

RETHINKING CHILD SUPPORT

RESPONSIBLE CITIZEN SUMMARY

Background

- Since 2005, the State of Utah has aggressively pursued the goal of “cracking down” on “deadbeat dads” – noncustodial fathers who are in arrears on their child-support payments.
- Family breakdown has not diminished and there is no evidence to suggest that children are better off in a culture of easy divorce or that child-support enforcement is appreciably increasing their quality of life.

What’s at stake?

- The best interests of children: punitive child-support enforcement may contribute to tension between parents and siphon money meant for children into collection agencies.
- Justice: child-support awards separated from any finding of fault on the part of a parent lead to irrational and unjust results, such as the re-emergence of a form of “debtor prison” and extreme punishment of parents without any attempt to establish that the punishment is merited.

What’s next?

- Remedy the injustices of the child-support system by rethinking the assumptions underlying “no-fault” divorce.
- Require custodial parents to account for the use of child-support payments that are tied to a finding of fault in the parent who is ordered to pay.
- Promote the ideal of marriage as the foundation of the child-support system.

Responsible *Citizenship*[™]

Utah’s counter-productive child-support system desperately needs an infusion of justice.

Utah lawmakers and journalists greeted with alarm and anger a 2005 audit concluding that non-custodial parents in the state owed \$325 million in unpaid, but legally-mandated, child-support payments. Deadbeat dads were betraying their children, withholding the resources they needed to escape from darkened lives of poverty. Legislative chambers and editorial boardrooms predictably echoed with calls for more vigorous measures to collect these resources. Tapping into what one journalist characterized as legislators’ determination to “get tough” on noncustodial parents who failed to meet their child-support obligations, one legislator¹ proposed giving the Office of Recovery Services (ORS) the right to suspend the driver’s licenses of non-custodial parents (overwhelmingly fathers) behind on child-support payments.² Sympathetic to that effort, the *Deseret News* published a pair of linked editorials titled, “Support Child Support Bills” and “Pay Up, Deadbeat Parents.”³ Though the driver’s-license proposal was not passed in the 2006 session, the two 2005 editorials that it occasioned reveal much about the troubling blind spots in prevailing understandings of child support in the Beehive State. Because of these blind spots, many Utahns support child-support policies that not only fail to deliver sought-for benefits for divorced parents and their children but perversely multiply the number of parents and children needing such benefits.

“IN A PERFECT WORLD”

In the first of their editorials, *Deseret News* editorialists endorsed the legislator’s objective, asserting that “ORS needs more enforcement tools to bring deadbeat parents into compliance.” Still, the

writers voiced doubts about the particular tool the lawmaker was trying to forge, calling it “counterproductive to take away a person’s means to work and expect [him] to meet [his] child support obligations.”⁴ Perhaps wanting to resolve the tension between their overall endorsement of stronger child-support measures and their objection to the specific measure on the agenda, the newspaper’s commentators revisited the topic again about eight weeks later. In this second editorial foray, they repeated their belief that “the Office of Recovery Services clearly needs more leverage to counter people who cannot pay or refuse to pay child support” and once again voiced doubts about the wisdom of suspending a driver’s license when a noncustodial parent fell into arrears in child-support payments. But now the writers had something better to offer: Why not go after the deadbeats through “more aggressive bank account seizures” – that is, seizures of assets in even relatively-small accounts?⁵

No doubt many of the newspaper’s readers regarded the editorialists’ perspective on child support as sensible – even wise. However, serious doubts may have arisen in the minds of readers who carefully scrutinized the cultural commentary within which the editorialists framed their policy analysis. Consider, for instance, the curious assumptions inherent in the philosophical reflection they included in the first child-support editorial: “In a perfect world, the government would have no role in recovering child support payments. Non-custodial parents would own up to their financial responsibilities, and custodial parents would honor visitation agreements. Children of divorce deserve that much.”⁶ Readers might be forgiven for shaking their head at the implicit assertion that “in a perfect world,” we would still find marriages broken by divorce and non-custodial parents separated from their young children. Moral confusion

runs very deep when prominent commentators cannot acknowledge – not even in a flight of fancy to “a perfect world” – that what will help children most is not willing compliance with child-support orders but rather an intact marriage making such orders unnecessary.

