs that make the most sense. In Cells 1 through 8, representing lower levels of CP income, we will want, insofar as possible, to obtain awards that raise the custodial household higher along the child well-being curve. Raising the household above Point A is especially important, but even beyond that, at these income levels additional dollars seem likely to yield fairly good returns in child well-being. This means that we may be able to tolerate greater inroads in the EPP than we would tolerate in Cells 9 through 16. Nonetheless, support levels will still be very low in Cells 1 and 5, where the EPP is strongest because obligor income is so low, so that in these cells it is unlikely the support payment will contribute much to raising custodial household income above Point A. Public funds are really the only hope for children with parents at these income levels. Cells 2 and 6 will allow greater demands on the obligor, but it is still likely, especially for Cell 2, that any

support payment will still leave the custodial household at well-being levels we will be dissatisfied with.

Other patterns revealed by the matrix will also be helpful. Consider especially these two:

***The Equal-Earner Diagonal: Cells 1, 6, 11, 16.*** These cells all involve parents who are equal earners. For this situation, a support amount that leaves the custodial and noncustodial households with approximately equal living standards would seem fair, insofar as we can gauge it. While equal living standards may sometimes seem a windfall for the custodial parent to which the obligor will object, there is no windfall where the parents are equal earners, as an equal living standard will naturally result in that case if we require the equal-earning parents to make an equal economic sacrifice for the children. This result also allows the custodial household the highest living standard possible without requiring the obligor to live less well than the child and custodial parent. Nonetheless, even in this case, the EPP will, for the very low earning obligor in Cell 1, bar a meaningful award, assuming we apply a self-support reserve.

***Cell pairs: 2&5, 3&9, 4&13, 7&10, 8&14, 12&15.*** Total parental income, and thus the living standard of the intact family, is the same in both members of each of these cell pairs. What differs is the relative income contributions of the custodial and noncustodial parents. From the child's perspective, that does not matter, and Principles 1 and 3 therefore lead to the conclusion that the support award should yield the same post-payment income for the custodial household in both cells of each pair. No child support system in the country produces this result, however, and the explanation is Principle 5. By focusing on these cells pairs, the policymakers can resolve the relative weights they wish to give Principles 1, 3 and 5. Some variation in the relative weights might be anticipated in a rationally designed system, because in some pairs the claims of the child in the lower-earning custodial household are stronger than in other pairs. The children in Cells 5, 9, and 13 have stronger Principle 1 claims, for example, than the children in Cell 15, whose claims are grounded more in Principle 3. Having resolved these weights across all these cell pairs would, however, permit reasonable interpolations to fill in the remaining cells in the grid.

*Figure Three: Combined Impact of All Principles Across Incomes*

**NONCUSTODIAL PARENT INCOME**

<b>CP INCOME ▼</b>	<b>LOW</b>	<b>LOW MEDIAN</b>	<b>HIGH MEDIAN</b>	<b>HIGH</b>
<b>LOW</b>	1 	2 	3 	4 
<b>LOW MEDIAN</b>	5 	6 	7 	8 
<b>HIGH MEDIAN</b>	9 	10 	11 	12 
<b>HIGH</b>	13 	14 	15 	16 

*LEGEND*

**Square Shading:** As squares go from dark to light, the base award shifts from consisting primarily of the well-being component, to consisting primarily of the dual-obligation component. Intermediate shades consist mostly of one but may contain some of the other.



Award substantially augmented by Gross Disparity Component



Award somewhat augmented by Gross Disparity Component



Award substantially reduced by EPP



Award somewhat reduced by EPP

An essential aid to policymakers implementing the approach suggested here is a simple spreadsheet template that shows them the child support results that flow from choices they make about the value of Points A and B, the income required by a single noncustodial parent to maintain a minimum decent living standard, and the marginal expenditure rate for a given number of children in a single parent household<sup>48</sup>. An example of such a spreadsheet template is available from the authors.<sup>49</sup>

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48. The literature contains various estimates of such marginal expenditure rates. For child support purposes, consultants generally rely on an equivalence scale methodology to derive marginal expenditures, but the choice of equivalence scale—there are many candidates—is largely arbitrary and they give differing results. See *Fudging Failure* at 189-199. For a more ambitious investigation into the matter, see Edward Lazear and Robert Michael, *ALLOCATION OF INCOME WITHIN THE HOUSEHOLD* (Chicago 1988). While they do not rely directly on an equivalence scale method, Lazear and Michael base their calculations on the allocation of clothing expenditures among members of the household, using data from the Consumer Expenditure Survey. Their calculations are thus subject to the same concerns about accuracy that also apply to calculations based upon the Rothbarth equivalence scale, see *Fudging Failure, supra*. One must also bear in mind all these estimates purport to tell us only the mean marginal expenditure rate; to the extent this mean is relied upon to set policy, the amount of dispersion around that mean may matter. Bassi and Barnow, relying on figures in Chapter 7 of Lazear and Michael, estimate that if the mean expenditure on two children in a two-parent household is 27 percent of all expenditures, one has to employ a range of 15 to 36 percent to capture 80 percent of those families, with the remaining 20 percent evenly divided between those below 15 and those above 36. Laurie J. Bassi and Burt S. Barnow, *Expenditures on Children and Child Support Guidelines*, 12 J Pol Anal and Manage 478, 486 (1993). It is precisely because estimates of marginal expenditure rates on children are subject to such dispute that one's choice of rate is necessarily a policy decision that reflects one's view about the best compromise in the face of imperfect information. Technical consultants can inform that policy choice but cannot make it.

49. The availability of such a template was important to the decision of an Arizona committee, appointed by the Arizona Supreme Court, to recommend changes in that state's guidelines consistent with the analysis of this article., because it demonstrated that a practical method to implement this analysis was available. The spreadsheet uses the income required by the single noncustodial parent to achieve the minimum decent living standard to set the self-support reserve the guideline will allow the poor obligor. The marginal expenditure rate is applied to the custodial parent's income to generate an estimate of that parent's marginal expenditures on the child, which are then allocated between the two parents in proportion to their income, yielding the dual-obligation component of the applicable support payment. In generating this figure the spreadsheet uses the chosen self-support reserve to reduce the support award below that amount, as appropriate for low-income obligors. The chosen value for Point B yields the maximum value for the dual obligation component, because that component should not include any marginal expenditures on the child for income exceeding Point B.

