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Child Support Enforcement: A Case for Balance - The Rational Limitations of Child Support Enforcement Guidelines

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CHILD SUPPORT ENFORCEMENT: A CASE FOR BALANCE—THE RATIONAL LIMITATIONS OF CHILD SUPPORT ENFORCEMENT GUIDELINES

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> The purposes of the legal system are not all upon the surface, and it may be that many whose nature is by no means anti-social are out of accord with some or even many of these purposes. Hence today, in the wake of ambitious social programs calling for more and more interference with every relation of life, dissatisfaction with law, criticism of legal and judicial institutions, and suspicion as to the purposes of the lawyer become universal.[1]

I. INTRODUCTION

Public regulation at the time of Professor Pound's 1916 speech was primarily directed at the regulation of business for the indirect promotion of the public good. State and federal regulation today may be viewed by some as the regulation of the public for the indirect benefit of business. Thus strict regulation and enforcement of child support obligations tend to reduce the number of welfare recipients and the public costs attendant upon such social programs. While those statements suffer from the vices of oversimplification, there remains evidence of a major shift of regulatory efforts from the early decades of this century to present. The little noted demise of the Interstate Commerce Commission at the beginning of 1996 is a case in point.[2] The relatively recent deregulation of the airline industry is another.

Proposals pending in Congress seek to eliminate large segments of the regulatory machinery of the federal government directed toward the curbing or directing of business as such business affects the public interest. This may be viewed by some as a wholesome return to the

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1. Roscoe Pound, The Limits of Effective Legal Action, Address Before the Pennsylvania Bar Association (June 27, 1916), *in* THE LAWYERS TREASURY 224 (Eugene C. Gerhart ed., 1956).

2. David E. Sanger, *ICC: Once Powerful Agency Is Dead at 108*, GRAND FORKS HERALD, Jan. 21, 1996, at F3.

laissez faire attitude expounded by Adam Smith.[3] While these changes are taking place to the immediate benefit of the affected industries, an opposite trend is well entrenched in the promotion of increasingly detailed and pervasive state and federal regulation of individuals' relations with one another and with their government. Drivers licensure, automobile insurance requirements, and highway safety regulations are benign examples of this counter-trend. Professor Pound was troubled by the incursions of the legal system into the daily life of Americans in 1916. We can only guess at his comments on the legal and administrative embroglios maintained in 1996 in the United States by the current state and federal laws relating to the provision for, and enforcement of, child support orders.

This writing is an attempt to highlight some of those recent changes in child support enforcement as they have been developed in North Dakota, and cooperatively with other states, or in response to federal directives. A further effort will be made to demonstrate and analyze some recent changes in those regulations which appear to encroach aggressively on the judicial process in a manner, which if continued, would seriously impinge on the ability of trial courts to provide a meaningful forum for the resolution of fact issues in child support cases.

Public dissatisfaction with court processes which are limited to filling in blanks provided by the distant, unseen, and deaf regulatory authority cannot be unexpected or long in coming. This untoward result can only be hastened by the projected application of regulations that can be made to require payment of child support based in part on "imputed income" that under some of such regulations does not exist.

The conclusion advanced in this piece proposes a re-examination of North Dakota's child support enforcement initiatives. That study should seek to preserve court directed collection and enforcement of decreed child support obligations. A second objective should be to seek legisla-

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3. Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations, in* WESTERN LIBERALISM, A HISTORY IN DOCUMENTS FROM LOCKE TO CROCE 224, (E.K. Bramsted & K.J. Melhuish eds., 1978).

> According to the system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: first, the duty of protecting the society from the violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and certain public institutions, which it can never be for the interest of any individual, or small number of individuals, to erect and maintain; because the profit could never repay the expense to any individual or small number of individuals, though it may frequently do much more than repay it to a great society.

