

ARTICLE

THE THEORY OF CHILD SUPPORT

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More Americans are subject to child support orders, either as obligor or obligee, than to any other civil judgment. Federal law requires each state to have its own guidelines to determine the dollar amounts of most support orders. What principles should decide the design of such guidelines and thus the amount of support to be ordered? What do these fundamental principles say about the impact that a parent's marriage or remarriage should have on the support order? This Article explains why the method most states use to develop child support guidelines prevents productive attention to questions like these. The Article then identifies the four fundamental policy considerations rulemakers are likely to believe relevant, and offers a new method for creating or revising support guidelines that would ensure the guidelines in fact reflect the rulemaker's preferred balance among these four considerations. The recommended method would replace the conventional approach employed by most of the consultants that states rely upon to prepare their guidelines, because the conventional method's exclusive focus on marginal child expenditures prevents such a balanced analysis.

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More than one quarter of the 23 million civil cases filed in state courts in 2004 were domestic relations cases, and many included a claim for child support.¹ Survey data suggest that 30% of the adult population either has paid child support or has been the person to whom someone else was ordered to pay it.² Such data suggest that more Americans have been subject to child support orders, as obligor or obligee, than to any other kind of civil judgment. For these reasons, as well as because of their presumed importance to children, the content of support orders is surely worthy of serious thought. The increasing effort over the past several decades to impose and enforce support orders should also heighten concern about the orders' content, because the content of the orders matters much more when they are enforced.³

¹ According to statistics gathered by the National Center for State Courts, there were 5.7 million domestic relations cases filed nationwide in 2004, and 16.9 million other civil cases. These counts exclude traffic cases and cases in juvenile courts. RICHARD Y. SCHAUFFLER ET AL., EXAMINING THE WORK OF STATE COURTS, 2005: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 15 (Nat'l Ctr. for State Courts 2006), available at <http://www.ncsc.org> (follow "Research" hyperlink; then follow "Court Statistics" hyperlink; then select "2005 Report"). Precise nationwide counts of the proportion of domestic relations cases that involve support orders are unavailable because not all states collect such statistics, and when they do, their collection methods vary in ways that make the totals difficult to aggregate. In 2003, 7.7 million of the 14 million custodial parents in the United States (parents with custody of children under 21) were entitled to child support awards that were granted by courts or other government entities. TIMOTHY S. GRALL, U.S. CENSUS BUREAU, PUBL'N No. 60-230, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2003 (2006), available at <http://www.census.gov/prod/2006pubs/p60-230.pdf> (last visited November 14, 2007) (based on data from the Child Support Supplement to the April 2004 Current Population Survey from early 2004).

² See Ira Mark Ellman et al., Intuitive Lawmaking: The Example of Child Support (July 2, 2007) (available at <http://ssrn.com/abstract=997964> (a survey of Pima County, Arizona jurors, finding that 12% of respondents had paid child support to another parent and that 18% had been recipients of child support orders).

³ See PAUL LEGLER, LOW-INCOME FATHERS AND CHILD SUPPORT: STARTING OFF ON THE RIGHT TRACK 8, (Policy Studies Inc. 2003) (finding that child support collections increased from \$8 billion in 1992 to \$18 billion in 2000). Among children living in single-mother families whose incomes fell below the federal poverty threshold, 30.8% received child support

The content of child support orders is largely determined by schedules that specify dollar amounts that obligors must pay for any given combination of parental incomes and number of children.⁴ Federal law requires states to have such schedules (called “guidelines”) and mandates that the amount of every individual support award be set as the schedule specifies, unless the trial judge writes an opinion justifying a departure.⁵ Such schedules necessarily implement some policy, but do they do so knowingly and purposely? We will see below that to the extent the policy purposes of support guidelines are explicitly identified, they do not appear to be consistent with the guidelines’ actual contents. It appears that setting guideline amounts can be politically contentious, and the process has attracted attention from partisans representing both sides of the gender gap, but there has been little systematic examination in the literature of support guidelines in light of their policy purposes.⁶

