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The Government's Role in the Support of Children

Allen M. Parkman*

I. INTRODUCTION

Numerous quality of life measures indicate that modern America has not been kind to its children. Crime by and against juveniles is on the ascend.¹ Test scores are falling² and suicides by teenagers are on the rise.³ Children have replaced the elderly as the primary victims of poverty in the United States.⁴ A primary cause of these changes has been changes in the structure of the family, especially the increase in single-parent households.⁵ One fourth of all children live apart from a parent, and recent estimates indicate that one in every two U.S. children will live apart from one of his or her parents some time before reaching adulthood.

Childhood poverty attracts the most concern. While poverty is a problem for children in two-parent households, it is a bigger problem in single-parent households because absent parents tend to ignore financial responsibilities for their children.⁶ This is because of the fact that less than half of custodial parents were due child support payments.⁷ In many cases, no child support award was made. Even among custodial parents with child support awards, only about half received the full amount to which they were entitled, one quarter received less than what was owed, and one quarter received nothing.⁸ More than half of all children poten-

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1. John J. DiIulio, Jr., *Saving the Children: Crime and Social Policy*, in SOCIAL POLICIES FOR CHILDREN 202-256 (Irwin Garfinkel et al. eds., 1996).

2. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES tbl. 271, at 175 (1995).

3. *Id.*, tbl. 136, at 100.

4. In 1970, 24.6% of people over 65 lived below the poverty level, while 14.9% of children under 18 were in that situation. Their positions were reversed by 1993, when only 12.2% of people over 65 fell below the poverty level, but the percentage of children had grown to 22%. *Id.* tbl. 745, 748, at 480-81.

5. SARA MCLANAHAN AND GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* (1994). Over half of children under 18 in families with a single female head of household were living below the poverty level. U.S. BUREAU OF THE CENSUS, *supra* note 2, tbl. 750, at 483.

6. While 22% of children live in poverty, over 50% of those in single parent households are living in a state of poverty. *Supra* note 2, tbl. 756, at 483.

7. U.S. BUREAU OF THE CENSUS, *WHO RECEIVES CHILD SUPPORT?*, SB/95-16, at 1 (1995).

8. This situation has not changed over the last few decades. U.S. BUREAU OF THE CENSUS, *CHILD SUPPORT AND ALIMONY, 1978*, CURRENT POPULATION REPORTS ser. P-23, no. 112 (1981).

tially eligible for child support receive nothing from their biological fathers.⁹ Conditions are particularly grave for the children of unmarried mothers, because only 30% of these mothers have established paternity and have received a child support award. This situation is not expected to improve, as one half of the next generation is expected to qualify for child support at some time in their lives. As a result, the quality of our child support system is important to the well-being of society, and the government has a central role in determining that quality.

We are at a crossroads. The role of the government in the support of children is a critical public policy issue. A variety of opinions exist. Some argue that the sole responsibility of the government should be to make sure that parents and families fulfill their financial obligations to their children.¹⁰ This conclusion is often based on ethical considerations. Others contend that government programs encourage the wrong people to become parents. These individuals argue that parents who cannot afford their children should put the children up for adoption rather than grabbing for government support. Meanwhile, others advocate a government guaranteed minimum level of financial support for all children.¹¹ These people see the plight of children as similar to the past plight of the elderly that was in part corrected by Social Security. They see government guaranteed child support as an extension of Social Security to the young.

This article addresses the issue of the government's role in child support using an economic framework. Voluntary choices both inside and outside markets generally tend to increase social welfare. We are all familiar with market transactions in which both the buyer and seller feel that they have gained from the transaction. Similar situations exist outside markets.¹² For example, brides and grooms usually exchange their vows with the expectation that marriage will increase their welfare relative to their alternative choice, i.e., remaining single. However, not all voluntary choices increase social welfare. These situations reflect "market failure," which occurs when transactions have substantial effects on third parties, or when either sellers or buyers have market power. A par-

9. U.S. BUREAU OF THE CENSUS, CHILD SUPPORT AND ALIMONY, 1989 ser. P-60, no. 173 (1991).

10. Charles Murray, *The Coming White Underclass*, WALL ST. J., Oct. 29, 1993, at A18.

11. A program that would provide government assured child support is summarized in Irwin Garfinkel, et al., *Findings of the Wisconsin Child Support Reform Project: Introduction and Summary*, in CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN, (Irwin Garfinkel, et al. eds., 1992). It is fairly common in Europe for governments to guarantee a specific level of child support if it is not provided by an absent parent. See Alfred J. Kahn & Sheila B. Kamerman, *Child Support in the United States: The Problem*, in CHILD SUPPORT: FROM COLLECTION TO SOCIAL POLICY 10-19 (Alfred J. Kahn & Sheila B. Kamerman, eds., 1988).

12. GARY S. BECKER, A TREATISE ON THE FAMILY (1991).

ticular concern addressed in this article is externalities, which is a term referring to the positive and negative effects people's choices have on third parties. For example, a well manicured lawn can be a source of positive externalities for neighbors, while an ignored lawn can generate negative externalities. The government plays an active role in influencing externalities. For example, copyright protection for books stimulates positive externalities, while environmental laws deter negative externalities otherwise generated by harmful conduct.

Children are an externality because they are the result of others' decisions that affect third parties. Voluntary sexual relations are assumed to increase the welfare of the participants, regardless of whether or not such relations are expected to result in a pregnancy. Sexual relations that result in a child cause substantial external effects on third parties. Thus, the parents' choice to engage in such relations will have a significant external effect on the child, and, depending on the quality of the parent-child relationship, other members of society may realize significant effects. Positive externalities include an enjoyable life and a child's constructive contributions to society. However, negative externalities may develop if the child has difficulty adjusting to life and participates in counterproductive or criminal acts that result in a destructive impact on social welfare. The government can have a central role in determining whether sexual relations result in positive rather than negative externalities.