Id.

tive review and repeal of some of the recent additions and amendments to child support enforcement statutes. A third objective would be to promote the restoration of meaningful judicial discretion in child support enforcement proceedings.[4]

II. PRACTICAL APPLICATIONS

It is the view of the writer that child support guidelines are a useful tool for the courts in measuring appropriate support levels for children residing under court ordered custody arrangements. There is a multitude of cases requiring attention for child support determinations.[5] Legislative direction and executive participation in this important social area are needed to support the essentially judicial application of law to individual cases. A healthy balance in the address of legislative, executive, and judicial authority over civil cases calling for the court ordered support of children can have many positive effects. However, the overbearing of any one of the three branches of government on the essential function of another can bring negative results. The overbearing of any two branches upon the functions of the third undermines the whole.[6]

Calculating the raw number of open child support cases in a given jurisdiction is only the starting point in any measurement of court involvement in such cases. The potential need for judicial intervention in any case can arise for a wide variety of reasons, including: each time a monthly payment is missed; each time a material change occurs in the obligor's employment or income; each time a change of custody occurs, whether by mutual consent of the parents or by court order; or under federally induced statutes, each time a three year periodic review of a

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4. *E.g.*, 1993 N.D. Laws, Ch. 152, secs. 8, 9, 12 (codified as amended at N.D. CENT. CODE §§ 14-09-08.6, -8.8, 14-09-09.7 (1991 & Supp. 1995)); 1993 N.D. Laws 621 (enacted from H.B. 1181 at the request of the Department of Human Services). It appears that those amendments and others of similar import are apt to hamstring the exercise of judicial discretion in the enforcement of decreed child support obligations by application of general legislative decrees and executive dictates to individual cases.

5. Interview with LaVonne Sigdahl, Clerk of Court, Grand Forks County District Court (Jan. 16, 1996). The District Court of Grand Forks County, North Dakota (with the 1990 United States Census population estimated at 70,083) was maintaining child support payment records for approximately 3,500 cases as of December 31, 1995. *Id.*

6. *See* FRANCIS BACON, *Essays, Of Judicature, in* THE ESSAYS OF FRANCIS BACON 210, 215 (1625) (reprinted by Peter Pauper Press).

> And let no man weakly conceive, that just laws and true policy have any antipathy; for they are like the spirits and sinews, that one moves with the other. Let judges also remember, that Solomon's throne was supported by lions on both sides: let them be lions, but yet lions under the throne; being circumspect that they not check or oppose any points of sovereignty. Let not judges also be ignorant of their own right, as to think there is not left to them, as a principal part of their office, a wise use and application of laws.

Id.

child support judgment is undertaken.[7] The massive commitment of judicial resources to these worthy ends can be easily imagined. It is the writer's contention that those determinations should be made on proofs, admissible under the Rules of Evidence, as to the needs of each child and at least as to the obligor's actual income.[8]

The proper nurture, care, and support of the children of North Dakota has been a continuing concern of the courts that has its immediate roots in the laws of the Territory of Dakota.[9] That continuing solicitude was reenacted in the Laws of the First Legislative Assembly, [10] which have been preserved and exercised liberally throughout North Dakota's history. During that history, the role of the courts in addressing social ills like non-support of minor children was passively limited to those cases that were brought to the Court's attention. Access to the District Court was made primarily through a petition or complaint prepared and presented through the services of a private lawyer. The remedy against refusal of an obliged parent to pay child support was civil contempt.[11] That traditional system of remedies has proved to be unequal to the needs of modern society. The legislative remedy has been to enact successively stricter proposals for statutory attacks on such problems.[12]

In 1973, the North Dakota machinery for case data collection and evaluation was in an early stage of development. The application of computer technology to court processes was all but unknown. The importance of computer applications in case counting and child support payment monitoring has been recognized by Congress and made a part

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7. 42 U.S.C. § 666 (1988 & Supp. II 1990) (establishing statutory procedures designed to improve effectiveness of child support enforcement); N.D. CENT. CODE § 14-09-08.4 (Supp. 1995) (providing for review every 36 months).

8. *But see, e.g.*, N.D. ADMIN. CODE § 75-02-04.1-07 (dealing with the imputation of income).

9. DAKOTA TERRITORY REV. CODE ANN., Civil Code §§ 73, 74 (1877) (providing that divorced husbands make payments for their children's support and education).

10. 1890 N.D. Laws chs. 167, 168 (providing for district court ordered support for married women and abandoned children).

