The Law and Economics of Child Support Payments
To Joan
The Law and Economics of Child Support Payments

Edited by

William S. Comanor

University of California, Santa Barbara, USA

Edward Elgar
Cheltenham, UK • Northampton, MA, USA
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Contributors

Heather Antecol is Assistant Professor of Economics at Claremont McKenna College. Her research interests include the effects of family structure on children and gender differences in labor market outcomes.

Kelly Bedard is Assistant Professor of Economics at the University of California, Santa Barbara. She has written widely on the effects of family structure on youth outcomes.

Donald J. Bieniewicz is a policy consultant for the Children Rights Council in Washington DC and the author of their model child support guidelines. He is also a member of the Economic Analysis Staff, Office of Policy Analysis, US Department of the Interior.

Sanford L. Braver is Professor of Psychology at Arizona State University. He is the author of Divorce Dads: Shattering the Myths, published in 1998.

William S. Comanor is Professor of Economics at the University of California, Santa Barbara, and Professor of Health Services at UCLA. He served as Chief Economist at the US Federal Trade Commission between 1978 and 1980, and was the recipient of the Distinguished Fellow Award of the Industrial Organization Society in April 2003.

Ira Mark Ellman is the Willard Pedrick Distinguished Research Scholar and Professor of Law at Arizona State University College of Law. He was the Chief Reporter of the American Law Institute’s ten-year study of Family Law, and is the senior author of the leading family law text, now going into its fourth edition.

Ronald K. Henry is a partner in the law firm of Kaye, Scholer, Frierman, Hays & Handler in Washington, DC. He has testified on numerous occasions before Congressional Committees on family matters, and also appeared on radio and television broadcasts.

Cynthia A. McNeely is an attorney and Executive Director of the With Arms Wide Open Foundation of Tallahassee, Florida, which is designed to promote healthy relationships between parents and children.
Robert A. McNeely is a shareholder in the law firm of McFarlain & Cassedy in Tallahassee, Florida. He is a founding member of the Florida Commission on Responsible Fatherhood.

Geoffrey P. Miller is the William T. and Stuyvesant P. Comfort Professor of Law at New York University Law School. His research has emphasized the relation between law and culture.

Llad Phillips is Professor of Economics at the University of California, Santa Barbara. He is a labour economist who has studied the impact of family structures.

R. Mark Rogers is a private economic consultant in metropolitan Atlanta, Georgia. He was a commissioner on the Georgia Commission on Child Support in 1998.

David Stockburger has taught quantitative analysis and software development for many years at Southwest Missouri State University.

Robert J. Willis is Professor of Economics and Senior Research Scientist in the Survey Research Center at the University of Michigan. He has written widely on the economics of the family.
Preface

William S. Comanor

This book originated with the complaints that have appeared in both the popular press and the academic literature as to the conduct of divorced and separated fathers. In the absence of marriage ties, these reports have suggested that many fathers have little interest or concern for their children. Many are even unwilling to make any financial provision for them. They are labelled ‘Deadbeat Dads’, and regarded as the worst type of villain. While they may not have physically harmed their children, you would never know that from the vitriolic tone of the published reports.

The evidence of this behaviour was well documented. Government statistics showed that most single mothers received no child support whatsoever from the fathers of their children. This absence was particularly common among never-married mothers, who are an increasingly high proportion of the total. Even among formerly married mothers, fewer than half received any support at all. Absent, non-paying fathers were an important social problem.

While one could not refute the statistical evidence, the conventional explanation seemed incomplete. If married fathers were concerned for their children, what explains the dramatic shift in their attitudes when marriage ties are broken? One answer, of course, is that most fathers did not really care about their children when married, and that this lack of concern simply becomes more apparent in the absence of marriage. But that explanation was not consistent with much of what I saw. Could there be another, more subtle explanation?

The attack on Deadbeat Dads was pursued with increasing vigour. In California, there was widespread agreement that the local district attorneys had not done enough to promote child support payment because so many of these obligations remained unpaid. The solution was to remove enforcement responsibility from these local officials and replace them with a centralized authority within the state government. A new Department of Child Support was created to serve that function. Henceforth, the full offices of the California state government would be used to ensure that these payments were made. If Deadbeat Dads were the problem, increasing government action would be the solution.
At about this time, I happened across a provocative paper by Yoram Weiss and Robert Willis in the *Journal of Labor Economics*. Among the findings presented there was that of every $5 of child support paid to the custodial parent, only about one dollar was actually used to support the child. That conclusion startled me, for it suggested a $4 ‘tax’ on every dollar of support actually provided. That ratio is an effective tax rate of 400 per cent. Perhaps that was the reason that so much child support went unpaid. If this finding was even approximately correct, there is clearly a substantial incentive against making these payments. Could that be the source of the ‘Deadbeat Dad’ phenomenon?

These issues cried out for the methods of law and economics. The function of this increasingly important hybrid discipline was to apply economic tools to legal issues. A particular methodological approach suggested itself. Using this method, the investigator assumes that preference functions remain unchanged as between alternate circumstances, and investigates if there are external factors that may have led to any observed differences in behaviour. Rather than making the easy assumption that preferences have changed, and that people are different when placed in new situations, this methodology presumes that the actors are unchanged and asks what else may have led to the different responses. Applied to the case at hand, this approach would assume, correctly or not, that most fathers’ concerns for their children are the same inside and outside of marriage, and then examines how incentives may have changed when they are asked to make child support payments.