Once the spreadsheet thus generates the value of the dual-obligation component for any particular set of parental incomes and household composition, the chosen values for Points A and B provide benchmarks to the policymaker who must decide the extent to which the actual support award should depart from the amount needed to achieve at least Point A and if possible Point B. The spreadsheet provides the user with the custodial household's income, after the addition of the dual obligation support payment, as a percentage of both Point A and Point B. These benchmark figures are automatically updated as the user makes experiments with trial adjustments to the dual-obligation figures, to take account of the well-being and gross-disparity components. At the same time, the spreadsheet provides the user with both the custodial household income, and the obligor's income, as a percentage of the income needed to maintain a minimum decent living standard, and also shows the support payment as a percent of the obligor's income. These benchmarks also change dynamically as the user experiments with adjustments in the support amount, providing the user a way to gauge the limits that the EPP should place on the support payments. The Arizona committee recommended a process in which the guideline writers first choose support amounts for thirty-six cases representing the interaction of six income levels each for obligor and obligee, spanning a range of incomes that includes most support cases. The consultant would then produce from this initial approximation a matrix with twelve income levels each, interpolating from the six-income grid that committee produced as an initial approximation, and highlighting for the committee any cases in which that interpolation required new policy determinations. Once the twelve by twelve table was settled on, the consultant could

## D. Complicating Realities

### 1. Remarriage of the Custodial Parent, and other additions to the custodial household

Existing law in most states seems to exclude from consideration the income of the custodial parent's new spouse.<sup>50</sup> These rules long preceded the trends of the late 1960's and the 1970's that elevated divorce rates and led to increased numbers of remarried custodial parents.<sup>51</sup> This increase in "blended families" gives these rules more importance. The logic of the stepparent-income exclusion is straightforward. The new spouse, it is said, has no legal obligation under the law to provide for children that are not his.<sup>52</sup> To assume his income is available to his wife's children, and then reduce their legal father's support obligation accordingly, is therefore wrong because it would, in effect, require him to support another man's children without legal basis. Yet this doctrinal logic seems in tension with the realities of household finances. Most custodial parents are mothers, and when they remarry their husband usually earns at least as much as they do, and most often more. The new husband's income thus typically improves the living standard of the custodial household. Regardless of whether the law requires the new husband to support his new wife's children, the addition of his income to the custodial household inevitably has that effect. This tension between doctrine and reality can be seen in the cases. For example, in *Long v. Creighton*,<sup>53</sup> the custodial mother testified that she earned \$22,000 a year from her hair styling business, but her new husband earned \$45,000 annually, and covered her and children on his health insurance policy. Asked the percentage of household expenses she pays, she said "It's all joint, it's all combined. Our monies are combined." On that basis the trial court assumed she was responsible for only her proportionate share of the household expenses and reduced the support order accordingly.<sup>54</sup> This reduction was reversed on the mother's appeal.

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produce, through interpolation, a complete table of support amounts for the full range of incomes addressed by the state's guidelines.

The Arizona committee offers examples of cases in which the committee is likely to reduce the support amount below the dual-obligation component, as well as others in which it will increase it above that level. Of course, other benchmarks, in addition or instead of those suggested here, could be employed to aid the committee in its decisions. The fundamental point is that a procedure of this kind allows the policymaker to judge how to balance the relevant factors in a sample of cases at a variety of points along the spectrum of incomes and household composition. At some point, the policymaker will have made a sufficient number of such judgments to allow a technical consultant to interpolate missing values and construct a complete set of support guidelines.

50. See the provisions set forth in notes 52, 55, and 56, below.

51. Divorce rates have generally been declining since 1980. Although the decline is significant, and the duration of this trend of declining rates unprecedented in American history, divorce rates are still higher than they were in the early 1960's, before the steep increases between 1965 and 1979 took place. See Ira Ellman and Sharon Lohr, *Dissolving the Relationship Between Divorce Law and Divorce Rates*, 18 *International Review of Law and Economics* 341 (1998).

52. E.g., Arizona's statutes provide that a "parent's legal duty is to support his or her natural or adopted children. The support of other persons such as stepchildren or parents is deemed voluntary and is not a reason for an adjustment in the amount of child support determined under the guidelines." Ariz.Rev.Stat. § 25-320(2)(D) (2004).

53. 670 N.W.2d 621 (Minn. App. 2003).

54. Even this reduced support obligation was suspended because of medical evidence of the father's disability, making this perhaps a particularly appealing case for such an adjustment.

Long [claims that] the district court's reduction [is] a violation of the statutory prohibition on considering the financial circumstances of her current spouse. We agree. Minn. Stat. § 518.551, subd. 5(b)(1) (2002), explicitly excludes from the definition of net income "the income of the obligor's spouse." Although the district court did not base its determination of Long's net income on a direct consideration of her spouse's income, when the court found that Long's spouse is responsible for 69% of the family's total expenses because he earns 69% of the family's total income, the court indirectly made Long's spouse responsible for the support of Long's children. No case law or statute imposes a legal duty upon a new spouse to provide support for his or her step-children.

So the court did not deny the economic reality; it simply concluded that this reality provided no basis for departing from the legal rule excluding the stepparent's income from the child support calculation. Not only are versions of this rule common,<sup>55</sup> but some courts that have held to the contrary have been overruled by their legislature.<sup>56</sup> Yet in many if not most states, the prevailing legal rule is more nuanced than suggested by the language of the *Long* opinion. Indeed, the common law requires stepparents to support and educate stepchildren living with them.<sup>57</sup> A recent compilation

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55. The idea that a stepparent has no legal support obligation is overtly expressed in the New Jersey child support guidelines, which exclude "income from other household members (e.g., step-parents, grandparents, current spouse) who are not legally responsible for the support of the child for whom support is being established." N.J. R. Prac. App. IV-B(1) (2005) (See (f) in the "Instructions for Determining Income: Types of Income Excluded from Gross Income" section). Likewise, Minnesota's provision excludes a stepparent's income from the "net income" calculation on which support payments are partially based. Minn. Stat. Ann. § 518.551 (2005). New Mexico's statute provides that, "[t]he gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage." N.M. Stat. Ann. § 40-4-11.1(C)(1) (2005). Utah's statute similarly excludes stepparent income from the "adjusted gross income" calculation on which it bases child support payments. Utah Code Ann. § 78-45-7.4 (2005). In Washington, though all household income must be disclosed, "[o]nly the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation." Wash. Rev. Code Ann. § 26.19.071(1) (West 2005).

56. Current Connecticut guidelines expressly exclude "the income and regularly recurring contributions or gifts of a spouse or domestic partner," Conn. Agencies Regs. § 46b-215a-1(11)(B)(v) (2005); they were enacted after the Connecticut Supreme Court's decision in *Unkelbach v. McNary*, 244 Conn. 350, 364-65, 710 A.2d 717, 725-26 (1998) which held that the new spouse's income could be considered in support orders as "gifts" to the parent. The Connecticut regulations now allow consideration of "regularly recurring" gifts "only if it is found that the parent has reduced his or her income or has experienced an extraordinary reduction or his or her living expenses as a direct result or such contributions or gifts." Conn. Agencies Regs. § 46b-215a-3(b)(1)(D). Current Idaho law overruled *Yost v. Yost*, 112 Idaho 677, 735 P.2d 988 (1987) in which the court held that income of wife's new marital community should be considered in child support determinations. The new statutory provisions direct the court to consider "[t]he financial resources, needs, and obligations of both the custodial and noncustodial parents which ordinarily shall not include a parent's community property interest in the financial resources or obligations of a spouse who is not a parent of the child, unless compelling reasons exist." Idaho Code Ann. § 32-706(1)(b) (2005).