11. *E.g.*, Gross v. Gross, 206 N.W. 793, 794 (1925) (holding "that as the court has power to compel the defendant to provide maintenance, (child support) the performance of this duty can be compelled only by resort to contempt proceedings under the express authorization of section 8180 of the Compiled Laws of 1913."). This former holding may be contrasted to current statutes which combine contempt for non-payment with a money judgment status for execution of judgment proceedings on court findings of arrearage in payment of child support. *See supra* note 7 (providing the relevant statutes).

12. *E.g.*, N.D. CENT. CODE § 14-08-07 (1965) (original version at 1965 N.D. Laws, ch. 115, sec. 1), *amended by* 1973 N.D. Laws ch. 124, sec. 1, *amended by* 1975 N.D. Laws ch. 127, sec. 1; *amended by* 1981 N.D. Laws ch. 169, sec. 1; *amended by* 1985 N.D. Laws ch. 197, sec. 1; *amended by* 1987 N.D. Laws ch. 176, sec. 1; *repealed by* 1989 N.D. Laws ch. 148, sec. 36 (effective July 12, 1989), *replaced by* 1989 N.D. Laws ch. 148, sec. 2 (codified at N.D. CENT. CODE § 14-09-08.1 (Supp. 1989) *amended by* 1993 N.D. Laws ch. 152, sec. 2 (Supp. 1995)).

of federal law in this respect.[13] The initial efforts of North Dakota trial courts to actually monitor payment of its court ordered child support were limited to new cases determined on July 1, 1973 or thereafter, or where parties to an earlier action had requested that action.[14]

Since 1973, North Dakota district courts have been actively involved in the enforcement of child support provisions of their judgments. Such proceedings were at first initiated by the States Attorney and with the administrative assistance of the Clerks of District Court in each county.[15]

As the concept of active trial court enforcement of child support orders was taking hold in North Dakota, three seemingly unrelated factors were growing in significance to enhance the necessity for and effectiveness of those enforcement efforts. They were, in reverse order of perceived importance: (1) The general recognition among judges since the mid-1960s of each judge's responsibility to use caseflow management techniques to promote the orderly disposition of *all civil and criminal cases* filed in that judge's jurisdiction; (2) the rising percentage of all marriages that were ending in divorce during the years following World War II;[16] and (3) the dramatic improvement of computer technology in the last two decades.[17]

Improvements in tracking and monitoring of payments of child support obligations mandated by federal law[18] and as applied by the state trial courts through the offices of their clerks, has been the real engine of positive change in enforcement of court ordered child support. It is earnestly suggested that credit for the improvements in child support collections and distributions as seen during the past twenty years in this and other states is due much more to the widespread application of computer technology than to the volumes of statutes that have been enacted since 1973 to make that enforcement increasingly more rigorous and exact.[19]

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13. 42 U.S.C. § 654(24) (1988) (requiring automated tracking and monitoring systems by October 1, 1995).

14. 1973 N.D. Laws ch. 124, sec. 3 (amending, *inter alia*, N.D CENT. CODE § 14-08-09 (Supp. 1973)).

15. *Id.*

16. This trend was accelerated by changes in states' divorce laws which made it easier to get a divorce, under "no fault divorce" proceedings.

17. Justine Kavanaugh, *Tracking Down Child Support Evaders* 9, GOVERNMENT TECHNOLOGY, 1, 46 (Feb. 1996).

18. 42 U.S.C. § 654(24) (1988).

19. *See* Disbursement of Nonsupport Payments, ch. 127, 1975 N.D. Laws 457; Uniform Parentage Act, ch. 130, 1975 N.D. Laws 461. *See also* Child Support Enforcement Procedures, ch. 196, 1979 N.D. Laws 427; Modification of Support Order, ch. 197, 1979 N.D. Laws 433; Child Support or Alimony Payment Failure Notice, ch. 169, 1981 N.D. Laws 399; Appointment of Guardian to Represent Child, ch. 170, 1981 N.D. Laws 400; Wage Assignment and Earnings Withholding for Child Support, ch. 171, 1981 N.D. Laws 401; Child Support Obligation Enforcement, ch. 178, 1983 N.D. Laws 485; Wage Assignment for Child Support, ch. 180, 1983 N.D. Laws 487; Minimum Contributions