Some Utahns might suppose it matters very little what an editorialist – or anyone else – says about an imaginary “ideal world.” But British novelist and journalist G.K. Chesterton sees more clearly when he insists, “The only way to discuss the social evil is to get at once to the social ideal. We can all see the national madness; but what is sanity?”⁷ When the social evil in view is the impoverishment of children, it is folly to suppose that the social ideal will be realized merely through fuller compliance with child-support orders. Even researchers who would never claim to have glimpsed “a perfect world” understand the meaning of the available empirical economic and sociological evidence: children flourish best in an intact family founded upon an enduring parental marriage. Compared to peers in single-parent homes, children living with their own married parents are much more likely to benefit from adequate economic resources during childhood and beyond.⁸ And only the terminally naïve would suppose that this economic gap can be bridged simply by improving the collection of child support.

IN THE REAL WORLD

For the advantages an intact parental marriage confers upon children can not be adequately summarized in any merely-economic analysis. Compared to the children of divorce, children of parents in an intact marriage are more likely to succeed in school and in their subsequent careers.⁹ They are more likely to live secure from the threat or actual experience of child abuse.¹⁰ They are

more likely to resist criminal impulses and illegal drugs,¹¹ so avoiding the life-darkening constraints of prison or probation. They are more likely to enjoy good physical and mental health.¹² They are more resolute in resisting the blandishment of tobacco,¹³ and more temperate in their use of alcohol.¹⁴ Enjoying all these advantages, it is no surprise that children of intact parental marriages are more likely to live long lives,¹⁵ in part perhaps because of their better health habits¹⁶ but also because of their distinctively low vulnerability to suicide!¹⁷ They are more likely to control their sexual impulses, so avoiding pre-marital sexual involvement and pre-marital parenthood.¹⁸ They are likewise more likely to marry rather than to opt for cohabitation,¹⁹ a dubious arrangement particularly vulnerable to domestic abuse, impermanence, alcoholism, and illegal drug use.²⁰ Once married, they are also more likely than peers from single-parent homes to avoid the divorce courts, so conferring their life advantages on their own children.²¹

Research makes clear that “divorce *itself* causes social, emotional, and academic problems for children.” It also fosters an environment conducive to future problems because “[d]ivorce is not a single event.” It makes future changes in a child’s family situation much more likely, including the introduction of a stepparent and further family instability (because second marriages are more likely to end in divorce). Divorce is particularly harmful to the bond between children and their fathers since “fathers are particularly likely to become distant after a divorce.”²² The state may try to force a type of father investment through child support, but the law cannot “compel the kind of enormous sacrifices – from working overtime, to taking a second job, to mortgaging the house to pay for college – that married fathers routinely make for their children, but which divorced or unmarried fathers seldom do.”²³

Empirical comparisons of children reared in intact families with peers from broken homes allow for only one conclusion. “Children thrive best,” remarks psychologist David G. Myers, “when raised by two parents who are enduringly committed to each other and to their child’s welfare.”²⁴ Scholars from the University of Texas and North Carolina University reach the same understanding of the social ideal: “Two biological-parent households are best able to invest in offspring.”²⁵

Editorialists dream of a “perfect world” that offers many children little more than the meager financial benefits that accrue when non-custodial parents willingly and fully comply with child-support orders. Because our visions of the “perfect world” profoundly affect our decisions about policy in this far-from-perfect world, Utahns have reason to object to such an impoverished view of perfection. They have reason to insist, with Chesterton, that no social evil – including the social evil of children impoverished by parental divorce – can be properly understood by those who have lost sight of the social ideal: in this case, an enduring parental marriage which never requires a non-custodial parent to make court-ordered child support payments to a custodial parent.

DOES PUNITIVE WORK?

The *Deseret News* editorialists might still plausibly assert that willing compliance with child-support orders would help *improve* a world in which roughly half of first marriages end in divorce.²⁶ They might even ask, “Why should we worry overmuch about a perfect world when the task of improving the real one has grown so daunting for government officials?” In their first child-support editorial, the commentators indeed deplore the need of involving government officials at all in the mess that divorcing parents have created: “It is difficult to under-

stand why noncustodial parents do not pay child support. Noncustodial parents have legal and moral obligations to provide for their children, regardless of the state of their relations with their former spouses. This should not become the business of the state.²⁷ And in their second child-support editorial, the *DN* board reiterates their view that collecting child support “wouldn’t be the government’s affair if parents would commit to do the best on behalf of their children, regardless of their personal circumstances.”²⁸

But Utahns need to examine closely the writers’ apparent belief that in collecting child support, government officials have reluctantly filled a gap created by morally-deficient divorced parents and that these same officials would gladly stop collecting child support if only these parents would shoulder their responsibilities. This belief obscures rather than illuminates the ugly and complex realities consequent to the widespread collapse of the ideal of enduring parental marriage in both private and public life.