57. *Van Dyke v. Thompson*, 95 Wn.2d 726, 729, 630 P.2d 420 (1981). The common law duty applied to any stepparent who acted "in loco parentis" toward the child, but that requirement is almost always fulfilled by the stepparent's voluntarily accepted the child into his home. Decisions grounded on this common law doctrine include *Harris v. Lyon*, 16 Ariz. 1, 140 P. 825 (1914); *State v. Smith*, 485 S.W.2d 461 (Mo. Ct. App. 1972) (position stepparent assumes for himself determines if he stands in loco parentis, and if he voluntarily receives child into family and treats it as a member thereof, he may be said to be standing in place of natural parent); *Schneider v. Schneider*, 25 N.J. Misc.

found this common law rule effectively codified in twenty states that imposed a general stepparent support obligation.<sup>58</sup> There are also “family expense statutes” that effectively continue this rule<sup>59</sup> because they allow creditors to reach stepparents for goods or services provided to stepchildren living with them.<sup>60</sup> Of course, such suits by creditors for payment of necessities are relatively rare. While in principle the stepparent support obligation could also be enforced by the state, as practical matter that will not happen. That is because, by its terms, the stepparent support duty normally ends with the parties’ divorce, when children typically remain with their legal parent and thus no longer live with the stepparent.<sup>61</sup> So the stepparent support obligation exists only within the intact family. The state, however, does not normally enforce support obligations within intact families unless the failure to support amounts to abuse or neglect. But even if rarely enforced, the legal expectation that stepparents will contribute to the support of children living with them does suggest something about what we believe right, as well as what is economically inevitable. We would disapprove of a stepfather who allows stepchildren living with him to suffer from limited resources when he has sufficient income to provide for them, and that is at least part of the reason why states look to stepparent income in determining eligibility for public benefits<sup>62</sup> and colleges typically consider

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180, 52 A.2d 564 (Ch. Div. 1947) (if stepfather voluntarily accepts into his family a child of his wife by a former husband and assumes the obligations of a parent, such obligation continues as long as he permits the child to be in his home); and *Palmer v. Harrold*, 101 Ohio App. 3d 732, 656 N.E.2d 708 (1995) (stepparent is liable for support of stepchild during marriage to natural parent under doctrine of *in loco parentis*).

58. Laura Wish Morgan, *The Duty of Stepparents to Support Their Stepchildren*, posted August 1999 on SupportGuidelines.com, <<http://www.childsupportguidelines.com/articles/art199908.html>>. Provisions such as these are typically found in different portions of the statutes than the support guidelines. Guideline provisions that exclude stepparent support obligations prevail over such statutes when the question is whether a court may require the stepparent to provide support in a case governed by the guidelines. *Harmon v. Department of Soc. & Health Servs.*, 134 Wn.2d 523, 951 P.2d 770 (1998).

59. E.g., see Wash.Rev.Code Ann. § 26.16.205:

The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them, and they may be sued jointly or separately. When a petition for dissolution of marriage or a petition for legal separation is filed, the court may, upon motion of the stepparent, terminate the obligation to support the stepchildren. The obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death.

For other state family expense statutes effectively requiring stepparent support see Del. Code Ann. tit. 13, § 501(b) (1999) (expanding duty to include cohabitators if natural parentis not supporting); Mont. Code Ann. § 40-6-217 (2003); N.D. Cent. Code § 14-09-09 (1997).

60. Wash. Rev. Code Ann. § 26.16.205 (1997).

61. See e.g. the Washington statute quoted in Note 59.

62. “The income of the natural or adoptive parent, and the spouse of the natural or adoptive parent, and the sibling of an eligible child, living in the same home with an eligible child shall be considered available, in addition to the income of an applicant for or recipient of aid . . . for purposes of eligibility determination and grant computation.” Cal. Welf. and Inst. Code § 11008.14 (2005). See also N.J. Stat. Ann. § 44:10-36 (2005) (“A parent who is eligible for benefits who is married to a person who is not the parent of one or more of the eligible parent’s children shall not be eligible for benefits if the household income exceeds the income eligibility standard.”). In the federal system, the same is true of social security disability benefits: remarriage and resulting income may reduce or eliminate a recipient’s benefits.). 42 U.S.C.A. § 402(b)(1)(H), (K). Some state’s welfare systems incorporate these definitions into their definitions of income or eligibility. New Hampshire’s statute provides that “In the determination of sufficiency of income and resources, [the fact finder] may disregard such income and resources as may be permitted by the Social Security Act of the United States.” N.H. Rev. Stat. § 167:4(I)(a) (2005).

stepparent income in awarding need-based scholarships. But on the other hand, we do not believe the existence of a stepfather excuses the legal father from his support obligations. What this tells us is that the usual child support rule that excludes the income of a stepparent probably has less to do with our view of the stepparent obligations than it does with our determination to make sure the legal father is not let off the hook.

Might we reasonably compromise by allowing consideration of stepfather income to reduce but not replace the legal father's support obligation? In fact, states sometimes do this, although they do not always characterize their actions in this way. One example arises in the application of income-imputation rules. When calculating support, virtually all states will impute income to a parent regarded as shirking employment, but not to a parent whose decision to reduce working hours is considered reasonable in light of all the circumstances (as where reduced employment is thought necessary to care for a young or disabled child). What then of the case in which a remarried custodial mother, for example, reduces her working hours, perhaps to zero, because she now can rely on her new husband's income: in calculating the father's support obligation, should the court impute a full-time equivalent income to the mother (thus reducing the father's support obligation) or should it accept her actual reduced income as her income (thus increasing the father's support obligation)? States like California and New Hampshire impute a full-time income to this mother.<sup>63</sup> They do not deny it is reasonable for her to take her new husband's income into account in deciding on her working hours; they simply believe that her reasonable decision to reduce her income does not, *in this case*, justify an increase in the father's support payments. This conclusion necessarily accepts the stepfather's contribution to the children's support as an appropriate factor to consider in fixing the father's support obligation. Such rules effectively recognize the reality that the new family is one economic unit.

Some states allow courts to take stepparent income in a broader array of cases, because they allow its consideration whenever judges decide whether to deviate from the guideline amounts. New Hampshire, for example, combines the previously quoted rule with another provision that permits the court, in deciding whether to deviate from the guidelines, to consider "the economic consequences of the presence of stepparents."<sup>64</sup> The New Hampshire Supreme Court has held that such deviations are *not* limited to the cases addressed by the first rule, involving remarried custodial parents who are underemployed.<sup>65</sup> Connecticut also endorses such deviation treatment.<sup>66</sup> Louisiana goes further, as it allows the court to consider, as income under the guidelines, "the benefits a party derives from expense-sharing...to the extent such income is used directly to reduce the cost of a

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63. New Hampshire provides that a stepparent's income "shall not be considered as gross income to the parent unless the parent resigns from or refuses employment or is voluntarily unemployed or underemployed". RSA 458-C:2, IV(b). California provides for the same result, but as a particular application of a more general provision permitting courts to consider the income of the spouse or nonmarital partner of either parent in "extraordinary" cases in which excluding it would lead to extreme and severe hardship on the child subject to the order. California Family Code § 4057.5(b) (2005).

64. N.H. Rev. Stat. Ann. § 458-C:5, I(c) (2005).

65. *Barrett v. Coyne*, 150 N.H. 520, 841 A.2d 74 (2004).