Child support refers to more than simply financial support.¹³ Of central importance is the effect of government funding versus parental funding of children on broader aspects of their lives.¹⁴ Increasingly, the government assumes financial responsibility for some children—a role that was traditionally filled by parents and their families. This shift in responsibility affects the incentives for parents to make choices that increase their children and society's welfare. With less financial responsibility for their children, some parents neglect their other parental responsibilities to the detriment of their children and society.

13. The recognition that support goes beyond just financial support has been a source of frustration. While acknowledging that children thrive when they receive emotional and financial support from both parents, the U. S. Commission on Interstate Child Support, based on its legislative mandate, elected to address only financial support. Margaret Campbell Haynes, *Supporting Our Children: A Blueprint for Reform*, 27 FAM. L.Q. 7, 9 (1993).

14. This concern can be illustrated by the difference between the quantity and quality of adults. In his defense of a larger social role in child support, Harry Krause expresses a concern that reproduction rates may fall to levels endangering our economy and the social security system. Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, 24 FAM. L.Q. 1, 27 (1990). Ignored is the quality of the adults produced by publicly funded child support.

Families consisting of adults and their children have traditionally played a critical role in society.¹⁵ Parents perform the important function of preparing their children for life by educating them and providing them with important social values. The role of being a parent extends far beyond just the obligation to provide financial support to children. Changes in the laws governing the financial responsibilities of the parents and the government effect the parents' incentives to assume and perform their traditional role. Economic analysis evaluates these incentives and discusses alternative programs for improving the incentives for parents to act in a manner which improves their children's welfare.

Government child support should focus on children's welfare, recognizing that the central role of adults should be to prepare children for adulthood. Current trends indicate that parents are doing a poor job with this responsibility, thus increasing the need for the government to reevaluate the incentives given to parents. While the quality of life for children may be deteriorating in two-parent households,¹⁶ single-parent households represent a much larger problem. An obvious difficulty for many of these single-parent households is a lack of adequate income. Children in single-parent households will benefit substantially if the government identifies both of the children's parents and forces them to assume responsibility for their children's support. The parents' obligation to provide financial support for their children should be predictable. Governments have a central role in establishing guidelines and assuring that the funds are paid, for example, by withholding income when necessary.

A concern for children's welfare, primarily addressed by increasing the money and services available to custodial parents, shifts the public policy focus away from the fundamental problem facing children today: unprepared and irresponsible parents. Now more than ever, successful parenting requires much more than just the desire for or acceptance of a child. The next section presents a brief history of the government's role in the support of children. Later this article will discuss the incentives these programs create for parents and government officials. This article concludes by considering alternatives to government financial support that have the potential for increasing the welfare of children.

15. MARK HUTTER, *THE FAMILY EXPERIENCE* 5 (1991).

16. No-fault divorce has created incentives for parents to focus more closely on their own self interest rather than that of their families. See ALLEN M. PARKMAN, *NO-FAULT DIVORCE: WHAT WENT WRONG?* 99 (1992).

II. BACKGROUND

The role of the government in the financial support of children has grown dramatically during this century.¹⁷ Parents and their families traditionally were the primary sources of support for children. However, this situation changed early in this century, when states enacted mothers' pension laws to provide financial support for children. At the time of the Great Depression, only two states did not have this type of legislation. Some states permitted payments to mothers who were not widows, but, as of 1931, more than 80% of those aided were widows. The Federal Government enacted similar legislation as part of the Social Security Act of 1935.¹⁸ The Aid to Dependent Children program, patterned after the mothers' pension programs, expanded coverage to include divorced, separated and never-married mothers as well as the children of widows.¹⁹

Coverage under the federal program was expanded to include custodial parents, and, in 1950, the program's name was changed to Aid to Families with Dependent Children (AFDC). In the 1960s, the Federal Government expanded programs to benefit children to include food stamps and Medicaid, while also expanding the benefits from and eligibility for AFDC.²⁰

Still, these programs were not intended to replace the financial support of living parents, especially fathers. Concerns about living parents not participating in their children's support caused Congress in 1974 to add Title IV-D to the Social Security Act. This legislation established the federal child support enforcement system by creating an Office of Child Support Enforcement (OCSE) within the U. S. Department of Health, Education and Welfare (HEW).²¹ It required all states to establish state offices of child support enforcement, and provided federal reimbursement for three-quarters of each state's enforcement costs. The initial results from this initiative were not encouraging. A 1981 study by the Census Bureau revealed that less than one half of the nonresident parents paid any child support.²² Only six out of ten mothers had child support awards, and only one out of ten never-married women had child support

17. For a summary of the historical development of welfare programs, see IRWIN GARFINKEL & SARA S. McLANAHAN, *SINGLE MOTHERS AND THEIR CHILDREN* 87-128 (1986).

18. *Id.*

19. While Aid for Dependent Children was intended to meet the needs of a child who had lost a parent, it quickly shifted toward being a program for supporting children who faced financial difficulties for other reasons. By 1940, only 42% of the participants had lost a parent and that percentage fell to less than 1% by 1982. Lowell H. Lima & Robert C. Harris, *The Child Support Enforcement Program in the United States*, in *CHILD SUPPORT* 21 (Alfred J. Kahn & Sheila B. Kamerman, eds., 1988).

20. *Id.* at 24.

21. *Id.* at 33.

22. U.S. BUREAU OF THE CENSUS, *CHILD SUPPORT AND ALIMONY: 1978*, P-23(112) (1981).

awards. Among mothers with awards, only about half received the full amount to which they were entitled and over one quarter received nothing.