This Article offers such an analysis. It identifies the three policy rationales that might plausibly be offered for requiring the payment of child support, as well as the principal rationale for limiting the amount of payment that might be required. It explains how policymakers can translate their particular weighting of these four fundamental considerations into specific support schedules.⁷ The Article also shows that the federally required guidelines currently in force in nearly all states are inconsistent with the likely policy preferences of the lawmakers who approved them, an inconsistency that is the unintended but inevitable consequence of the method employed to write

payments in 1996; this number increased to 35.5% in 2001. Similarly, the percentage of children receiving child support payments who lived in single-mother families with incomes at or up to 200% of the poverty threshold increased from 44.6% in 1996 to 50.1% in 2001. ELAINE SORENSEN, CHILD SUPPORT GAINS SOME GROUND (Urban Inst., Snapshots of America’s Families III Series No. 11, 2003), http://www.urban.org/UploadedPDF/310860_snapshots3_no11.pdf (last visited November 14, 2007). An increasing number of orders are being entered against nonmarital fathers. Between 1992 and 2000, the number of cases each year in which paternity was established increased from 500,000 to 1.5 million. LEGLER, *supra* at 6. New federal rules requiring states to attempt to establish the paternity of children born to unmarried mothers before they leave the hospital have been effective. See Ronald Mincy et al., *In-Hospital Paternity Establishment and Father-Involvement in Fragile Families*, 67 J. MARRIAGE & FAM. 611 (2005). But see NANCY DUFF CAMPBELL ET AL., FAMILY TIES: IMPROVING PATERNITY ESTABLISHMENT PRACTICES AND PROCEDURES FOR LOW-INCOME MOTHERS, FATHERS AND CHILDREN 7 (Nat’l Women’s L. Ctr & Ctr on Fathers, Families & Pub. Pol’y 2000), available at http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/16/b2/9b.pdf (finding that establishment of paternity does not always lead to a child support order).

⁴ See Child Support Guidelines on the Web, <http://www.supportguidelines.com/links.html> (last visited November 14, 2007) (compilation of all state child support schedules).

⁵ 42 U.S.C. § 667(a), (b)(2) (2000).

⁶ Even Betson, on whose work the entire marginal expenditure approach rests, has noted the need for such an examination, although Betson did not himself attempt to fill that gap. David Betson et al., *Tradeoffs Implicit in Child Support Guidelines*, 11 J. POL’Y ANALYSIS & MGMT. 1 (1992); see discussion of marginal expenditure approach *infra* Part I. By far the best effort of this kind is offered in an analysis of the American Law Institute (“ALI”). See AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS 423–38, 570–85, 586–644 (2002). Its analysis, however, focuses on the competing interests involved, rather than the policy purposes of the underlying law.

⁷ See discussion *infra* Part III.A and note 134.

them.⁸ In making this last point, this Article relies on a previous article by one of the authors that examined in detail the conventional method employed by the consultants on whom states have usually relied to draft support guidelines.⁹

Part I of this Article discusses the recent history of child support and analyzes the conventional method used to develop support guidelines. Part II asks the fundamental question that current methods for writing guidelines do not usually consider: what, in fact, are the policy purposes society means to further by requiring child support payments? Part III explains how states can write guidelines that implement their particular policy choices far more reliably than current methods can.¹⁰

I. CURRENT PRACTICE

A. Background

At one time, child support orders were determined case by case. Trial judges exercised discretion under statutes that left them largely free to set

⁸ See discussion *infra* Part III.A.

⁹ Ira Mark Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 U. CHI. LEGAL F. 167, 170 (2004).

¹⁰ The analysis in this Article does not explicitly address the impact that an alimony award might have on the relative situations of the custodial and noncustodial households. Alimony awards are not generally available to a custodial parent who was not married to the other parent, and while contract or equity-based claims for alimony-like awards are theoretically possible in many states, they are rarely successful. See Ann Laquier Estin, *Ordinary Cohabitation*, 76 NOTRE DAME L. REV. 1381, 1395, 1400 (2001). Alimony awards are also generally unavailable to a custodial parent who is married (whether to the other parent or to a new partner). IRA MARK ELLMAN ET AL., *FAMILY LAW: CASES, TEXT, PROBLEMS* 412–13 (4th ed. 2004). In 2005, 36% of custodial parents either had never married or were in a first marriage to someone other than the other parent. An additional 16% had been divorced but then remarried. These percentages are derived from the numbers contained in Table 4, “Child Support Payments Agreed to or Awarded Custodial Parents by Selected Characteristics and Sex: 2005”, of a recent Census Bureau report. U.S. CENSUS BUREAU, *CURRENT POPULATION SURVEY, APRIL 2006*, available at www.census.gov/hhes/www/childsupport/chldsu05.pdf, (last visited October 26, 2007). Most custodial parents were thus ineligible to receive alimony awards. Where alimony awards are made, the norm is to add the value of the alimony payments to the income of the recipient, and to subtract them from the income of the child support obligor, as adjustments to their respective incomes in calculating support. See, e.g., AM. LAW INST., *supra* note 6 at § 3.14(2) (“[S]pousal-support payments should be treated as income to the payee and deducted from the income of the payor.”); ARIZ. REV. STAT. ANN. §25-320(5–6) (2007) (“Gross income includes income from any source, and may include . . . income from . . . spousal maintenance. . . . The court-ordered amount of spousal maintenance resulting from this or any other marriage, if actually being paid, shall be deducted from the gross income of the parent paying spousal maintenance.”). The analysis offered in this Article is unaffected by the possibility of alimony in any jurisdiction that employs this conventional approach to coordinating alimony and child support awards. Alimony is simply part of the calculation of the incomes assumed for the parents whose situations are considered in the examples examined in this Article.