66. CONN. GEN. STAT. ANN. § 46b-86(b) (West 2005).

party's actual expenses."<sup>67</sup> Idaho also allows consideration of such expense sharing benefits, but only if "compelling reasons exist".<sup>68</sup>

It is fair then to conclude that despite the general understanding that stepparent income is excluded from support calculations, many states make exceptions and qualifications to this exclusion that reflect ambivalence about the basic rule. This ambivalence mirrors popular views: most people, it appears, believe there are at least some cases in which the custodial mother's remarriage to an income earner warrants some reduction in the father's support payments.<sup>69</sup> There are several explanations one might offer to explain these views. The fact that most support guidelines try to allocate the support obligation between parents in proportion to their incomes may reflect an intuition that such proportionality achieves effective equality by equalizing the parental sacrifice. But if the custodial parent benefits financially from her remarriage, then her relative "sacrifice" is less than before. That point becomes especially salient where the custodial parent's new spouse earns more money than the support obligor, because people are not entirely comfortable with a rule that transfers money from a lower income household to a higher income household, especially when the lower income household also has children, as it often does. This example also illustrates another possible explanation of people's reactions: their likely perception that when the custodial parent remarries the child's well-being may no longer depend nearly so much upon the support payments if the new spouse has a good income.

The support principles offered in Part II lead to similar conclusions. Consider a custodial mother earning \$2500 a month, and a noncustodial father earning \$5000. The required support amount will be based largely on concerns for the child's well-being (Principle 1); the dual obligation component (Principle 2) will add little. But now assume the mother remarries, and her new husband earns \$7500. Principle 1 ceases to seem applicable, as even without any support payment, the child's living standard is likely to exceed the living standard in the original intact marriage and may approach the well-being maximum. We are still reluctant to eliminate the support award entirely, but that reluctance arises from Principle Two, which has now become much more relevant to this case. That is, the remarriage has shifted the basis of the support award from concern for the child's well-being, to concern for maintaining the principle that a parent, including an absent parent, should contribute to his child's support. Along with that shift is an appropriate recalculation of the award's amount, which can be reduced because Principle 2, the dual-obligation component, yields more easily to the EPP than Principle 1, the child's well-being component. In this case, then, the obligor need pay no more than his proportionate share of the marginal expenditures on the child that would have been made by these two parents were they living together in an intact family with the child.

We reach a different conclusion if the new member of the custodial household generates

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67. La. Rev. Stat. Ann. § 9:315.2(C)(5)(c) (2005).

68. Idaho Code Ann. § 32-706(1)(b) (2005).

69. See, e.g., Nora Schaeffer, *Principles of Justice in Judgments About Child Support*, 69 *Social Forces* 157, 167 (1990). Another analysis of the same data set appears to replicate this finding. See Corbett, Garfinkel and Schaeffer, *Public Opinion About a Child Support Assurance System*, in GARFINKEL, McLANAHAN, AND ROBINS, *CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN* 339-364 (1992).

marginal expenditures greater than his or her income. No adjustment to the support award is justified in this case. The award certainly cannot be increased, because the obligor is not responsible for the custodial household shortfall created by additional members for whom the obligor has no legal or moral support obligation. But neither should his payments be reduced. The new members of the custodial household, like the custodial parent, will inevitably reap some benefit from the existing support payments, but that unavoidable fact cannot justify a reduction that would necessarily penalize the child as well

## 2. Remarriage of the Obligor

A sense of symmetry might lead one to assume the same rules should govern the remarriage of the support obligor as govern the remarriage of the custodial parent. But in the usual situation in which the child lives primarily in one of the parental households, symmetrical treatment is inappropriate. The support obligor's remarriage has no direct impact on the financial well-being of the child who is the intended beneficiary of the support order, and the obligor's new spouse has no obligation to the child. In most cases this is sufficient to conclude the remarriage has no effect on the support order. The possible exception arises when the obligor was excused from more than nominal support because of his very low income, but now marries someone with an ample income. Especially where the custodial household income is well below the well-being maximum, an upward revision of the support award may be appropriate. We reach this result not because of our assessment of the parental obligations has changed, but because the impact of the EPP on those obligations may have changed. When the remarriage means the obligor is no longer impoverished, and will not become impoverished if the support obligation is increased, then the force of the EPP, which justified the initial choice of a nominal award only, is weakened.

## CONCLUSION

The conventional method used to generate child support guidelines conceals important policy choices from those charged with making them. A systematic analysis of the policy purposes for collecting child support reveals that most existing guidelines are inconsistent with them. Careful analysis of the policy issues suggests a superior alternative to the conventional methodology in current use, and also helps to resolve the difficult problems created by the increasing incidence of blended families containing both child support obligors and child support recipients.

## Appendix A

### A Comparative Sampling of Support Amounts Required by State Guidelines

The analysis in the text focuses on an example based upon the support guidelines of one state, Arizona. Arizona is an “income shares” state, as are the great majority of American jurisdictions. Ultimately, however, “income shares” means only that the incomes of both parents are necessary to perform the support calculation, in contrast with states that set support amounts as a percentage of the obligor’s income (POOI), without regard to the income of the custodial parent. Income shares states vary considerably among themselves in the amount of support they would require in any particular case, both because their guidelines set different basic support amounts at any given parental income level, and because they vary in the adjustments they allow or require in transforming this basic support amount into the actual support order. The differences among states are not easy to capture, for several reasons.

First, the differences are not straightforward: it is not necessarily the case, for example, that State A generally imposes support awards that are \$100 or 15% higher than State B. State A might impose higher support awards at lower parental income levels, but not at higher income levels, or vice-versa, or the difference might get smaller or larger if one looks at families with one child versus families with several children. Second, the methods states use to compute support amounts vary in ways that make comparisons impossible without making assumptions about which reasonable persons may differ. States vary, for example, on whether their guidelines require an input of gross or net parental incomes. Arizona uses gross incomes, and therefore Table 1 does as well. But to determine how that same family would come out in California, we must first choose net income equivalents to these gross incomes, because the California guidelines require an input of net incomes. And so, for example, one must make some assumption about the income tax liability of the two parents in each of the three Table 1 cases. States also vary in their treatment of child care costs, health insurance costs, and adjustments to reflect the amount of time the child spends with the support obligor. Maureen A. Pirog and colleagues have perhaps the most useful general study of how child support guidelines vary across states, as well as over time, with periodic updates.<sup>70</sup> Their analysis focuses on four fact patterns that vary in both total parental income, and the income of each parent. The purpose of Table 1, however, is to compare the outcome for a low income custodial parent as the income of the other parent changes from low to high. The Pirog study does not examine this kind of fact pattern set. We do so here, for Arizona, California, Massachusetts, New York, Oklahoma, South Dakota, and Wisconsin. This small sample includes states that vary in methodology (Wisconsin and New York are POOI states; the rest are income shares states), size, and region, and also appear, from the Pirog data, to span the spectrum from low to high in the support amounts they typically require (bearing in mind the limitations noted above about such generalizations).