Recognizing the deficiencies in the existing process, the Federal Government enacted additional legislation. The Child Support Enforcement Amendments of 1984 required states to adopt numeric child support guidelines that courts could use, at their discretion, to determine child support obligations. The Act also bound states to withhold child support obligations from wages and other income of nonresident parents who become one month delinquent in their child support payments.²³ States were encouraged to develop expedited processes to establish paternity. Expanding upon the 1984 legislation, The Family Support Act of 1988 required states to establish procedures to determine paternity, to create guidelines for setting initial awards, to update awards on a regular basis, and to automatically withhold child support obligations from the paychecks of nonresident parents.²⁴

While most legislation was aimed at increasing the financial support from parents, other legislation worked for government guaranteed child support. Researchers at the University of Wisconsin developed a proposal for a child support assurance system that would add a government guarantee of a minimum level of child support to the requirements of the 1988 legislation. The idea of government-guaranteed child support received additional recognition in 1991, when the National Commission on Children recommended that the federal government, in partnership with several states, undertake a demonstration project to design and test a government insured child support plan. Recently, President Clinton proposed the Work and Responsibility Act of 1994, which incorporates a child support system for the twenty-first century, by including provisions that establish awards in every case, ensure fair award levels, and collect awards that are owed. Two other proposals in the Act guarantee some level of child support by testing the concept of child support assurance by enhancing parental responsibility and opportunity for nonresident parents to contribute to the support to their children.

The primary role of the government should be to increase social welfare. At first glance, it would appear that the welfare of children living in poverty would be best served by transferring income to them if not from their non-residential parents, then from the government through their custodial parents. The welfare of children living in poverty would be best served by transferring income to the children, either from their non-resident parents, or from the government through their custodial parents.

23. Lima & Harris, *supra* note 19, at 35.

24. Lima & Harris, *supra* note 19.

However, further reflection indicates that the incentives created by government financial transfers to custodial parents may result in long-term negative externalities to children and society. Ideally, children will have parents who are capable and committed to preparing them for life. Unfortunately, an increased role for the government in providing financial support to children has perverse incentives for parents and government officials that reduce the likelihood that children will grow up in that type of environment.

III. INCENTIVES FOR PARENTS

The government's assumption of the financial role traditionally held by parents and families has encouraged some unprepared and irresponsible people to become parents.²⁵ Often these parents are not willing to accept the cost of parenthood associated with a long-term commitment to their spouses and the sacrifices necessary to prepare their children for life. If all children had a right to child support—if not from their parents, then from the government—that support system would assume much of the role currently held by welfare programs, such as AFDC, and the problems that are increasingly associated with them.²⁶ Paramount among the problems associated with welfare programs are the incentives for unprepared and irresponsible parents to have children and the disincentives for parents to establish a two-parent household. Many authors agree that living in a two-parent household is more desirable for a child than a single-parent household.²⁷

25. It is noteworthy that when people consider the rationale for parental child support, they include situations such as the ongoing family, after divorce, and when the absent parent never participated in the family. Ignored is the incentives that a predictable child support obligation would have for certain people avoiding becoming parents in the first place. See Krause, *supra* note 14, at 4. Ignoring incentives in the current system that permit men to father children for which they are unwilling to assume any responsibility, and for women to mother children often to the extreme detriment of the children, Krause notes that many fathers simply do not have sufficient income to support their children. It would be unfair to expect such fathers to foot the bill for their children; thus, these children have a claim on society, along with their claim on the parents. *Id.* at 14. Others have expressed a deeper concern for the "problems" of the fathers rather than the "problems" of the children. Roger J. R. Levesque, *Targeting "Deadbeat" Dads: The Problem with the Direction of Welfare Reform*, 15 *HAMLIN J. PUB. L. & POL'Y* 1 (1994).

26. While AFDC payments are often identified as the only source of support for unmarried, poor mothers, the package of benefits can be much larger including food stamps, Medicaid, public housing, nutrition assistance, and utility assistance. The incentives created by these programs are discussed in CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980* (1984).

27. McLANAHAN & SANDEFUR, *supra* note 5. Not only do single parents do a poor job of preparing children for becoming adults, they often are the source of child abuse. Richard J. Gelles & Murray A. Straus, *Profiling Violent Families*, in *INTIMATE VIOLENCE: THE DEFINITIVE STUDY OF THE CASES AND CONSEQUENCES OF ABUSE IN THE AMERICAN FAMILY 77-97* (Richard J. Gelles & Murray A. Straus, eds., 1988). Note that the prototypical abusive parent would be a single parent under thirty, married for less than ten years, had his or her first child before the age of eighteen, and was unemployed or employed part-time.

Government support programs that focus on the financial needs of children tend to ignore the traditional role of parents.²⁸ Parenting goes far beyond just putting food on the table; parenting also includes nurturing children. Parents, further, play an important role in preparing their children for life by educating them and teaching them important social values. While the educational role has been assumed to some extent by the government, parents still have an important role in education and the central function of establishing critical social values.²⁹ The decline in the family is associated with a decrease in the recognition of these critical social values by the current generation.

A. *The Costs and Benefits of Parenthood*

While the creation and nurturing roles of parents are instinctive, costs and benefits influence the choices made in conjunction with those roles.³⁰ While successful parenting is costly, requiring substantial investments of time, energy and money, it also offers the potential for being the most beneficial and rewarding experience of a person's life. Social welfare is increased by activities, such as good parenting, whose benefits exceed their costs. Parents who make substantial investments in their children increase the likelihood that their children will turn into productive members of society, which benefits society and families. Alternatively, when people produce children who are disruptive in their youth and antisocial as adults, the costs may exceed the benefits. Society would be better off if these children had been encouraged to make different choices during their lives.

Traditionally, parents had incentives to avoid raising antisocial and disruptive and antisocial children because the best interests of the parents coincided with those of society. Most costs and benefits of children were internalized in the family because parents could anticipate a lifelong relationship with their children. This familial relationship was especially true in agrarian societies in which geographic mobility was limited. The threat

28. While proponents of CSAS acknowledge that economic theory suggests that increasing the income of families headed by single women will enlarge the women and children living in such families, they go on to say that "increasing the incomes of families headed by single women will reduce some if not all of their present problems, it might also reduce the negative consequences associated with growing up in such a family." GARFINKEL & MCLANAHAN, *supra* note 17, at 3.