To be sure, the state officials who collect child support from reluctant noncustodial parents have made life appreciably easier for many betrayed former spouses struggling with the difficulties of single parenthood. But a little investigation soon exposes the folly of relying heavily on child support as an economic support for custodial parents and their children. First, state officials often find it difficult to locate the non-custodial parent (almost always the father).²⁹ Second, among the non-custodial parents that state officials can find, many are themselves so poor that they cannot satisfy the court’s support orders. One national study concluded that “at least 15% and possibly as many as 25% of all nonresident [i.e., non-custodial] fathers are poor.”³⁰ Another study found that “as much as 36.7 percent of

young non-custodial fathers are impoverished.”³¹ Emphasizing just “how tough child-support enforcement can be,” Florida editorialists have characterized the job of collection officials as that of “collect[ing] money from people who, without a job or income, have no money to pay.”³² It is hardly surprising that a certain hoary old proverb has gained new currency among such officials: “You cannot draw blood from a turnip.”³³

Even when state officials do locate a non-custodial parent with a job and income, his resources are still typically limited; too limited to satisfy court orders for large payments of child support. As researchers at the University of Wisconsin–Madison have acknowledged, non-custodial parents are usually men whose “generally low to modest incomes . . . do not lend support to the stereotypical portrayal of noncompliers as wealthy men who simply refuse to support their children.”³⁴ And modest incomes that may suffice to maintain one household often become inadequate. “Two households,” policy analyst Martha Minow remarks, “in most circumstances, will be unable to achieve the standard of living available to the one.”³⁵ Legal scholar Jed Abraham has likewise remarked that divorce “sunders an economically efficient household into two inefficient and antagonistic halves.” After divorce, Abraham points out, “both parties will have lost the economies of scale that the intact family provides.”³⁶

The difficulties a noncustodial father faces in paying child support only multiply if he remarries and starts another family. As a concerned state legislator in Georgia has noted, many second wives “complain that their husbands are paying so much child support to the first wife that [the second wife’s] children are suffering.”³⁷ The difficulty many men face in paying child support has helped incubate a growing number of Second Wives organizations

intent upon reducing such support. One social scientist has indeed highlighted the difficulty a divorced man faces when dealing with “competing demands of two spouses – one ex, one present.” It is because “the present spouse usually wins” in this tug-of-war that many non-custodial fathers fall short in paying child support.³⁸

Unfortunately, the harsh realities facing impoverished and remarried non-custodial fathers expected to pay child support often elude policymakers and journalists. Some indeed fail to perceive that they are playing a zero-sum game by advocating measures for collecting child support that – in the view of one policy expert – mean “improving the economic status of custodial families ... [by] at the same time impoverish[ing] some non-custodial families.”³⁹ The regrettable consequence of this myopia is, as scholars at the Ford Foundation and Urban Institute have remarked, that “child support reforms have focused almost exclusively on punitive measures driven by the stereotypical image of a ‘deadbeat dad’ who can afford to pay child support but refuses to do so.”⁴⁰

“Punitive” is the *mot juste* for Utah proposals for taking driver’s licenses away from noncustodial fathers in arrears in their child-support payments or making it easier to seize their bank accounts. *Punitive* would certainly describe child-support orders exceeding 75% of a non-custodial parent’s income, documented by researchers at the University of Wisconsin–Madison. The adjective ‘punitive’ would seem apt even for orders exceeding 50% of the noncustodial parent’s income, and the researchers found such orders in force for 19% of the noncustodial parents they surveyed.⁴¹ Such punitive measures help explain why some observers fear that “get tough” child-support measures are “running [poor fathers] into poverty and homelessness.”⁴² Surprisingly, those advocating ever-tougher measures to collect

child support have rarely considered how those policies affect the non-custodial parents (usually fathers) who must pay that support money. The editorialists might be less mystified by the failure of some non-custodial parents to pay mandated child support if they had talked with James Thalman, one of their own staff reporters. Through his investigation of the issue, Thalman has established that in the Beehive State the existing system for collecting child support – a system the editorialists want to make tougher – is already sufficiently onerous that “support payers often have to take second or third jobs to pay child support and support themselves.”⁴³ “Concern about the effects of child-support enforcement on the [non-custodial] fathers themselves has been minimal,” acknowledges a team of prominent researchers headed by Irwin Garfinkel.⁴⁴