awards at the dollar amounts they thought appropriate.¹¹ Not surprisingly, the result was wide variation in the amount of child support ordered among cases whose essential facts seemed quite similar.¹² The few applicable legal principles did not provide courts much guidance. It was often said that the law required the support amount to be based on the standard of living maintained in the intact family.¹³ It does not require too much thought, however, to see that compliance with that principle is impossible in all but the unusual case in which the parents' combined income is significantly greater after divorce than before. Where their incomes are unchanged, the greater expense of maintaining two post-divorce households necessarily requires that at least one and probably both experience a decline in their living standard. This reality means that the real question is the proper allocation of this living standard shortfall. Trial judges answered that question implicitly as they set support levels in individual cases, and they rarely had to explain their choices.¹⁴ That is why the governing rules seemed to vary between cases. Some commentators argued that child support orders were often too low to meet a child's minimum needs, much less to maintain the child's prior standard of living.¹⁵ Additionally, the burden of making out a case for support

¹¹ See LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION § 1.01 (1996). See also Lucy M. Yee, *What Really Happens in Child Support Award Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court*, 57 DENV. L.J. 21, 38-42 (1979); Kenneth R. White & R. Thomas Stone, Jr., *A Study of Alimony and Child Support Rulings with Some Recommendations*, 10 Fam. L.Q. 75, 83 (1976), available at <http://www.supportguidelines.com/book/chap1a.html#Historically>.

¹² MORGAN, *supra* note 11; Yee, *supra* note 11.

¹³ See *Lenore Z. K. v. Albert K.*, 373 N.Y.S.2d 486, 494 (N.Y. Fam. Ct. 1975) (suggesting that the objective of a child support order is to emulate the standard of living of the intact family). One still sees such statements even in the guideline era. See, e.g., *Voishan v. Palma*, 609 A.2d 319, 322 (Md. 1992) ("The conceptual underpinning [of Maryland's child support guidelines] is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together.").

¹⁴ When the amount of a child support award was challenged, the appellate court often acknowledged the breadth of the trial judge's discretion in establishing the award—and the difficulty of overturning it. See, e.g., *Fugate v. Fugate*, 510 S.W.2d 705, 706 (Mo. Ct. App. 1974) ("The [child support] amount determined is a matter resting in the sound discretion of the trial court, and we review the record only to determine whether or not that discretion has been abused. . . . Such an abuse of discretion must be based upon an erroneous finding and judgment which is clearly against and contrary to facts or the logical deductions from the facts and circumstances before the court, and which works an injustice."); *Pennsylvania ex rel. Berry v. Berry*, 384 A.2d 1337, 1339 (Pa. Super. Ct. 1978) ("[T]he trial court possesses wide discretion as to the proper amount of child support payments and, unless surrounding circumstances suggest that the lower court has abused its discretion, its judgment must be upheld."); *Dismukes v. Dismukes*, 376 So. 2d 730, 731 (Ala. Civ. App. 1979) ("Determination of the amount of child support is a matter within the sound discretion of the trial court. Such an award will not be reversed on appeal in the absence of a manifest abuse of discretion.").