29. According to an Oregon longitudinal study, the single best predictor of adolescent criminal behavior is a long established pattern of early antisocial behavior in school associated with a dysfunctional family situation. Hill Walker & Robert Sylwester, *Where is School Along the Path to Prison?*, EDUCATIONAL LEADERSHIP, Sept. 1991, at 14-16.

30. Allen M. Parkman, *The Deterioration in the Family: A Law and Economics Perspective*, in THE INDIVIDUAL, THE FAMILY AND SOCIAL GOOD: PERSONAL FULFILLMENT IN TIMES OF CHANGE 21-52 (Gary Melton, ed., 1995).

of poor parenting imposing a substantial cost on parents encouraged parents to devote substantial time, money and effort to raising their children. In addition, the children were the future source of their parents' support in their old age, and poor parenting could eliminate prospective support. As a result of these incentives for responsible parenting, families and society were better off.

Responsible parenting also stemmed from viewing parenting as a privilege, with significant entry barriers, rather than a right. Men and Women were usually expected to marry because premarital sex could create substantial problems for society and, therefore, strong sanctions were imposed to discourage it. A couple customarily had to wait until they had accumulated ample resources to establish their own household before they were married. Limited opportunities for divorce encouraged adults to devote substantial time and effort to choosing a mate and making their marriage a success. The requirement of minimum resources before marriage and the stability provided by the long duration of the parents' marriage generally worked to the advantage of the couple's children.

This pattern of cohesive, lasting parent-child relationships has changed dramatically as some parents now expect a much weaker attachment to their children. In part, this weakening is due to greater geographic mobility, but it is also due to society accepting responsibilities and costs that used to belong to the parents. With fewer responsibilities, parents limit their involvement in their children's lives. Before AFDC, parents, especially fathers, or their families were expected to support their children. If the father was unable or unwilling to assume that role, the burden fell on the mother or her family—a role that they often did not assume happily—making it difficult for a father to avoid his responsibilities. Today, society assumes responsibility for the financial obligations of some fathers, and also assumes a custodial responsibility for children. When parents do a poor job raising their child, it is now common for the child to be sent to a publicly funded institution. Consequently, between 1950 and 1990, the number of children in juvenile institutions rose from 37,000 to 104,000.³¹ Further, the dramatic increase in the homeless population is another reflection of weaker links between parents and their children.³²

31. U. S. BUREAU OF THE CENSUS, *HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970* at 419 (1976) and U. S. BUREAU OF THE CENSUS, *STATISTIC ABSTRACT OF THE UNITED STATES*, 1994 at 69 (1994).

32. Two parent households gave children access not only to their parents, but also to a network of aunts, uncles and grandparents. This network is usually smaller and weaker when the child grows up in a single-parent household. CHRISTOPHER JENCKS, *THE HOMELESS* 80 (1994).

Because of the decline in the parents' presence in their children's lives, the benefits and, more importantly, the costs of children have increasingly fallen on external parties. The external benefits consist of social interactions and increased productivity, while the external costs include increased taxes for education and correcting or disciplining antisocial behavior such as crime. Many parents associate fewer costs with poor parenting, and fewer benefits from expending substantial efforts to be good parents.

The most obvious of these parents are those who do not participate in the rearing of their children, especially fathers. Between 1970 and 1994, the percentage of American children living in mother-only families climbed from 12% to 27%.³³ According to the Census Bureau data, 19 million children were living in families with no father present in 1994.³⁴ Moreover, fatherless families are often in neighborhoods where more than one half of all families with children are headed by a woman with no father present.³⁵ In some situations, the fathers have no contact with their children at all. Thirty percent of all children born in 1992 were born to unmarried women,³⁶ though in some cases, the children were born to cohabitating parents. In 1992, there were 354,000 births to unmarried women aged fifteen to nineteen compared with 190,000 births to that group in 1970.³⁷ If one half of today's children are expected to spend some of their childhood in a single-parent home, the ties between the parents and their children later in life may be weaker than in the past. In many cases, therefore, parents will assume less of a burden for poor parenting than they did in the past.

As some shift the cost of poor parenting to others, the government's role in forcing parents to assume financial responsibility for their children is highly laudable and necessary for increasing social welfare. Currently, some parents, especially fathers, escape or limit their parental costs.³⁸ Yet, social welfare would be enhanced if parents were confronted with a substantial share of parental costs, which might encourage them to have children only when that choice will benefit the children, their parents and society. Some people, when confronted with these parental costs, might decide that they would prefer not to become a parent. They can only be confronted with these costs when they know that paternity

33. U.S. BUREAU OF THE CENSUS, *supra* note 2, tbl. 71, at 61.

34. *Id.*, tbl. 78, at 65.

35. ANNIE E. CASEY FOUNDATION, KIDS COUNT DATA BOOK 5 (1995).

36. U.S. BUREAU OF THE CENSUS, *supra* note 2, tbl. 88, at 73.

37. *Id.*, tbl. 94, at 77.

38. At least one author sees a contradiction between increased social acceptance of consensual non-marital sex and the strict enforcement of a civil liability on the parents for their sometimes accidental children. See KRAUSE, *supra* note 14, at 20.

will be diligently pursued, followed by predictable and enforceable child support obligations. Meanwhile, government sponsored child support subsidizes parental costs, thus, encouraging the wrong people to become parents.