The proliferation of statutes relating to child support enforcement is matched by a similar proliferation of administrative regulations establishing child support guidelines.[20] Those guidelines, first designed to channel trial court enforcement, have since been amended and added to control those court processes. Recent statutes and executive regulations have asserted authority to severely limit the ability of the district court to hear and consider evidence relevant to the issues of the propriety of the level of child support in cases before it. These changes, if unchallenged, would by law deny admissibility of relevant evidence to child support court proceedings.[21]

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for Child Support, ch. 181, sec. 1, 1983 N.D. Laws 488 (providing that "[t]he department of Human Services shall establish a scale of *suggested minimum contributions to assist courts* in determining the amount that a parent should be expected to contribute toward the support of a child") (emphasis added); Parental Duty to Support Children, ch. 196, 1985 N.D. Laws 578; Child Support Enforcement Agency Notification, ch. 197, 1985 N.D. Laws 579; Support Payment Transmittal, ch. 176, 1987 N.D. Laws 433; Child Support Income Withholding, ch. 181, 1987 N.D. Laws 441; Child Support Withholding, ch. 183, 1987 N.D. Laws 419; Support Order Modification, ch. 180, 1989 N.D. Laws 551; Child Support Affidavit Service, ch. 151, 1991 N.D. Laws 418; Child Support Obligation, ch. 152, 1991 N.D. Laws 419. Section two of chapter 152 provides:

> If the child support agency determines, at the request of the obligor or obligee, or on its own motion, . . . that the child support order should be reviewed, the child support agency shall initiate a review of such order. *The child support agency may seek an amendment of the order if the order is inconsistent with the amount that would be required by child support guidelines established under subsection 1 of section 14-09-09.7.*

Child Support Obligation, ch. 152, sec. 2, 1991 N.D. Laws 419 (emphasis added). *See also* Support Order Enforcement, ch. 146, 1993 N.D. Laws 613; Child Support Enforcement, ch. 152, 1993 N.D. Laws 621; Professional License Suspension for Nonpayment of Child Support, ch. 153, 1995 N.D. Laws 488; Driver's License Suspension for Nonpayment of Child Support, ch. 154, 1995 N.D. Laws 489; Child Support Duties, ch. 155, sec. 1, 1995 N.D. Laws 491 (providing that a "[d]elinquent obligor may not renounce claim. An obligor whose child support obligation is delinquent may not renounce, waive, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency.") (underscoring omitted); Uniform Interstate Family Support Act, ch. 157, 1995 N.D. Laws 501.

20. N.D. ADMIN. CODE § 75-02-04.1 (1996).

21. *See, e.g., id.* § 75-02-04.1-09 (effective Jan. 1, 1995) (limiting the type of evidence that can be used to rebut the presumptive guidelines). The current Child Support Guidelines (Version V, effective January 1, 1995) do not recognize the "income shares model" for determination of child support levels despite the formal objection of the Legislative Council on Administrative Rules stated as a preamble thereto. B. Nordwall, Summary of Comments Received in Regard to Proposed Amendments to North Dakota Administrative Code § 75-02-04.1, Child Support Guidelines (Nov. 14, 1994). *But see* Nebraska Child Support Guidelines, 540 N.W.2d CLXX-CLXXV, Adv. No. 3 (Jan. 16, 1996) (adopting an "income shares model" for calculating child support levels based on the income of the custodial as well as on the income of the noncustodial parent). *See also* Letter from Thomas Jefferson to James Smith from Monticello (Dec. 8, 1822), *in* CITIZEN JEFFERSON THE WIT AND WISDOM OF AN AMERICAN SAGE, at 102 (John Kaminski, ed., 1st ed. 1994) (stating that "[m]an, once surrendering his reason, has no remaining guard against absurdities most monstrous, and like a ship without a rudder, is the sport of every wind").