A CURE WORSE THAN THE AILMENT

It is past time for more than minimal concern about the effect of punitive child-support measures. For these are measures that not only put some impoverished non-custodial father on the street but also put a growing number behind bars: in a 1997 ruling, the Utah Supreme Court gave state officials power to jail noncustodial parents for nonpayment of child support. In trying to square this ruling with the prohibition in the Utah Constitution on imprisonment for debt, attorney Stacie M. Smith, offered this legal casuistry: “The court is basically saying child support is different from a regular debt [because] it’s so important to look out for the interest of the kids.”⁴⁵ Utah is hardly alone in pursuing deadbeat fathers with a zeal that has smashed previous constitutional prohibitions forbidding imprisonment for debt.⁴⁶ In some jurisdictions, hundreds of noncustodial fathers spend time in the county jail in a single year.⁴⁷ (Astonishingly, a non-custodial father may spend significantly

more time behind bars for non-payment of child support than does a man convicted of fraud, embezzlement, or bribery!⁴⁸) It is hardly a wonder, then, that authorities in some areas now complain that jailing noncustodial fathers for nonpayment of child support has become a “major contributor to crowded conditions” in jails.⁴⁹

As he considers the growing number of poor working-class fathers jailed for non-payment of child support, political scientist Stephen Baskerville discerns a dubious “criminalizing [of] poverty” rather like that which Dickens once targeted in his fictional depiction of Victorian debtors’ prisons.⁵⁰ It is not Dickens, however, but Kafka who may come to mind when one contemplates laws that hold a father liable for additional arrearages in child support accrued while he is doing time in jail for previous non-payment of child support!⁵¹

As the effort to apprehend and jail deadbeat dads has grown more extensive – now involving unprecedented labors by agencies such as the FBI, the IRS, and the Justice Department – some prominent commentators have defended this aggressive approach to enforcing child-support orders.⁵² However, it is easy to see why Judge Carmen A. Ferrante concludes that it can, in any case, prove “counterproductive.” After all, Ferrante concedes, “We’re saying, ‘You’ve got to pay me, you can’t go out to work to get the money to pay me, but you’ve got to pay me before you get out.’”⁵³ Attorney Leora Gershenson makes a similar point, emphasizing that “the whole point is to collect money, and this approach is very expensive.... The idea is to get cash for kids, not necessarily to put bad guys in jail. [Putting people in jail] may make you feel better, but it won’t necessarily help children.”⁵⁴

Gershenson’s concern about the expenses entailed in punitive child-support measures deserve attention

from anyone concerned about fiscal discipline. Official figures already indicate that the state spends one dollar for every four dollars it collects in child support.⁵⁵ And analyst Robert Lerman argues that the real overall cost of collecting child support runs significantly higher, since the official numbers “understate the resource cost [of collecting child support], since they do not count most costs imposed on the judicial system nor the dollars spent on private collection agencies.”⁵⁶

The operations of these private collection agencies – sometimes employed as surrogates by government agencies, sometimes employed directly by custodial parents themselves – raise disturbing questions. These agencies – some of which operate in Utah⁵⁷ – routinely charge 30% of what they collect; some charge as much as 50%.⁵⁸ The size of such commissions understandably has some commentators wondering, “Do [such] companies ... profit children or mainly themselves?”⁵⁹

To be sure, custodial parents frequently cooperate fully with both private and public agencies using even the most aggressive tactics to collect child support. However, when some custodial mothers see the fathers of their children subjected to “increasingly punitive policies,” they simply stop cooperating with state officials, according to researcher Janice H. Laakso, who fears that such punitive policies are now producing “unintended effects and consequences ... [so] undercutting the purposes for which child support is created.”⁶⁰ The unintended consequences of get-tough child-support laws worry policy analysts Ronald B. Mincy and Alaine J. Sorensen, who remark, “More aggressive and punitive enforcement efforts may not always result in increased collections and may be harmful for low-income non-custodial fathers, discouraging them from formally supporting their children.”⁶¹