B. Long-term Commitment

Single-parent households, a prevalent cause of poverty affecting children, result from the lack of long-term commitment between prospective parents. The problems facing children are particularly acute when their parents have not made a long-term commitment to each other, resulting in single-parent households. While this problem is particularly acute if the parents never lived together, it is also a problem when cohabitating or married couples separate. Two social science commentators, Sara McLanahan and Gary Sandefur, stated the following:

Children who grow up in a household with only one biological parent are worse off, on average, than children who grow up in a household with both of their biological parents, regardless of the parents' race or educational background, regardless of whether the parents are married when the child is born, and regardless of whether the resident parent remarries.³⁹

Evidence indicates that single-parent households detrimentally affect school performance. For example, white children raised in a single-parent household are about 5% less likely to finish high school, while black children are 13% less likely.⁴⁰

The mean age at first birth for women receiving AFDC in 1993 was 20.3 years.⁴¹ Teenage pregnancy and motherhood are associated with lower educational attainment and higher fertility for the mother and the children, both of which limit their opportunities to develop skills and relevant experience, thereby reducing their earning capacities.⁴² In addition to low earning capacities, single parents are less able to instill important social values in their children. Almost two-thirds of rapists, three-quarters of adolescent murderers, and the same percentage of long term prison inmates are young males who grew up in fatherless homes.⁴³ Children living in single-parent families headed by never-married young women

39. McLANAHAN & SANDEFUR, *supra* note 5, at 1.

40. Sara McLanahan, *Family Structure and the Reproduction of Poverty*, 90 AM. J. SOC. 873-901 (1985).

41. U.S. BUREAU OF THE CENSUS, *MOTHERS WHO RECEIVE AFDC PAYMENTS SB/95-2* (1995).

42. KRISTIN A. MOORE AND MARTHA R. BURT, *PRIVATE CRISIS, PUBLIC COSTS: POLICY PERSPECTIVES ON TEENAGE CHILDBEARING* (1982).

43. Irving Kristol, *Life Without Father*, WALL ST. J., Nov. 3, 1994, at A13.

have far higher delinquency rates than children who grow up in two-parent families.⁴⁴

C. *Parents Below the Poverty Level*

As noted above, children benefit from parents who are committed to each other and who are willing and able to incur substantial parenting costs, a term which embraces more than just financial expenses. If successful parenting requires a substantial commitment, it seems reasonable that being financially capable of supporting the child is fundamental. A myriad of factors cause poverty, some of which are beyond the individual's control. Despite the considerable financial burden associated with child rearing, many low income people willingly accept the burden for the sake of having a family. However, some people parent children that they are unable or unwilling to support and that often has to be viewed as an irresponsible act.⁴⁵ This disfavor is due to a lack of money and, further, serves as a reflection of a fundamental lack of concern for the child's welfare. Interestingly, public funding encourages the irresponsible to have children. People who are unwilling or unable to fulfill the financial obligations associated with parenthood often are less likely to fulfill other parental obligations, such as educating and socializing their children.⁴⁶

Welfare programs have reduced the financial cost of children for some parents, thereby, increasing the quantity of children demanded. Single mothers have more easily qualified for aid, so economic analysis concludes that the growth in those programs has contributed to the increase in the ratio of illegitimate to legitimate birth.⁴⁷ For example, the number

44. JAMES Q. WILSON & JOAN PETERSILIA, *CRIME* (1995).

45. The rise in births to unmarried women is increasing at the same time that birthrates overall are decreasing. While accidents do occur, this data reflects the ability of adults to exercise some control over pregnancies. The birthrate per thousand unmarried women has increased from 26 in 1970 to 45 in 1992. See U.S. BUREAU OF THE CENSUS, *supra* note 2, tbl. 94, at 77. The birthrate per thousand women aged 15-44 has generally fallen during this century from 127 in 1910 to 69 in 1992. It dropped dramatically during the Great Depression and then recovered during the post World War II baby boom. This decline is particularly noticeable since 1960, when the birthrate was 118 per thousand women aged 15-44. U.S. BUREAU OF THE CENSUS, *HISTORICAL STATISTICS OF THE UNITED STATES* ser. Be-10, at 49 (1976) and U.S. BUREAU OF THE CENSUS, *supra* note 2, tbl. 89, at 74.

46. Robert Haveman & Barbara Wolfe, *The Determinants of Children's Attainments: A Review of Methods and Findings*, 33 J. ECON. LITERATURE 1829-1878 (1995), presents a summary of the research on the factors that influence children's attainments later in life. They note that growing up in a poor family appears to have a particularly negative effect on later work and earnings. *Id.* at 1864. Recognizing these problems, it has been advocated that the government provide support while increasing the high cost and ineffective process of having social workers scrutinize the quality of the children's home life. Children could be removed from homes that had been bureaucratically determined to be inadequate. Krause, *supra* note 14, at 29.

47. BECKER, *supra* note 12, at 139.

of recipients in the AFDC program rose from 9.7 million in 1970 to 13.7 million in 1992.⁴⁸

While the value of AFDC payments adjusted for inflation have declined since 1970, academic literature concludes that AFDC and the other welfare programs have created incentives for unmarried women to have children.⁴⁹ While early research on welfare programs, especially AFDC, produced mixed results, current research associates these programs with the increase in illegitimacy rates and the poverty of unmarried mothers and their children.⁵⁰ Others have argued that even though inflation adjusted AFDC payments fell after 1970, the large increases in those payments during the 1960s encouraged unmarried women to have children; thus, in the 1960s, many of the social restraints on illegitimacy eroded as out-of-wedlock births became more common.⁵¹ Although early research did not establish a statistically significant relationship between AFDC payments and the number of unmarried mothers, the logical assertion is that unmarried mothers generally could not have established independent households without the substantial increase in welfare programs, eligibility and payments that have occurred since the 1960s.

Welfare fosters undesirable results. First, it permits women with poor employment opportunities to establish an independent household usually under poverty conditions. Second, it induces women with employable skills to become mothers who often forsake employment and, thereby, join the ranks of the poor.⁵² Their fall below the poverty level is based on the relative attraction of low paying jobs and motherhood. Low paying jobs are unattractive, while caring for one's child is far more appealing.