If accepted, such changes would, within a short time, virtually eliminate meaningful judicial review and deny to the courts their inherent responsibility to hear and decide cases upon all relevant evidence in the enforcement of their own child support judgments.[22]

The statutory elevation of those guidelines and their concomitant administrative regulations in North Dakota to rigid rules of law has severely undermined the authority of the judiciary to provide a meaningful forum for the consideration and just determination of the competing claims of the parties. The legislature and the executive departments have acted, no doubt, in good faith for what they perceive as laudable goals of proper financial support for minor children of divorced and separated parents. It is submitted that in their zeal for that desirable result those branches of government have gone too far.

The extensive restrictions on judicial discretion in these cases evince as veiled distrust of the effectiveness of the modern judicial process. There should be no doubt that the judiciary of this state is equally well motivated to effectuate the underlying principles which justify and support a reasonable and vigorous maintenance of child support obligations. The changes in child support laws beginning in 1973 were embraced at that time by the judiciary of North Dakota. The federal enhancements under the "Family Support Act of 1988,"[23] which were mandated upon North Dakota along with the other states have been accepted in their complexity. However, the most recent version of the North Dakota Child Support Guidelines, effective as of February 1, 1995, and the 1995 additions and amendments to North Dakota's child support enforcement statutes, appear to exercise an increasing legislative and executive authority which approaches domination over the judicial processes in child support matters. It appears that the legislative and Executive branches of our government have collectively concluded that if some regulation of the court processes in child support enforcement is

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22. The successive versions of the Guidelines (Versions: I, effective November 3, 1980; II, effective February 8, 1984; III, effective October 18, 1988; IV, effective February 1, 1991 and the current Version V, effective January 1, 1995) have been crafted to eliminate judicial discretion wherever possible and to reduce to an evanescence the courts' authority to deviate from the latest decretal amount applicable, under the restrictive fact determinant rules of the guidelines themselves. *See* N.D. ADMIN CODE § 75-02-04.1-09 (effective Feb. 1, 1995) (outlining the rules that have affected judicial discretion). *But see* JOSEPH A. WAPNER, A VIEW FROM THE BENCH 154 (1987). The author states:

> When the law recognized that the names on the dockets belonged to people, flesh and blood men and women who felt pain just as every other kind of person, the law worked miracles . . . . The glory is that the American law can accommodate the pain of the people before it, the concern of thousands of judges who can feel that pain, and then, far more often than not, render justice.

Id.

23. 42 U.S.C. § 654 (1988).

good, then more regulation would be better. Perhaps they believe that by rigor and mandate they can approach the absolute, but elusive, goal of one hundred percent enforcement of every term of every existing child support judgment—that rigor being directed to non-custodial parents and those mandates to the courts through ever-increasing statutory grants of executive power over the judicial branch. Whether that prediction would apply in our future remains to be seen. It has been said that, "[p]ower tends to corrupt and absolute power corrupts absolutely."[24] It is the fair balance of powers among the legislative, executive, and judicial branches of government that best promotes the general welfare.[25]

It appears that the legislature and the executive branches of North Dakota have placed great confidence in increasing stringent laws to effect the desired goals. It is the writer's belief that such confidence is misplaced since the far greater part of the present effectiveness of child support enforcement is properly attributable to several mundane features of the present laws which are not inconsistent with the due application of the judicial process to the enforcement of its own decrees. Those factors include: (1) The collection and distribution of child support by the Clerk of Court with full utilization of computer resources for case counting, and record keeping of reception and disbursement of child support payments; (2) routine wage withholding from wage earning obligors; and (3) executive determination of numerical guidelines for various levels of income after elimination of artificial statutory or

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24. Letter from Lord Acton (1843-1902) to Bishop Mandell Creighton (Apr. 3, 1887), *in* OXFORD DICTIONARY OF QUOTATIONS at 1 (3d ed. 1979).

25. THE FEDERALIST No. 78, at 522-23 (Alexander Hamilton) (Jacob E. Cooke ed. 1961).

> Whoever attentively considers the different departments of power must perceive, that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse . . . and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.
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> This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter: I mean, so long as the judiciary remains truly distinct from both the legislative and executive. For I agree that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."

Id.

regulatory restrictions upon the essential judicial functions of determinations of relevancy and admissibility of evidence in the fact finding and decision making process.