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70. The most recent version of this effort known to the authors is Maureen A. Pirog, Tara Grieshop, and Brooks Elliot, *Presumptive State Child Support Guidelines: A Decade of Experience*, in Volume 12, No. 1 of *Policy Currents* (Newsletter of the Public Policy Section American Political Science Association), Spring 2003, at page 16.

**Table A-1**

*Support Amounts, in Dollars and As % of NCP Income, With Post-Transfer CP Income  
Shown as % of Poverty Threshold, for CP with One Child and Income of \$1000  
(See State by State Tables Following for Important Information)*

NCP \$:	Case One: \$500 Gross			Case Two: \$2500 Gross			Case Three: \$6000 Gross		
State	Support Amount	As % NCP \$	CP As % Poverty	Support Amount	As % NCP \$	CP As % Poverty	Support Amount	As % NCP \$	CP As % Poverty
Arizona	\$75	15%	96%	\$402	16%	125%	\$690	11.5%	151%
Calif.	\$47	9%	93%	\$428	17%	127%	\$977	16%	176%
Mass.	\$112	22%	99%	\$552	22%	138%	\$1420	24%	216%
N.Y.	\$78	16%	96%	\$392	16%	124%	\$942	16%	173%
Okla.	\$96	19%	98%	\$390	16%	124%	\$710	12%	152%
S.D.	\$100	20%	98%	\$419	17%	126%	\$769	13%	158%
Wisc.	\$56	11%	94%	\$425	17%	127%	\$1020	17%	180%

**Notes**

The following assumptions or methodological choices were made in producing the calculations shown in this Table. For further notes specific to an individual state, see the State by State Tables below.

1. There is one child, and that child is ten years old. (Some states allow adjustments for older children.)
2. The custodial parent has a gross income of \$1,000 per month (as in Table 1 in the text).
3. The child spends 73 days, or 20% of the year, with the non-custodial parent. This assumption is relevant in those states which make adjustments for this factor.
4. Neither parent pays or receives support for other children.
5. All calculations are based entirely on the parents' incomes, visitation time (when relevant under the guideline), and the child's age (when relevant under the guideline). No extra expenses or contributions, such as child care or health insurance, were considered. Such expenses would affect guideline calculations.
6. Numbers were rounded to the nearest whole number.
7. Discretionary self-support or low income allowances were not applied. See the individual state by state tables for further information on the impact of this decision in each state.
8. The poverty threshold employed for all poverty calculations is the poverty threshold provided by the United States Census Bureau in *Poverty Thresholds for 2005 by Size of Family and Number of Related Children under 18 Years*. This publication is available at <http://www.census.gov/hhes/www/powerty/thrshld/thresh05.html>. For a family of two (custodial parent and child) in which the parent is under 65 years of age and there is one child under the age of 18, this federal poverty threshold is at \$13,461 (\$1,121.75 monthly). For one person under the

age of 65 (non-custodial parent), it is \$10,160 (\$846.67 monthly).

**STATE BY STATE TABLES**  
**Arizona**

Case Number	NCP Monthly Gross Income (Before Support Payment)	Monthly Support Payment (Under Arizona Guideline)	Payment as % NCP Income	CP Income, After Payment, as % of Poverty	NCP Income, After Payment, as % of Poverty
1	\$500	\$75*	15%	96%	50%
2	\$2500	\$402	16%	125%	248%
3	\$6000	\$690	11.5%	151%	627%

\*At this income level, the NCP would be eligible for the discretionary self support reserve which would reduce the obligation to zero.

As previously indicated, the support amounts shown here assume the obligor visits with the child a total of 73 days per year. The visitation adjustment applied by Arizona would substantially greater if the obligor saw the child at least 88 days per year. In that case (and assuming visitation did not exceed 115 days) the support amounts called for in the guidelines for Cases 1,2 and 3 would be, respectively,\$57, \$365, and \$633. On the other hand, the guidelines allow the court to increase the child support award to reflect the obligor’s proportionate share of child care costs “appropriate to the parents’ financial abilities”, and require an increase to reflect the obligor’s share of the cost of health insurance. Child care and health insurance costs, were they present, would thus yield an upward adjustment.

Support Amounts Obtained from the Arizona Child Support Guidelines Calculator, Arizona Supreme Court, <http://www.supreme.state.az.us/childsup/pdf/arizsup22.pdf> (Last accessed August 3, 2006).

### California

Case Number	NCP Monthly Gross Income (Before Support Payment)	Monthly Support Payment (Under California Guideline)	Payment as % NCP Income	CP Income, After Payment, as % of Poverty	NCP Income, After Payment, as % of Poverty
1	\$500	\$47*	9%	93%	53%
2	\$2500	\$428	17%	127%	245%
3	\$6000	\$977	16%	176%	593%

\* This amount does not include the discretionary low-income allowance. Obligor earning less than \$1000 in net disposable income are eligible for this allowance, which would reduce the monthly support payment to \$25.

The California child support formula does not use gross income, but rather the “net disposable incomes” of both parents. California Family Code §4059 specifies that net disposable income is derived from gross income by deducting actual amounts for several items, including federal and state income taxes, FICA payroll taxes, compulsory union dues, alimony and court-ordered child support to other children actually being paid, and health insurance premiums. To convert from the gross incomes used for the calculations of other states, estimates of state and federal income taxes, and FICA, were deducted from gross income and the resulting income was employed in the calculation. Thus, it was assumed there were no deductions for union dues, alimony, support for other children, or health insurance. The net disposable incomes thus employed for the calculations, as equivalent to the gross incomes employed in other states, was \$1064 for the custodial parent, and \$460, \$2035, and \$4320 for the noncustodial parent in cases 1 through 3 respectively. The custodial parent’s net disposable income higher than that parent’s gross income because of the average impact of the earned income tax credit.

Federal income tax was estimated by multiplying the assumed gross income by average tax rates actually paid by US taxpayers with similar characteristics. The average tax rates were derived from an IRS table showing taxes paid and earned income tax credits (EITC) refunded by income category, marital status and number of children at home. (This table was supplied to the authors by the Individual Special Projects Section, Statistics of Income Division, Internal Revenue Service as a special tabulation, prepared June 29, 2006, and derived from the IRS 2003 Statistics of Income Individual Tax File). The effect of the EITC is included in this calculation, and yields a negative average tax rate for the lowest income earners with children. California state income tax were estimated from the state’s tax table, assuming the standard deduction. This assumption overstates the actual average state taxes paid since some taxpayers, especially those with higher incomes, have larger deductions. (Source: California Franchise Tax Board 2005 tax table (Form 540 2EZ) at

[http://www.ftb.ca.gov/forms/05\\_forms/05\\_5402eztt.pdf](http://www.ftb.ca.gov/forms/05_forms/05_5402eztt.pdf)). FICA was assumed to be 7.65% of gross income in all cases ( 6.2% for social security and 1.45% for medicare.)

Support amounts were obtained using the California support calculator provided by the Self Help Law Center, <http://www.west.net/%7Eivguy/testcalc.html> (Last accessed July 17, 2006).