48. U.S. BUREAU OF THE CENSUS, *supra* note 2 tbl. 589, at 377.

49. The welfare programs available to unmarried, poor mothers can include AFDC, food stamps, Medicaid, public housing, nutrition assistance, and utility assistance. If someone qualified for all of these programs, their value would be equivalent to pretax earnings of \$27,760 in Hawaii to \$13,059 in Mississippi, or if they only qualified for AFDC, food stamps and Medicaid, it would be equivalent to pretax earnings of \$21,300 in Alaska to \$6,100 in Mississippi. Michael Tanner, et al., *The Work vs. Welfare Tradeoff*, POL'Y ANALYSIS, Sept. 19, 1995, at 240.

50. Nearly all of the earlier investigations used cross-sectional state or SMSA data. It is difficult to establish causation with contemporaneous cross-sectional data and conventional regression techniques. To avoid these problems, more recent studies such as Calmon R. Winegarden, *AFDC and Illegitimacy Ratios: A Vector-Autoregressive Model*, 20 APPLIED ECONOMICS 1589-1601 (1988) and Robert D. Plotnick, *Welfare and Out-of-Wedlock Childbearing: Evidence from the 1980s*, 52 J. MARRIAGE FAM. 735-746 (1990) have used time series data. Other researchers have established a substantial and consistent relationship between the size of public assistance payments and illegitimacy by using a more closely focused sample of young women in metropolitan areas. See Mark A. Fossett & K. Jill Kiecolt, *Mate Availability and Family Structure among African Americans in U. S. Metropolitan Areas*, 55 J. MARRIAGE FAM. 288-302 (1993).

51. Charles Murray, *Does Welfare Bring More Babies?*, THE PUBLIC INTEREST, Spring 1994, at 17-30.

52. Mwangi S. Kimenyi and John Mukum Mbaku, *Female Headship, Feminization of Poverty and Welfare*, 62 S. ECON. J. 44-52 (1995).

Though income from welfare may be lower than job wages, motherhood may seem more attractive than employment in a low-paying, monotonous job; this dichotomy generally results in a household, which would not otherwise be classified as poor, joining the ranks of the poor.

Welfare affects fathers too. To the extent that welfare discourages the presence of the father by providing an alternative source of support for a mother, it encourages the father to limit his parental responsibilities—a choice that some fathers find attractive. Despite the recent surge of women in the workforce, men are generally expected to be the primary provider. A 1990 poll found that 77% of young women felt a well-paying job was an essential requirement for a husband.⁵³ Given society's expectations, it is difficult for a man to participate in a family for which he is not the primary source of support. About 24% of the children living with a divorced mother and about 33% of the children living with a never-married or remarried mother had no contact with their fathers during the past year.⁵⁴

Parenthood has shifted from being a privilege to a right, with the government assuming the financial role traditionally assumed by fathers. With AFDC, the government required, and then encouraged, women-headed households and the absence of the father often to the detriment of the children. While much of the thrust of social policy and practice has been to dismiss absent fathers, there is a growing body of research emphasizing the important role a father's involvement can play in the positive cognitive, emotional, and social development of his sons and daughters.⁵⁵ Research shows that children born to single teenage mothers are more likely to drop out of school, to give birth out of wedlock, to divorce or separate, and to be dependent on welfare.⁵⁶ A recent report indicates that most young men in the juvenile justice system spent at least part of their childhood in a single parent household.⁵⁷ The process has its own momentum as the high drop out rate of one generation leads to poor employment opportunities and absent fathers in the next generation.⁵⁸

Among the poor, government financial support for children expands the incentives for people who have not met the most fundamental financial requirement for parenthood to become parents. If, after government financial support, all children had equally qualified and motivated par-

53. *Women the Road Ahead*, TIME, Fall 1990, at 14.

54. MCLANAHAN & SANDEFUR, *supra* note 5, at 96.

55. Nicholas Davidson, *Life Without Father: America's Greatest Social Catastrophe*, 51 POL'Y REV. 40-44 (1990).

56. GARFINKEL & MCLANAHAN, *supra* note 17, at 1-2.

57. ANNIE E. CASSEY FOUNDATION, *supra* note 30, at 13.

58. Even after income is taken into account, children who grow up in mother-only households are still far more likely to become single parents themselves than are people who grow up in two-parent households. GARFINKEL & MCLANAHAN, *supra* note 17, at 12.

ents, we would have to judge the government support a success. Unfortunately, this does not appear to be the case. Government support appears to encourage less qualified and motivated people to become parents.

D. *Parents Above the Poverty Level*

Even among parents above the poverty level, government financial support in the form of assured child support can have perverse effects. A woman's search for a reliable husband is often masked by romantic notions of marriage.⁵⁹ Marriage can sometimes be a precarious institution for women, since marrying an irresponsible man can impose substantial costs on them during marriage and at divorce, especially if there are children. These costs are often financial, but can also result in a reduction in their overall quality of life. Parenting can be much more difficult with only one parent and, if a divorced woman wants to remarry, custody of any children can be a major impediment to an active social life.

Knowing the costs of a poor choice encourages women to critically assess potential mates.⁶⁰ As marriage has become a more vulnerable institution, in part because of the enacting of no-fault divorce, adults have been delaying marriage. The fault divorce grounds of adultery, cruelty and desertion provided some protection for spouses who worked at home. That protection was dramatically reduced by the introduction of no-fault divorce, which permits unilateral divorce subject to only limited compensation.⁶¹ While most women are not familiar with the change in the grounds for divorce, they are familiar with the disaster that faces many middle-aged mothers who are divorced. As women have approached marriage with more caution, the average age at first marriage for women has increased from 20.6 in 1970 to 23.7 in 1988.⁶²

While potentially costly, children are also a source of great joy. Normally women are reluctant to marry and mother the children of clearly irresponsible men. However, knowing that some government financial support is available, some women may screen potential mates less severely and put less effort into making the relationship work. This process is analogous to what the insurance industry calls "moral hazard." For example, people with insurance are encouraged to increase the activities for which the insurance is provided.⁶³ Although the proponents of govern

59. BECKER, *supra* note 12, at 108-134.

60. It has also encouraged married women to maintain marketable skills during marriage. See Allen M. Parkman, *Unilateral Divorce and the Labor-Force Participation Rates of Married Women, Revisited*, 82 AM. ECON. REV. 671-678 (1992).