Social scientists Sara McLanahan and Marcia J. Carlson even warn that aggressive measures to collect child support “can lead to conflict and tension between parents.”⁶² Available research does indeed indicate that “paying any child support increases the incidence of conflict between parents.”⁶³ Because “child-related conflict is particularly detrimental to children,” researcher Amy Koel and her colleagues worry that such conflict is very common in the “postdivorce family.” After all, “dissatisfaction with the role and decisions of the [divorce] court ... is common, chronic, and sometimes passionate among separating and divorcing parents.” Such dissatisfaction helps explain why the “scope of relitigation is alarming: Nearly half of [the divorce couples with minor children studied by Koel and her team] returned to court, often repeatedly,” with child-support issues figuring prominently in much of the relitigation.⁶⁴ Because collection of child support often stirs up intense acrimony, Garfinkel and his associates candidly concede – despite their own advocacy of more vigorous child-support measures – that “stronger enforcement [of child-support orders] may make children worse off overall.”⁶⁵

IS FAIRNESS A STANDARD?

Aside from its ineffectiveness, highly-punitive policies against noncustodial parents raise troubling questions about fairness and due process. McLanahan and Carlson acknowledge that the rigid formulae for assessing child-support obligations can mean that “low-income fathers [are] forced to pay a much higher proportion of their income that middle-income fathers pay.” What likewise troubles McLanahan and Carlson is that “child support orders are not routinely adjusted for changes in the father’s income, which can lead to fathers accumulating large arrearages [after sustaining a loss in income]

that, according to federal law, cannot be forgiven or adjusted in most cases.”⁶⁶

Basic principles of fairness seem lacking in the entire system for monitoring noncustodial parents under child-support orders, individuals who often marvel at the astoundingly disproportionately-aggressive state efforts to collect child support from non-custodial parents while generally allowing custodial parents to ignore with impunity the visitation rights of the absent parent. Highlighting this disproportionality, former *Salt Lake Tribune* commentator Rebecca Walsh noted in 2002 that the state was “spend[ing] \$42 million a year to collect child support, but just \$120,000 to guarantee divorced parents see their kids.”⁶⁷ “There seems to be little concern,” one divorced Utah father unhappily complained, “for a non-custodial parent’s role in children’s lives other than financial.”⁶⁸ Perhaps commentators at the *Deseret News* and elsewhere would express less incomprehension at the failure of non-custodial fathers to pay mandated child support if they spent time in the research indicating that some of these fathers have “stop[ped] making child support payments because they are ... denied visitation by vindictive wives.”⁶⁹ Yet, even as their visitation rights are largely ignored, non-custodial fathers often find themselves the object of aggressive and relentless tactics for collecting child support, treated as quasi-criminals even if they are in compliance, their employment and income ceaselessly tracked by extensive computer systems.⁷⁰

And let no one assume such computer systems cause trouble only for those who are actually out of compliance with official child-support orders. In one jurisdiction (San Diego County) with a sophisticated – and costly – computer system for identifying deadbeat dads, investigators found that “a great number of people [had

been] erroneously ensnared by computer error," with a good many men finding themselves in legal difficulty for "hav[ing] suffered from the coincidence of having the same or similar name as a father who hasn't paid up." "The computer," explained one San Diego official, "brings the benefit of serving a lot of cases, but it also is not real forgiving.... [H]ow do you keep the number of injustices down? It never goes to zero." Some measure of computer-generated injustice did not trouble Lucia Edmundson of the San Diego District Attorney's office, who stoutly defended "a child-support net so wide that a few bystanders get caught." Of the innocent but falsely accused, she said, "I can understand their feelings, but they still have to prove [their innocence]. If the only alternative is to come to court, then that's what they have to do."⁷¹ In their determination to collect child support by any means possible, many public officials appear willing to jettison the traditional legal presumption of innocence.