¹⁵ Lenore J. Weitzman & Ruth B. Dixon, *Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation after Divorce*, 12 U.C. DAVIS L. REV. 473, 494-501 (1979); N. D. Hunter, *Child Support Law and Policy: The Systematic Imposition of Costs on Women*, 6 HARV. WOMEN'S L.J. 1 (1983).

was itself an important barrier to the establishment of an order, and thus to enforcement of the support obligation.¹⁶

Reforming this discretionary system became part of the federal effort to improve the collection of child support.¹⁷ Congress conditioned federal funding for each state's welfare program on the state's creation of child support guidelines.¹⁸ Under rules still in effect, the Family Support Act of 1988 requires that state guidelines provide a dollar amount of child support for every potential case.¹⁹ States must require their courts to set a support order at the guideline amount unless a judge writes an opinion explaining why the guideline amount is inappropriate for the particular case in question.²⁰ From the outset, the construction of these support guidelines attracted some debate.²¹

¹⁶ Before mandatory guidelines, each parent typically presented the court with a household budget that exceeded that parent's household income, thus placing a burden on the custodial parent to convince the judge to make an adequate child support award in the face of the noncustodial parent's alleged financial straits. See AM. LAW INST., *supra* note 6, at 14.

¹⁷ Beginning with a 1974 amendment to the Social Security Act that required each state to create a child support enforcement program, the federal government has led a joint federal and state effort to improve the enforcement of child support awards. See Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337. See also Paul K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 FAM. L.Q. 519, 521-27, n. 1044 (1996). The history of federal legislation related to child support enforcement is also outlined in LAURA W. MORGAN, *supra* note 11, § 1.02.

¹⁸ 42 U.S.C. § 667(a) (2000).

¹⁹ 42 U.S.C. § 667(b) (2000).

²⁰ *Id.*

²¹ The debate over the content of child support rules began in earnest in the 1970s as pressure mounted to do something about the enforcement of support orders. The battle was engaged once the federal government required all states to adopt support guidelines. The approach suggested by the consultant to the U.S. Department of Health and Human Services (HHS) advisory committee, described *infra* as the *Williams-Betson*, or conventional, model, came under early attack from feminist scholars, many of whom made insightful observations about its problematic policy implications. See, e.g., WOMEN'S LEGAL DEFENSE FUND, *ESSENTIALS OF CHILD SUPPORT GUIDELINES DEVELOPMENT: ECONOMIC ISSUES AND POLICY CONSIDERATIONS* (1987). Many supported what became known as the equal living standard principle, originally advocated in JUDITH CASSETTY, *CHILD SUPPORT AND PUBLIC POLICY: SECURING SUPPORT FROM ABSENT FATHERS* (1978). A more exhaustive recent effort to justify an equal living standard approach is offered in Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 CAL. L. REV. 41 (1998). Despite these efforts by feminists, the *Williams-Betson* model came to dominate. See *infra* note 33 and accompanying text. More recently, it has been attacked by some fathers' advocates as unfair to support obligors. See, e.g., R. Mark Rogers & Donald Bieniewicz, *Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living*, in *THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS* 60 (William Comanor ed., 2004); Ronald Henry, *Child Support Policy and the Unintended Consequences of Good Intentions*, in *THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS*, *supra*, at 128, 147-52. Neither side in these debates effectively engages the other because the two begin from incompatible premises. Feminist scholars often seem to assume that an equal living standard is the only just result, while partisans on the fathers' rights side assume that there is some objectively correct measure of a child's "cost" upon which a support amount should be based. See Sanford L. Braver & David Stockburger, *Child Support Guidelines and Equal Living Standards*, in *THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS*, *supra*, at 91-127. The first is a value judgment about which reasonable observers may differ. The second is mistaken as a technical matter. See Ellman, *supra* note 9 at 170, 171 nn.5-8. The fact that no state has intentionally adopted equal

Although federal law requires that states establish child support guidelines, it leaves them free to fashion the guidelines as they wish.²² A guideline writer's first thought might be to base the guidelines on the cost of children, but that approach cannot work. One cannot calculate what children "cost" without first deciding on the living standard to buy for them. It obviously costs more to provide a child with a middle class living standard than to provide a living standard that barely exceeds the poverty threshold, and more yet to provide the child with the same living standard as that enjoyed by successful entrepreneurs and professionals. Any claim that support guidelines be based on the cost of children necessarily assumes a choice of living standard, but that choice of living standard is a value judgment about which people will differ.