61. LENORE WEITZMAN, *THE DIVORCE REVOLUTION* (1985); and Parkman, *supra* note 16.

62. U.S. BUREAU OF THE CENSUS, *supra* note 2, tbl. 145, at 103.

63. Peter Kerr, *Blatant Fraud Pushing Up the Cost of Car Insurances*, N.Y. TIMES, Feb. 6, 1992, at A3 (notes auto insurance encourages people to dump their cars into rivers and then

ment assured child support have described it as similar to the survivor benefits contained in social security, the impact would be very different. While "moral hazard" can be a problem with any type of insurance, the opportunities for abuse under child support assurance are more numerous than under the survivor benefits in Social Security. The later program requires the death of the insured worker as a requirement for government support, which is an alternative that is clearly not very attractive even with the insurance.

IV. INCENTIVES FOR GOVERNMENT OFFICIALS

If government officials had the capacity and motivation to compel parents to assume financial responsibility for their children, the incentives for irresponsible parental behavior caused by governmental financial support for children would be limited. However, it is unlikely that the actions of government officials will be effective. Traditionally, child support enforcement was not a public issue as the dominant social work doctrine proclaimed that the father should not be confronted with his support obligation because enforcement might inconvenience the mother.⁶⁴ The child support enforcement programs enacted to date have produced poor results. A program consisting of paternity identification, child support guidelines, and withholding would place a much larger administrative burden on governments, especially the Federal Government. A cornerstone of a government child support program must be the identification of non-resident parents followed by the requirement that they contribute to their children's support. A review of past performance and future incentives suggest that the proponents of a limited role for government guaranteed child support have been overly optimistic about the effectiveness of government officials in this process.

Although the federal government has been involved in child support enforcement since 1975, its record is not impressive. Using 1983 data, Garfinkel and McLanahan estimated that only about 40% of absent white fathers and 19% of absent black fathers pay child support; among those who pay, the average amount received was \$3,129 for white mothers and \$1,698 for black mothers. Placing these figures in perspective, these payments accounted for about 10% of the income of single white mothers and for about 3.5% of the income of black mothers.⁶⁵

"Despite a decade and a half of child support reform, by 1990 some indicators suggested that there had been little more progress."⁶⁶ Of the

file stolen car claims).

64. Krause, *supra* note 14, at 4.

65. GARFINKEL & MCLANAHAN, *supra* note 17, at 24.

66. Irwin Garfinkel, et al., *Child Support and Child Well-Being: What Have We Learned?*,

11.5 million custodial parents in 1991, only 54% had obtained child support awards.⁶⁷ Custodial mothers received an annual average of \$3,011 in child support payments, but only 25% of mothers with awards did not receive any payments, and another 24% received only partial payments.⁶⁸

There are vast differences across the states in the extent to which the reforms are being implemented. For example, the paternity establishment rate for children born outside of marriage ranges from a low of 5.5% in Arizona to a high of 67% in Georgia.⁶⁹ An analysis of the paternity adjudication process in Wisconsin in 1990 demonstrated a range of results across counties.⁷⁰ Three counties were investigated with substantially higher adjudication rates in smaller counties. In the largest county, Milwaukee County, only 42% of cases were adjudicated and sanctions were rare in part because a staff of 104 was responsible for 77,776 cases.⁷¹ Even though the federal government has been willing to pay 90% of the state's cost to automate their child support record-keeping, most states have yet to automate. During the 1980s, the likelihood of a custodial mother's obtaining an award and receiving full payment did not change.⁷² A recent Urban Institute study showed that potential child support collections amount to as much as \$46 billion in 1995 dollars.⁷³ Yet only \$15 billion in awards are currently in place and only \$10 billion is paid, leaving a collections gap of approximately \$36 billion. Overall, average awards and payments declined by 25% in real terms between 1978 and 1985, although some of the change can be explained by a change in the composition of the parents.

As late as December 1994, the General Accounting Office (GAO) pointed out that management weaknesses were keeping the Office of Child Support Enforcement (OCSE) from effectively leading the program and the states, judging how well the program is working, and setting effective policies.⁷⁴ Despite twenty years of required performance reporting, OCSE has not developed universally understood data definitions, and

in CHILD SUPPORT AND CHILD WELL-BEING (Irwin Garfinkel, et al. eds., 1994)

67. U.S. BUREAU OF THE CENSUS, *supra* note 2, tbl. 616, at 391.

68. *Id.*

69. McLANAHAN & SANDEFUR, *supra* note 5, at 148.

70. Sara S. McLanahan, et al., *Paternity Establishment in AFDC Cases: Three Wisconsin Counties*, in CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN, *supra* note 11, at 137.

71. *Id.* at 146.

72. U.S. GENERAL ACCOUNTING OFFICE, CHILD SUPPORT ASSURANCE: EFFECT OF APPLYING STATE GUIDELINES TO DETERMINE FATHERS' PAYMENTS GAO/HRD-93-26, 2 (1993).

73. Irwin Garfinkel & Donald T. Oellerich, *Noncustodial Fathers' Ability to Pay Child Support*, in CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN, *supra* note 11, at 73.

74. U.S. GENERAL ACCOUNTING OFFICE, CHILD SUPPORT ENFORCEMENT: FAMILIES COULD BENEFIT FROM STRONGER ENFORCEMENT PROGRAM GAO/HEHS-95-24, 3 (1994).

states collected data in ways that make aggregation and comparison impractical. Therefore, OCSE was in no position to know how the national program was actually performing. By the early 1990s, OCSE's monitoring role had come into greater prominence with more than half of the OCSE staff devoted to compliance audits. State program staffs reported to the GAO that the audits helped them gain state legislative support, but the audits were too detailed and were too untimely to be useful management tools for them, with audit reports sometimes issued two years after the period audited.