Massachusetts

Case Number	NCP Monthly Income (Before Support Payment)	Monthly Support Payment (Under Mass. Guideline)	Payment as % NCP Income	CP Income, After Payment, as % of Poverty	NCP Income, After Payment, as % of Poverty
1	\$500	\$112*	22%	99%	47%
2	\$2500	\$552	22%	138%	230%
3	\$6000	\$1420	24%	216%	541%

\*Obligor is not eligible for the self support reserve. It is discretionary for those earning less than \$400 per month.

Massachusetts employs an unusual hybrid system, part POOI and part income shares. When the obligee’s income is less than \$20,000 (plus child care costs), Massachusetts applies a progressive POOI system: the award is a percentage of the obligor’s income, with the percentage increasing as obligor income rises. For example, if there is one child, the percentage begins at 21%, rises to 23% for obligor income in excess of \$1213 monthly, and then again to 25% for obligor income in excess of \$3250. The amount calculated by applying these percentages to obligor income is called the “basic award”. The basic award is reduced if obligee income exceeds a threshold of \$20,000 annually (\$1667 monthly), plus child care costs. This reduction increases as obligee income rises: the greater the amount by which obligee income exceeds this threshold, the greater is the reduction in the basic award. While child care costs are thus a factor in calculating the award—the higher they are, the higher an income the obligee must have before the basic award is reduced—they are not otherwise allocated between the parties, as they are in other states, but remain the responsibility of the custodial parent. Health insurance costs attributable to the child are split evenly between the parents, rather than in proportion to their incomes. Most uninsured medical costs are allocated on a case by case basis. Adjustments for visitation are discretionary on a case-by-case basis. When the obligee’s gross income falls below \$5200 annually, the support award is discretionary, but cannot be less than \$80 per month. Earned income tax credits are counted as income in these calculations, for both parents.

Support amounts were obtained by using the two official aids: the Calculator Long Form, at <http://www.cse.state.ma.us/PARENTS/Calc2.htm>, and Table A from Commonwealth of

Massachusetts, Administrative Office of the Trial Court, Child Support Guidelines at <http://www.mass.gov/courts/formsandguidelines/csg2006.html>. (Last accessed August 2, 2006.)

New York:

Case Number	NCP Monthly Income (Before Support Payment)	Monthly Support Payment (Under New York Guideline)	Payment as % NCP Income	CP Income, After Payment, as % of Poverty	NCP Income, After Payment, as % of Poverty
1	\$500	\$78*	16%	96%	50%
2	\$2500	\$392	16%	124%	249%
3	\$6000	\$942	16%	173%	597%

\*New York allows a self-support reserve of 125% of the poverty level set by the federal department of Health and Human Services for a single person household. N.Y. Com Rel. Law § 240.1-b(b)(6) (McKinney 2003). This obligor is eligible for that self support reserve, which would reduce the obligation to zero.

Support amounts were calculated manually, as New York’s system is relatively simple. When the parents’ combined annual gross income is less than \$80,000, the obligor owes 17% of his or her adjusted income for one child. \*\*TARA: I ADDED “THE PARENTS” ASSUMING THAT IS WHAT WAS MEANT. The adjusted income is defined as gross income less *city* income taxes, FICA , compulsory pension deductions, alimony paid and other child support paid. State and federal income taxes are not deducted. The calculations employed here assumed an adjusted gross income equal to the gross income minus FICA (which was taken as 7.65% of gross income).

Oklahoma

Case Number	NCP Monthly Income (Before Support Payment)	Monthly Support Payment (Under Oklahoma Guideline)	Payment as % NCP Income	CP Income, After Payment, as % of Poverty	NCP Income, After Payment, as % of Poverty
1	\$500	\$96	19%	98%	48%
2	\$2500	\$390	16%	124%	249%
3	\$6000	\$710	12%	152%	625%

Support amounts were obtained by using the Unofficial Online Child Support Guidelines Calculator made available by the Child Support Enforcement Division of the Oklahoma Department of Human Services, at <http://www.okdhs.org/childsupport/guidelines/calc.htm> (Last accessed August 6, 2006).

South Dakota

Case Number	NCP Monthly Income (Before Support Payment)	Monthly Support Payment (Under South Dakota Guideline)	Payment as % NCP Income	CP Income, After Payment, as % of Poverty	NCP Income, After Payment, as % of Poverty
1	\$500	\$100	20%	98%	47%
2	\$2500	\$419	17%	126%	246%
3	\$6000	\$769	13%	158%	618%

Support Amounts were obtained using the child support calculator provided by the South Dakota Department of Social Services, Division of Child Support, posted at <<http://www.state.sd.us/applications/SS17PC02CAL/SupportCalc1.asp>> (last accessed August 3, 2006).

Wisconsin

Case Number	Monthly NCP Income (Before Support Payment)	Monthly Support Payment (Under Wisconsin Guideline)	Payment as % NCP Income	CP Income, After Payment, as % of Poverty	NCP Income, After Payment, as % of Poverty
1	\$500	\$56*	11.13%	94%	52%
2	\$2500	\$425	17%	127%	245%
3	\$6000	\$1020	17%	180%	588%

\*In general, obligors owe 17 percent of gross income for support of one child. However, for obligors earning between \$575 and \$950 a different rate schedule applies. (Available at [http://www.legis.state.wi.us/rsb/code/dwd/dwd040\\_app\\_c.pdf](http://www.legis.state.wi.us/rsb/code/dwd/dwd040_app_c.pdf), last accessed August 3, 2006). Below \$575 gross income, child support amounts are discretionary. The amount for Case 1 was computed using the minimum rate on the low income schedule (11.13%).

Child support amounts were obtained using the Child Support Percentage Conversion Table contained in Appendix A of the Guidelines for Setting Child Support Amounts, Chapter DWD 40, published by the Wisconsin Department of Workforce Development and available at <[http://dwd.wisconsin.gov/dwd/publications/dws/child\\_support/dwsc\\_824\\_p.htm](http://dwd.wisconsin.gov/dwd/publications/dws/child_support/dwsc_824_p.htm)>.

## Appendix B

### *A Sample from the Literature on the Relationship Between Income and Child Well-Being*

By Preethy George and Ira Ellman,

This review does not purport to be a comprehensive and definitive statement of all that social science can tell us about this topic. It is instead an overview of a reasonably representative sample of the literature, adequate to provide the reader a window into the potential value, as well as the limits of, the information available to child support policymakers.

#### 1. The Effect of General Family Income on Child Well-being

During the last two decades, there has been a growing body of research investigating the associations between family income and children's development, particularly for low-income families. The general review of the literature would suggest that poverty is detrimental to children's development across all domains of development. The literature consistently finds a relationship between economic hardship in the family and child outcomes such as diminished cognitive ability, academic failure, behavioral and psychological disorders, and delinquency (Duncan & Brooks-Gunn, 1997; Luthar, 1999; McLoyd, 1998). Sobolewski and Amato (2005) found that growing up with economic stress in the family also predicts children's poor emotional mental health into early adulthood. While many studies in the psychological literature document the negative effects of poverty on child well-being, there is variability in the experience that children have within each income level. Research suggests that income level is not as predictive of child outcomes as are other indicators that are often associated with income level (i.e., geography, immigration status, parenting quality, and exposure to adverse life events and stress). We present below an overview of current literature that examines how income relates to child outcomes and well-being. The studies included in this section employ child well-being measures that assess major developmental areas of competence that children are expected to achieve. These variables include assessments of academic achievement, cognitive development, and psychosocial development.