Questions of guilt or innocence pale into insignificance in the minds of some defenders of aggressive child-support policies. For them, the overriding consideration is the children's right to receive financial support from non-custodial parents. Speaking of child-support dollars collected through the threat of imprisonment, activist Laura Canini declares, "This money benefits the children involved."⁷² Many of those supporting aggressive strategies for collecting child support apparently share her views.

THE PROBLEMS OF "NO-FAULT" DIVORCE

However, those who truly wish to benefit the children involved may wish to weigh the grievances of non-custodial parents more carefully before endorsing yet more aggressive measures to collect child support from

them. Such grievances would seem to merit attention even from pragmatists generally satisfied with the current child-support system, for 21st-century research indicates that "compliance [with child-support orders] runs lower among fathers who perceive their support order as unfair." It would seem, then, that those trying to collect more child support would view it as a problem that 26% of divorced fathers surveyed regard their child-support order as "very unfair" and that 32% characterized their child-support order as "somewhat unfair."⁷³ Such widespread perceptions of injustice in child-support orders help explain why legal experts report a growing number of "mad dads" as part of "a growing backlash against divorce settlements by non-custodial parents."⁷⁴

That many non-custodial parents perceive injustice in divorce settlements should surprise no one. After all, since the "no-fault" revolution in divorce law (a revolution that came to Utah in 1987), the courts have routinely ignored questions of innocence or culpability both in granting the divorce itself and in subsequently awarding custody of children involved and then establishing child-support responsibilities for the non-custodial parent. The result, as acknowledged by Justice Richard Neely of the West Virginia Supreme Court, has been that "a blameless father often emerges from divorce courts with all the financial responsibilities of marriage and none of its emotional or economic rewards." The jurisprudence of divorce under "no-fault" thus can leave a guiltless father "saddled with children whom he never sees and who may even have been turned against him."⁷⁵ "No-fault" divorce has also hurt many custodial parents because, as legal scholar Riane Tennenhaus admits, "the elimination of guilt and innocence has also taken away from divorce proceedings some of the weapons lawyers traditionally used to get better economic settlements for wives."⁷⁶ In other words, "no-fault" divorce has imposed unjustly heavy

child-support burdens on many non-custodial parents who never wanted a divorce and who were entirely faithful to their marital vows, while mandating unjustly light child-support burdens on many non-custodial parents who caused their divorces through perfidy or abuse.

Remedying such injustice appears impossible without reexamining the very premises of "no-fault" divorce. In a number of states – including Florida, Michigan, Washington, and Iowa – lawmakers concerned about the injustice fostered by "no-fault" have indeed proposed a return to fault-based divorce law.⁷⁷ To date, however, these lawmakers have failed to overcome the strong resistance of the defenders of "no-fault" divorce.

Those who care most about reforming the current divorce system have good reasons to work towards changing the political climate in ways that permit a truly open and full debate over the consequences of "no-fault."⁷⁸ In the meantime, however, they may pursue lesser but still significant reforms that will reduce the injustices and perverse incentives built into the present system. One such piecemeal reform might be realized by remedying the gross underfunding of state agencies charged with enforcing the visitation rights of noncustodial parents.

WHY NOT TRY ACCOUNTABILITY?

But perhaps a more meaningful reform would be one advocated for some years by non-custodial fathers: namely, that of requiring custodial mothers receiving child support to account for how they spend that money. In this context, Ted Hulick of Texas Fathers for Equal Rights has asserted that "child-support compliance would rise dramatically if noncustodial parents could be sure their money was spent on the child and

not on the custodial parent's whims – clothes, jewelry, gifts for boyfriends."⁷⁹

Some Utahns might resist the idea of requiring custodial parents to account for how they spend child support money, arguing that such a requirement would mean burdensome record-keeping for individuals whose lives as single parents are already difficult. Certainly, such a requirement does seem punitively unnecessary if the non-custodial parent is the one who filed for the original divorce. But what about cases in which the custodial parent is the one who filed for a "no-fault" divorce – especially since Utah law currently gives preference in custody disputes to the parent who has filed for divorce first?⁸⁰ The arguments for such financial accountability in the expenditure of child-support payments gain plausibility in such cases, especially under a regime of "no-fault." Let it be remembered that, as Harvard scholar Martha Minow has remarked, even though "child support is intended to benefit the child, not the custodial parent," in fact it is "difficult if not impossible to disentangle [the child's well-being] from the custodial parent's standard of living." Since it is impossible, for instance, to provide good housing to the child without also providing it to the custodial mother, a non-custodial parent's payment of child support often means "windfalls to the custodial parent."⁸¹