These motivating factors are critically important for devising appropriate policies. If the conventional wisdom is correct, and the interests and preferences of fathers in marriage and outside are simply different, then there may be little recourse but to impose increasingly stringent sanctions on behaviour we seek to discourage. On the other hand, if the problem is not due to a shift in interests or preferences but rather to rearranged incentives, then the appropriate policies may be quite different. The solution may instead be to shift incentives and find a way to make child support payments more incentive-compatible. The methodology of law and economics is drawn to this second approach.

Following my encounter with the Weiss and Willis article, I published a column in the *Los Angeles Times* that raised some of these issues. There were discussions with lawyers and economists on these issues, but little more. Then in March of 2001, I received notice of a UCSB campus project on Critical Issues in America. An endowment existed to support a conference to explore issues that had become critical for our society. Clearly, the ongoing problem of child support payments fell in that category. I submitted a proposal for a conference on this topic, which was approved. I am
deeply indebted to Provost Aaron Ettenberg and Carole Self of the College of Letters and Science at UCSB for their support. I also received support from Chancellor Henry Yang, which I appreciate very much. We would not be at this stage in our work without this help.

The conference on this topic was held on the UCSB campus on 20 September, 2002. There were four papers presented by economists, four by attorneys, and one by a psychologist. They all dealt with different facets of the child support system. For the most part, those who attended were the authors of the papers, although there were also a small number of invited guests. I am particularly indebted to Professor H.E. Frech of the Department of Economics at UCSB, Dean Scott Altman of the Law School at the University of Southern California and Penny Mathison of the Santa Barbara Bar for their assistance. Apart from the opening chapter of this volume, the others were all presented at the conference. Each was subject to considerable discussion and debate, and was later revised. My introductory chapter was not presented there, but rather relies on the results and findings of the original papers and discussions.

There is an increasing need for further consideration of the child support system. My goal for this volume is that it provides an impetus for this effort. The current system cries out for needed change.

NOTES

2. Ibid., p. 665.
INTRODUCTION

There are two systems of belief regarding child support payments. The first system, which dominates academic discussions, considers these payments an important component of social insurance policy. Single-mother headed households represent a large share of all low-income households, and many believe it is the responsibility of the absent fathers to contribute to their support. Indeed, some writers assert that ‘one of the major causes of poverty in single parent families is the inadequate amount of child support’ (Del Boca and Ribero, 1998, p. 471).

Even where single-mother households have higher incomes, many believe that support payments are still needed to raise living standards. When the father is absent, income levels are invariably lower since there is now only a single wage earner. Page and Stevens find that in the first year following divorce, pre-tax family income falls on average by about 42 per cent, and post-tax income by about 32 per cent1 (p. 17). To be sure, the absent father’s consumption spending is also removed from the household budget so these differences do not necessarily mean lower living standards. Despite that fact, a commonly stated objective is to assure the same household income with one parent as would exist with two.

An important dimension of this belief system is that the costs of the children and those of the mother cannot really be distinguished. Incomes refer to the household, and the living standards of a mother and her children are inseparable. As a result, all consumption expenditures are effectively for household collective goods. In this setting, the only constraint is the ability and willingness of the non-resident father to make his payments.

In contrast to the first approach, there is a second system of belief in which child support payments have a more limited objective. Their purpose is not to provide a general income supplement for single-parent households. Instead, support payments are designed only to help pay the costs of the children. Its proponents acknowledge that both parents are responsible for

1
their children, and agree that absent fathers should contribute to their support. However, in this belief system, the costs of the children must be distinguished from those of the parent. Once determined, child costs should then be apportioned between the parents according to their relative incomes and the amount of time that each spends with the children.

While both systems of belief recognize the need for child support payments, they have very different implications for the level of payments. Proscribed payments are much higher under the first belief system than the second.

To expand the volume of child support payments, federal and state governments have intervened since 1975 with increasing vigour on the side of potential recipients. While previously these payments were considered private obligations, to be enforced through conventional legal processes, they are now viewed quite differently and the subject of major policy interventions. Yet, these efforts have not generally been successful. Despite widespread acceptance of the need for these payments, most support payments are not paid, which is a pattern that has not changed very much for the past 25 years.

Many believe this pattern arises simply from ‘deadbeat dads’, men who refuse to make their required payments. A recent statement from the Journal of Human Resources testifies to that viewpoint:

If the NCP (non-custodial parent) is altruistic, he will receive utility from expenditures on the children, and even in the absence of any laws about child support, he will voluntarily transfer income to the custodial parent (CP) to increase child expenditures. Some NCPs, however, may wish to contribute little or nothing in support of their children, perhaps due to weak emotional attachment, antagonism toward the ex-spouse, inability to pay, or even the perception of alternative income available to the CP and child. It is in these cases that the role of the State is most important.²

The explanations given there for non-payment are conventional. Most discussions of these issues say little more.

These descriptions, however, are unsettling. Why should an attentive father within a family shift to being so inattentive when the household dissolves? How can we explain so striking a shift in his actions, that where he was once happy to support his child, he is now unwilling to do so?

Particularly striking is the widespread prevalence of civil disobedience. Except for the anti-liquor laws during the Prohibition era and the anti-drug laws more recently, there has not been such a general unwillingness to follow the law. Child support is a required obligation, and yet most non-custodial parents do not make their required payments. Why?

The purpose of this volume is to offer some tentative answers to these questions. We shall find that these answers relate directly to the two systems of belief regarding these payments.