Sobolewski and Amato (2005) is one of the few studies that attempts to assess the long-term impact of economic hardship on children, by examining their outcomes as adults. They used the data collected by Booth et al (1998) in the study of Marital Instability Over the Life Course. A sample of 2000 married persons were interviewed over the phone in 1980, having been reached by random digit dialing. Follow up interviews were then conducted at four later times, through 1997, and a sample of the children of the original interviewees was included in the data collection during the final two interview waves. Among other variables, the questions provided information on the parents' education, their economic resources (in both income and assets), their subjective perception of whether they were under economic stress, the extent of marital discord, the quality (assessed by both the parents and the sample of their children) of the parent-child relationship, and measures of the children's psychological well-being and their socioeconomic attainment. Their central finding relevant to our concerns was that perceived economic stress was related to lower levels of

psychological well-being in the children, while objective indicators of the parents' economic resources was related to the children's socioeconomic status as adults (measured in years of education and income). One limit in this study's applicability to child support issues is the authors' focus on children whose parents remained married through the years of the study. That focus allowed them to test, and confirm, a model posited by earlier authors that economic stress yields marital discord, which in turn reduces children's psychological well-being. Clearly, this model tells us little about the possible impact of economic stress on children raised in single-parent families.

On the other hand, their data also support a more direct relationship between objective indicators of economic status in children's households, and children's socioeconomic status as adults. These results do seem equally applicable to children in single-parent families. Moreover, the authors were able to relate the duration of economic privation to the effect size, by examining whether, in each of four waves during the child's minority, the child's family was in the lowest quartile in objective economic indicators. They found a monotonic association between the number of waves in which this was true, and the children's ultimate educational attainment, with each period of exposure to economic hardship associated with a reduction in the children's completed years of education by one-fourth to one-third of a year. A similar analysis of the parents' perception of economic stress, as contrasted with objective indicators of economic hardship, found a similar relationship between it and the children's psychological well-being, but no relationship with the children's educational attainment.

Other studies do not look at the long-term outcomes for children when they are adults, but the basic pattern in their results is nonetheless similar to the Sobolewski and Amato study: there are repeated findings of a relationship between objective economic indicators, and cognitive or educational measures of children's outcomes, but less consistent findings of any relationship between economic indicators and psychosocial measures. Mistry, Biesanz, Taylor, Burchinal, and Cox (2004) conducted a study using data from an already existing longitudinal data set. Mothers and children were recruited throughout 1991 from hospitals in or near 10 cities across the U.S. For this study, 1,363 families were included in the final analyses. Data were collected when the children were 1 month of age through 36 months of age. Mothers were interviewed regarding family income, and children's functioning was assessed during laboratory visits when children were 36 months old. The study sought to identify the relationship between family income, family processes and child adjustment. They also sought to find whether the associations between income and child functioning were linear (i.e., is more always better?) or whether income is more strongly related to child well-being at certain points of the economic distribution than others. To measure family income, they used an income-to-needs ratio, which is calculated from maternal interview items collected at 4 different time points. The income-to-needs ratio was computed by dividing family income by the appropriate poverty threshold for each household size. An income-to-needs ratio of 1.0 thus indicates that the family income equals the poverty threshold income for a family of that size and composition. Such an income-to-needs ratio is a commonly used method for creating a common metric that allows comparisons of economic status across families of different size and composition. For 2002, the poverty threshold for a family of four was \$18,392, and this family would have an income-to-needs ratio of 1. An income to needs ration of 5, for a family of four, was \$91,960. In this

sample, income-to-needs ratios ranged from 0.16 to 22.47. To measure family processes, the researchers examined mothers' level of depression and the mother's relationship with the child. Researchers measured child cognitive and language development at 36 months using the School Readiness subtest of the Bracken Scale of Basic Concepts (Bracken, 1984). Readiness measures knowledge of color, letter identification, number/counting, comparisons and shape retention. Language development was measured using the Reynell Developmental Language Scales (Reynell, 1991), which assessed verbal comprehension and expressive language. They also examined maternal reports of child behavior problems and maternal reports of child social competence. Family financial resources were also based upon maternal reports. One caution is that such reliance may introduce unreliability in the measures. A study employing independent observers of both family process measures and child outcomes would avoid this chance of reporter bias.

In sum, Mistry, et al. found that after controlling for family process variables, children's cognitive-linguistic development was the only variable strongly related to the income-to-needs ratio. The other psycho-social measures (social competence and problem behavior) were not directly affected by income. Changes in income has a larger impact on cognitive-linguistic development at lower income levels. For children in households with income-to-needs ratios below 5, the effect on cognitive-linguistic development was especially strong. At ratios greater than 5, the relationship begins to diminish toward zero. While there was a relationship between income and measures of child social competence and behavior problems, that relationship was fully mediated by maternal mental health and maternal-child relationships. In contrast, the relationship between income and cognitive-linguistic outcomes for children could not be fully explained by maternal mental health and parent-child relationships.

In a similar study, Dearing, McCartney, and Taylor (2001) examined associations between the change in income-to-needs and child outcomes (school readiness, receptive language, expressive language, positive social behavior, and behavior problems). Their sample consisted of 1216 families using longitudinal data from the NICHD Study of Early Child Care. Families with an income-to-needs ratio greater than or equal to 1 during all the time assessments were coded as not poor, and those with an income-to-needs ratio of less than 1 were coded as poor. Children from poor families had significantly lower levels of functioning across all indicators of child well being than did children in families classified as not poor, even after controlling for child gender, ethnicity, birth weight, mother's education, and changes in family structure. These results are consistent with other findings that income effects are strongest at the low end of the income distribution. This study's design, classifying all families as poor or not poor, makes it impossible to identify the income level at which additional dollars have diminishing returns.

Morris and Gennetian (2003) used data from the Minnesota Family Investment Program, designed to promote participation in work related activities for long-term welfare recipients and to provide a financial benefit to families to supplement their earnings through the welfare system. Their study examined the association between income, and children's achievement and behavioral outcomes, as well as the effects on children of increased parental employment. Measured income included earnings, food stamps, and welfare benefits. Mothers were asked to rate their children on

several indicators, including academic achievement, engagement in school, problem behavior, and positive behavior. The relationship between income, school engagement and positive social behavior was in the expected direction but were not statistically significant.

Using data from the National Longitudinal Survey of Youth's Mother and Child Supplement, Dooley & Stewart (2004) examined whether income, or other factors related to the family, were stronger predictors of cognitive outcomes for children over time. They measured cognitive ability using the Peabody Picture Vocabulary Test (PPVT) for children ages 4-6, and the Canadian Achievement Tests (CAT/2). They found that at lower income levels, average income was significantly related to math and reading abilities. The effect of income on cognitive outcomes leveled off at \$60,000 per year. Controlling for other variables, such as receipt of welfare funds, adoption status, number of siblings, and housing quality, reduced but did not eliminate the relationship. They conclude that income has a small but positive effect for low-income children's cognitive outcomes.