Sharpening the point of Minow's comment, economist Robert J. Willis has calculated that between two-thirds and four-fifths of the money paid as child-support payments actually serves as "consumption insurance to the [former] wife." One of Willis's econometric models actually predicts that "a dollar transferred by the [noncustodial] father will generate only about 20 cents' additional expenditure on the child."⁸² Quite probably, many custodial mothers are far more conscientious than Willis's

model would predict in spending child-support payments on their children, not on themselves. But the conversion of child-support payments seems to have attracted the attention of the Georgia Superior Court in 2002 when the Court opined that enforcement of child support sometimes “leaves the non-custodial parent in poverty while the custodial parent enjoys a notably higher standard of living.”⁸³

Unfortunately, research on how custodial parents actually spend child-support payments remains thin – suspiciously thin, given the abundance of research on strategies for maximizing the collection of child-support money from noncustodial parents! The paucity of research on how much of child-support payments is actually spent on children is also suspicious given how heavily the advocates of aggressive collection of those payments rely on child-centered rhetoric. Consider, for instance, how the editorialists of *The New York Times*, for instance, have endorsed the Children’s Defense Fund’s call for vigorous efforts to collect child support by asserting that “every child has a right to be supported by his parents ‘to the fullest extent possible’ and that society has ‘a responsibility and a self-interest in helping protect and enforce that right.’”⁸⁴

ARE WE ENCOURAGING DIVORCE?

If children truly do define the focus of concern for those advocating strong measures to collect child support, why has so little effort been expended to see that custodial parents actually spend child-support payments on their children? Researchers certainly have not produced a body of data that definitely refutes the claims of disgruntled non-custodial parents convinced that “children have become the cash prize ... for the parent who has custody.”⁸⁵ The suspicion grows that advocates

of aggressive collection of child support are using the slogan “children’s rights” for dubious purposes. “‘Children’s rights,’” warns legal expert Martin Guggenheim, “has become a mantra invoked by adults to help them in their fights with other adults in all sorts of contexts.” “Children’s rights” have thus become “a useful subterfuge” for adults seeking to hide their own motives.⁸⁶

What motives might advocates of aggressive collection of child support prefer to keep hidden? One such motive bobbed to the surface when a refreshingly-candid teenager recently spoke to a reporter inquiring about her life plans: “I’m going to marry a really rich guy, then divorce him and marry for love. But first I’m going to have his kids so I get child support.”⁸⁷ Adult women may speak less frankly about their motives than did this adolescent, but the financial advantages that a “no-fault” divorce followed by a court order for child support can open to an unscrupulous wife have received telling attention from analysts Kimberley Folse and Hugo Varela-Alvarez, who point out that for a woman married to a professionally-successful husband, “divorce can be attractive, or at least economically rewarding.”⁸⁸ Willis, too, recognizes that when courts require a non-custodial father to pay child support in amounts that well exceed the costs of actually rearing a child, they create “an incentive for divorce by the custodial mother that, in turn, would cause an actual reduction in the welfare of the child.”⁸⁹

Some defenders of aggressive measures for collection of child support have theorized that such measures reduce the incidence of divorce by reducing the incentive for paternal abandonment. However, researchers Chia-Chung Huang, Irwin Garfinkel, and Jane Waldfogel recognize another and very different possible consequence: “If C[hild]S[upport]E[forcement] is tougher,”

they write, “mothers will be more prone to parent a child out-of-wedlock and to divorce.”⁹⁰ After examining available data, researcher Bradley T. Heim likewise concludes that increasing efforts to collect child support “may, in fact, have the effect of actually increasing divorce rates,” at least modestly.⁹¹

Some may suppose that children will receive little or no benefit from a marriage so weak that a parent could be tempted to end it for the sake of child-support payments. But available research indicates that an intact parental marriage confers on children significant social and psychological benefits even when husband and wife describe their marriage as “unsatisfactory”⁹² and even when married parents report moderate spousal conflict in their union.⁹³ Marriages strained by conflict or dissatisfaction may fall short of the kind of social ideal Chesterton would want to keep in view when considering the social evil attendant to parental divorce. Nonetheless, even these very imperfect marriages offer a much better approximation of the social ideal than does any imaginable set of child-support regulations; an ideal far richer with benefits for children than is the collection of child support.