These factors are the heart of effective enforcement of child support guidelines. It is hoped that in North Dakota there will be a meaningful dialog among the three branches of government to the end that there will be a return to the mutual respect of each branch of government for the particular functions, good will, and capabilities of each of the other branches. This can only be accomplished by a careful return to individual case determinations, based upon properly admissible evidence to arrive at reasoned facts with just determination under reasonable guidelines.

Of course, these issues are not merely matters of debate among the branches of government. They are important to all citizens and vital to the welfare of affected children and of their separate parents. The public importance of these issues is underscored by the large numbers of people directly affected and the high costs of public assistance to those people. Public dissatisfaction with legal institutions is not new.[26] Criticism of current child support guidelines, however, is more recent.[27]

As we have seen, judicial proactive enforcement of child support judgment provisions in North Dakota has a short history of just over twenty years.[28] As 1996 begins, the North Dakota district courts are charged with the mandatory obligation of imposing and enforcing child support orders issued in strict compliance with administratively created guidelines. Support payments are required to be collected through each county's Clerk of District Court Office. These orders are enforceable in every State thorough uniform statutes including the 1951 Reciprocal Enforcement of Support Act; the 1969 Uniform Reciprocal Enforcement of Child Support Act (URESA);[29] and most recently through the 1995 Uniform Interstate Family Support Act (UIFSA).[30] The Federal Government has become involved in the development and extension of child support enforcement laws through its fiscal lever of

26. PHILIP K. HOWARD, THE DEATH OF COMMON SENSE 23-25 (1994).

27. *See* N.D. ADMIN. CODE § 75-02-04.1 (setting forth the Child Support Guidelines). *See also* N.D. ADMIN. CODE § 75-02-04.1 (Supp. 1995), The Legislative Council's Committee on Administrative Rules Objects to North Dakota Administrative Code Chapter 75-02-04.1 Relating to Child Support Guidelines (authorized pursuant to N.D. CENT. CODE § 28-32-03.3 (Supp. 1995).

28. 1973 N.D. Laws ch. 124, sec. 1 (amending N.D. CENT CODE § 14-08-07 (1965) (current version at N.D. CENT. CODE § 14-09-08.1 (Supp. 1995)). *See also supra* note 12 (tracing the statute's active history).

29. 1969 N.D. Laws ch. 153, secs. 1-43 (codified at N.D. CENT. CODE § 14-12.1 (1971)).

30. 1995 N.D. Laws ch. 157, secs. 1- 4 (codified at N.D. CENT CODE § 14-12.2 (Supp. 1995)).

Aid For Dependent Children (AFDC) payments to the states' welfare programs.[31]

III. CONCLUSION

It is submitted that laws and regulations enacted since 1993 regarding child support enforcement in North Dakota should be reviewed in the context of preexisting laws and regulations and monitored in their application. It is hoped that in the crucible of respectful dialog among the three branches of our State's government, reasonable alternatives to some of the stricter of those regulations will be considered and followed.

The bottom line is that the application of the laws of a national state upon the life of any one, or all, of its individual citizens is made easy, difficult, or at worst, impossible, in proportion to the respect with which the governed hold the institutions of that government.[32] Where laws are created for the general welfare, and administered with fairness and justness, all citizens' respect for the legislature that created the law and the executive authority that applies them is enhanced. In cases of dispute between citizens, or between a citizen and the State on the particular interpretation of such laws as applied to that citizen, it is the province of the courts to fairly interpret those laws and apply them within sound limits of judicial discretion. This process, when recognized by all three branches of government is a wholesome and necessary interface between the theoretical good that the law was designed to promote, the executive assertion of that law upon the citizen, and the essential power of the court to apply that law to the facts of the case and to make a just decision. This is the ideal state referred to by Professor Pound in his address on The Limits of Effective Legal Action.[33]

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31. 42 U.S.C. § 654(15) (1988).

32. *See* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

33. Pound, *supra* note 1, at 224 ("For when men [and women] demand little of law, and enforcement of law is but enforcement of the ethical minimum necessary for the orderly conduct of society, enforcement of law involves few difficulties. . . . On the other hand, when [women and] men demand much of law . . . enforcement of law comes to involve many difficulties.").