Blau (1998) examined the effect of parental income on children's cognitive, social and emotional development, using data from the National Longitudinal Survey of Youth (NLSY). The PIAT Reading and Math, PPVT verbal ability measure, and the Verbal Memory Parts A and B (measuring short-term memory) were used to assess cognitive outcomes, and a behavioral measure was included to gauge child behavior problems. The effect of current income on child cognitive development was in the expected direction, but it was small and not statistically significant. The behavior problem index showed a larger income effect. Linver, Brooks-Gunn and Kohen (2002) examined a sample of 493 White and African American children, ages 3-5. They found a statistically significant relationship between income and children's scores on the Stanford-Binet Intelligence Scale and the Wechsler Preschool and Primary Scale of Intelligence. Every \$10,000 increase in income was associated with about half a point increase on these measures of cognitive ability. However, they also found that a stimulating home environment explained part of this relationship. If raising income did not also improve the stimulation in the home environment, gains would be less. Two of these researchers found similar results in another study on the relationship between income and measures of intellectual achievement (Yeung, Linver, & Brooks-Gunn, 2002).

Economic hardship may have differential effects for children's well-being depending on the persistence of financial loss. Though some families experience extended periods of financial difficulty, others experience temporary loss. Studies have found that persistent financial hardship has a greater effect on child outcomes than intermittent difficulty (Duncan, Brooks-Gunn, & Klebanov, 1994). Another factor that is important to consider is the age of the child. When examining academic indicators of functioning, the effects of low family income are larger for preschool aged children than adolescents. (Ackerman, Brown, & Izard, 2004).

## 2. Does Child Support Have an Impact on Child Well-Being Distinct from Income in General?

Some studies suggest that child support has a distinct impact on children's outcomes, beyond the effect of income in general. While these studies face serious methodological challenges as a result of heterogeneity, they do suggest a distinct impact of child support payments.

## A. Cognitive Measurements

Child support was found to be positively related to children's school achievement in a study by McLanahan, Seltzer, Hanson, and Thomson (1991). Their subjects were 844 mothers of children under 18, in which at least one child had a living nonresident father, who had answered survey questions in the National Survey of Families and Household (NSFH). These mothers were asked "What sort of grades does your child get?". Responses were limited to "mostly A's," "mostly A's and B's," "mostly B's," "mostly B's and C's," etc., and were coded from 0 to 4 to reflect likely GPA. The more child support received, the higher the reported grades. Moreover, child support dollars were associated with larger increases in GPA than dollars from other sources: Each thousand dollars of other income was associated with an increase in GPA of less than 0.0005 points, whereas \$1,000 of child support was associated with increase in GPA of 0.011 points. The difference was statistically significant.

A study by Virginia Knox and Mary Jo Bane used a sample of children in the 1987 Panel Study of Income Dynamics (PSID) who were between ages 2 and 8 in 1968, the first year of the study. They looked at children in families in which their mother was head of the household for at least one year while the children were between 8 and 18. They had family income data, including income sources, for these 11 years, as well as the number of grades the children completed by age 21. They found .1 increase in years of education for each \$1,000 increase in child support, a considerably larger effect than from any other income source. They conclude that child support has a greater positive impact on the educational attainment of children of single mothers than does income from welfare or maternal employment.

Yoshikawa (1999) used a sample from the National Longitudinal Survey of Youth (NLSY) that included children aged 6-8, and their mothers, who were eligible for welfare and who were single parents for at least 1 year during the study. They related the number of years that children received child support payments to their scores on two reading subtests from the Peabody Individual Achievement Test (PIAT), and the PIAT Math measure. Years of child support was significantly associated with the children's reading and math scores. The effects were generally small but consistent. Similar results were found by King (1994), who looked at the relationship of both father visitation, and payment of child support, with scores on both the PIAT Math Assessment and the PIAT Reading Recognition assessment, as well as child self-esteem and scholastic competence in school. Child support payments were positively related to PIAT scores and scholastic achievement, while the mother's overall household income was positively related only to children's math achievement. Again, the effect size was small even though statistically significant.

A meta-analysis by Amato and Gilbreth (1999), of 63 studies of non-resident fathers and child well being, found children's academic success positively related to fathers' payment of child support.

## B. Behavioral and Psycho-Social Measurements

McClanahan et al.(1991) also examined the relationship of child support with school problems, measured by the mother's report that the child had dropped out of school (coded as 1), that the parent had been asked to meet with a teacher or principal because of behavioral problems during the past year (coded as 2), or, that the child had ever been suspended or expelled from school (coded as 3). Additional child support payments were associated with fewer school problems, and the effect size was larger than for income from other sources. A thousand dollars of ordinary income was associated with reductions in school problems by 0.003 among children born to married parents and 0.021 among children born to unmarried parents. An increase of \$1,000 in child support was associated with reductions of 0.053 and 0.144 for children born to married and unmarried parents respectively. However, a study by Antecol and Bedard (2004) found a greater incidence of smoking, sexual activity, and criminal convictions among youth who received child support but rarely saw their biological father, than in the other three groups they observed (youth who often saw their father and received child support; youth who often saw their father, but did not receive child support; and youth who rarely saw their father and did not receive child support.) They suggest two possible explanations for this result: fathers with already deviant youth may be compelled to pay support but less willing to see them, than fathers with less deviant children, or that children whose fathers pay but do not visit see their fathers as particularly uncaring, because it is clear they know where their children are but nonetheless do not see them.

### C. The Heterogeneity Problem

It is axiomatic that correlational data cannot establish causal connections. The difficulty of discerning causal relationships is worse when multiple factors, themselves related to one another, are present, and could plausibly have a causal role. That is the case in most of these studies. The intensity and quality of parental involvement with the child, parental conflict, and socioeconomic circumstances all might plausibly affect a child's adjustment to divorce and single parenthood (Lamb 2002), and are all related to one another. The complexity of the analysis is increased if, as seems the case here, any associations could be bi-directional. For example, not only may increased child support foster visitation, and thereby enhance child adjustment, but adequate contact may also strengthen a nonresident father's sense of involvement, and thereby increase his willingness to make child support payments, which in turn may all affect child well-being. It is therefore difficult to know whether these studies are measuring something other than child support itself. Fathers who may have more education and higher incomes may be more likely to pay child support than other fathers, and their children may be more likely to do well in school. Fathers who pay child support may care more about their children and may be more involved with their children in other unobserved ways (Argys, et al. 1998 at 161). Payments could be correlated with some other unmeasured the family characteristic such as fathers' commitment to the child, mother's determination to make the father pay, or parent's ability to cooperate in raising the child. Therefore, the child support coefficient may be capturing the effects of these unmeasured variables as well as the effects of child support dollars.

Knox and Bane sought to deal with heterogeneity by controlling for the father's education and for whether he paid any support at all. They found that neither variable reduced the effect size

of child support payments or its statistical significance (Knox and Bane at 302). Indeed, they found no effect at all of the father's education on their children's educational attainment, a result at odds with findings in other studies. Argys et. al, controlled for family income and other socioeconomic family-background characteristics, and found that child support receipt still had additional positive effects on children's math (PIAT) and verbal (PPVT) score.

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