VESTED INTERESTS ARE WINNING

Unfortunately, the value of the social ideal of an intact parental marriage may fade in the minds of those who benefit financially from the collection of child support. Nor are custodial parents the only ones who may so benefit. Researchers Scott Coltrane and Neal Hickman identify “increasing numbers of professionals (including mediators, social workers, and psychologists)” as individuals who now “have vested interests in debates over custody and support reforms.”⁹⁴ Cataloguing those who “have a financial interest in having as many children as

possible separated from their fathers,” Baskerville identifies “line/managerial/executive child-support staff, state and local agencies, judges, court masters, hearing officers, government and private attorneys, social workers, advocates, corporations that partner with government to provide child-support services, and private collection firms.”⁹⁵ In the same vein, feminist commentator Wendy McElroy acknowledges that many now view “the current child-support system [as] a ‘grave train’ for state and local agencies, judges and attorneys, social workers, private collection agencies, child-support professionals ... none of whom have a vested interest in reducing bureaucracy or listening to fathers’ complaints.”⁹⁶

How much are Utah lawmakers affected by groups with such vested interests when they consider child-support measures? Are they swayed in ways that undermine the likelihood that children will actually enjoy the benefits of the true social ideal – namely, an intact parental marriage? Utah citizens might wonder if lawmakers are hearing a balanced representation of the state’s current child-support when they read that among those prominent in supporting a proposal to raise child-support payments was a representative of “a company ... involved in the collection of delinquent child support ... [which] stands to benefit financially if child support guidelines are raised.”⁹⁷ Meanwhile, an overmatched non-custodial father lobbying on the other side of the issue acknowledges that he can raise his solitary voice against a measure that will (in his view) change a “system [that] is bad already and ... make it worse” only because of unusual circumstances. “I’m only working one job now,” this distressed father remarked, “and I have time to [lobby the state Legislature]. I’m lucky. Most guys in this boat are too busy making money so they can pay child support.”⁹⁸

Just whose voice truly carries weight in debates over child support may be inferred from a *Salt Lake Tribune* editorial endorsing new efforts to collect “Cash for Kids” in the form of more child support. While calling for child-support measures that would “help children get their due,” the *Tribune* editorialists mention the urgency of securing “\$110 million in federal aid” available not for the children themselves but rather for the army of government officials responsible for collecting child support⁹⁹ – the very officials who increasingly find their professional and financial self-interest in the failure – not the realization – of the social ideal of an intact parental marriage. Some indeed might perceive a certain unintended irony in 2006 remarks by Utah’s own Michael O. Leavitt when in his capacity as the Secretary of Health and Human Services he boasted that “child support collections ha[d] nearly doubled” nationwide since 1996, yet admitted that the goal of “moving more people into self-sufficiency and stable, two-parent families” remained part of the government’s “unfinished business.”¹⁰⁰ Utah’s former governor seems not to have considered the possibility that officials who zealously collect child-support without requiring any accountability for how that support is spent may actually be undermining the ideal of “stable, two-parent families.”

Explaining her support for aggressive measures to collect child support, one activist has declared, “We can – and we must – take the financial reward out of desertions.”¹⁰¹ Such a view is understandable, even laudable. But is it not also time to take the financial reward out of marital faithlessness? After all, desertion is hardly the only social evil now endangering the well-being of children. In an era of “no-fault” divorce, many of those compelled to pay child support have not deserted their children but rather have suffered the heart-wrenching

tragedy of having a faithless spouse take them away through a divorce they cannot contest. In these circumstances perhaps it is time to scrutinize more skeptically the inevitably costly, coercive task of ameliorating the social evil of parental divorce through collecting child support and turn toward the worthier task of reinforcing the social ideal that best safeguards the well-being of children: namely, the ideal of an intact parental marriage. That ideal can be significantly reinforced by finally removing some of the financial reward from marital betrayal. State officials can remove much of that ill-gotten reward by requiring custodial parents who have filed for a “no-fault” divorce to account for how they spend child-support money they receive. Both Utah’s non-custodial parents and Utah’s children of divorce deserve as much.

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