A. *Who's Fault?*

A common conclusion when a project fails is that it is the fault of the underlying legislation rather than the administrator of the program. The solution is often new legislation. The incentives facing government officials who generally find it difficult to make burdensome decisions are frequently ignored; forcing parents to confront their financial responsibilities to their children certainly can be burdensome.⁷⁵ Divorced parents usually support two households rather than one, so it is no surprise that their finances are strained. Absent fathers are often unemployed. Therefore, many non-custodial fathers have a legitimate claim to hardship. It is easier for officials to ignore the delinquent father and shift support to AFDC or any other social program that is available than to force the parents to live up to their obligations. If public programs become more generous, relative to the resources of the fathers, the choice will become even more obvious for officials to provide public funding. This outcome is also influenced by the high cost of collecting from delinquent parents. In 1994, it cost the Federal government \$1.2 billion to collect \$7.3 billion in child support.⁷⁶ The child support collected was probably the easiest to

75. While the record of states' collecting child support is poor, some states are using innovative techniques. States such as Nebraska and Iowa have begun building electronic funds transfer networks to collect payments. Ellen Messmer, *Child Support Law Prompts States to Build EFT Networks*, NETWORK WORLD, Feb. 21, 1994, at 14. In Massachusetts, child support collection was shifted from the welfare agency to the Department of Revenue (DOR). In two years the state has boosted its child support and alimony compliance rate from 59% to 78%. The DOR has a better database, but its employees are probably a lot less sympathetic to delinquent fathers. Alan R. Earls, *Dialing For Deadbeats*, COMPUTERWORLD, June 27, 1994, at 129. In contrast to the lack of incentives facing government officials, private businesses with a profit motive have a strong incentive to collect from "deadbeat" fathers. For example, companies like Child Support Services charge an application fee of \$35 and a 25% contingency fee based on what they collect. Using the classic techniques of the bill-collection trade, Child Support Services locates about 85% of its targets. They are particularly effective because the 1977 Fair Debt Collection Practice Act restrictions do not apply to court ordered child support obligations. Susan Greco, *The Collectors*, INC., Dec. 1992, at 148-157.

76. U.S. GENERAL ACCOUNTING OFFICE, CHILD SUPPORT ENFORCEMENT: OPPORTUNITIES TO REDUCE FEDERAL AND STATE COSTS GAO/T-HEHS-95-181, 9-10 (1995).

collect, so the return on additional collection efforts would be expected to be even less productive.

The problems associated with government officials identifying and collecting from non-resident parents is compounded by the potential lack of cooperation from custodial parents who often are looking for a way to avoid imposing a cost on the non-custodial parents. If the parents still have a relationship, demands for child support tend to strain that relationship and reduce their overall resources.⁷⁷ Alternatively, the parents may not have a harmonious relationship, and the custodial parent may not want to be forced to have an ongoing relationship with the non-custodial parent or she may fear retaliation if child support is imposed on that parent. Therefore, even if support can be conditioned on cooperation by the custodial parent that cooperation may be limited in many cases. Only if the custodial parent wants to impose a cost on the non-custodial parent, or there is no other source of funds, will the custodial parent have an incentive to cooperate with the process. Noting the reluctance of the custodial parent, the bureaucrat will be even more inclined to take the easy way out by reporting that a diligent effort has been made to identify and collect from the non-custodial parent, thereby, qualifying the family for government financial support.

V. CONCLUSION

While the government's activities to identify both parents and force them to provide financial support for their children are laudable and necessary, government financial support can work to the detriment of those programs while encouraging additional children by less reliable parents and marriages by less responsible adults. Government financial support for children has a fundamental appeal by directing money to deserving people. It is an easy response, especially if the perverse incentives created are ignored. As with welfare programs that encourage unmarried mothers to have children, when the perverse incentives created by the program are recognized, it is questionable whether the benefits of government child support programs exceed the costs.

Harder and certainly less appealing programs may ultimately be better for society. The preferred government programs to support children would work to encourage prepared and responsible couples to have children or to place children in homes with those characteristics. Some people who have not made a long term commitment to each other and have not demonstrated the capacity to make a financial commitment to

77. Sara S. McLanahan, et al., *Child Support Enforcement and Child Well-Being: Greater Security or Greater Conflict?*, in *CHILD SUPPORT AND CHILD WELL-BEING*, *supra* note 61, at 239.

their children are having children. Their choices can result in negative externalities. Current policies condone and to some extent encourage this behavior. Shifting from parenthood being a right to the recognition that it is a privilege along with society having an obligation to protect children would encourage a different program. The cornerstone of any program has to be identification of parents coupled with the enforcement of their financial obligations to their children. An earned income credit that is less dependent on number of children might also be desirable. Still, children should not be subjected to unreliable and irresponsible parents. Rather than funding irresponsible parents, society should consider placing these children—for their own benefit—in foster homes or orphanages. When, subsequent to foster placement, at least one parent has demonstrated the requisite parental responsibility, that parent can re-assume the parental role and regain custody. For the sake of the children, the period in a foster home or orphanage could be limited, permitting adoption by people who are willing and able to provide the child with an acceptable environment.

Often the argument is made that adequately funded orphanages are more expensive than current programs. However, this overlooks the true cost of current programs in terms of lower education and employment attainment by children, poorer adjustment by them, and, in some cases, extreme antisocial behavior. Orphanages, adoption and foster homes are clearly a second best solution when compared to a child growing up in a loving and competent household. The goal of government financial support is to promote loving and competent households; however, this article argues that government intrusion is more likely to be destructive to these environments.