Choosing a living standard is a difficult and contentious value judgment because the child and the custodial parent share the same living standard when they share a home—the custodial parent cannot be expected to eat noodles while feeding the child steak. But absent infinite parental resources, the higher the living standard the support guidelines provide the custodial household, the lower the living standard enjoyed by the support obligor. Further, both obligor and custodial parent may live with new spouses and new children who will also share their living standard.²³ Child support awards inevitably transfer resources from all members of the obligor's household to all members of the custodial parent's household, including to the custodial parent herself. Any effort to set support awards by reference to a comparison of the living standards of the two parental households is complicated by the fact that awards affect entire households, rather than particular individuals within them.

living standards (Braver & Stockburger, *supra*, at 91) suggests it is not compatible with most people's instincts as to the fair result. Both sides in this debate must grapple with the reality that the child and the custodial parent share a common household. For fathers' advocates who object to the custodial parent deriving any benefit from child support, the problem is that such benefit is unavoidable and cannot be eliminated without eliminating support for the child. On the other hand, feminist scholars need to acknowledge that child support payments do provide what is, in effect, "hidden alimony" (as fathers' groups label it). The American Law Institute's recent proposal was a major step forward from this morass, and this article draws from and builds upon it. See AM. LAW INST., *supra* note 6, at ch. 3.

²² See 42 U.S.C. § 667 (2000). The only federal directive on how state guidelines are to be fashioned is contained in 45 C.F.R. § 302.56(h) (2007) ("As part of the [quadrennial] review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines.").

²³ See Laura W. Morgan, *The Duty of Stepparents to Support Their Stepchildren*, SUPPORTGUIDELINES.COM, <http://www.childsupportguidelines.com/articles/art199908.html> (last visited November 18, 2007) ("The 1990 census . . . revealed that approximately 29% of all married-couple households with children [contain at least one stepchild under the age of eighteen]. Further, stepchildren make up 20% of all children in married couple families." (citing BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, SER. P-23-180, MARRIAGE, DIVORCE, AND REMARRIAGE IN THE 1990s (1992))); *id.* ("[A]s we approach the year 2000, the percentage of stepchildren living in married couple families is expected to grow to 33%." (citing Paul J. Buser, *The First Generation of Stepchildren*, 25 FAM. L.Q. 1, 2 (1991))); Paul J. Buser, *The New Wave: Stepparent Custody, Visitation, Support*, 1 DIV. LITIG. 4 (1990).

Unfortunately, however, the law ignores this reality. It assumes that dollars are true to their label—that child support dollars benefit only the obligor’s children and alimony dollars benefit only the parent. As a general matter, therefore, the law sets support amounts without considering either the award’s impact on these third parties or the impact of the third parties’ presence on the goals that the award is meant to further.²⁴ For example, the income of a custodial mother’s new husband will almost always improve his stepchild’s living standard, and the income of the support obligor’s new spouse may improve the obligor’s living standard, and thus the obligor’s capacity to pay support. A sensible analysis of child support policy must take the situation of the whole household into account. Much of this Article therefore discusses the relative situations of custodial and noncustodial households, rather than the relative situations of the individuals within them, on the assumption that members of a family who live together share a common living standard. Indeed, one might argue that shared financial status is one characteristic that distinguishes a family household from a group of housemates. For ease of exposition, however, we begin our analysis by ignoring the complications of additional household members, but we return to discuss them in Part III of the Article.²⁵

What principles do current state guidelines reflect? The aspirational statements contained in most state statutes or regulations are so vague as to be almost contentless. California, for example, specifies that parents should support their child “in the manner suitable to the child’s circumstances.”²⁶ Such vacuity, or in some cases, the provision of contradictory statements,²⁷

²⁴ In particular, the law does not consider the income of a new spouse unrelated to the children. *See infra* Part III.B and notes 135–158. *See also* *Donohue v. Getman*, 432 N.W.2d 281, 283 (S.D. 1988) (ruling that the support obligor’s extraordinary medical expenses for his stepchildren from his later marriage cannot be considered in setting his support obligation to his children from a previously dissolved marriage).

²⁵ *See infra* Part III.B.

²⁶ CAL. FAM. CODE § 3900 (West 2007).

²⁷ Inconsistent statements that imply different resolutions to this tradeoff are another way states avoid confronting the issue. Official descriptions of New York’s child support law, for example, demonstrate such inconsistency. *Compare* City of New York, Human Resources Admin., Dep’t of Social Services, Child Support Calculator, http://www.nyc.gov/html/hra/html/revenue_investigation/OCSE_child_support_calculator.shtml (last visited November 18, 2007) (“The goal is to give children the same standard of living they would have if their parents were together.”) with N.Y. STATE DIV. OF CHILD ENFORCEMENT, PUBL’N NO. 4721, WHAT NONCUSTODIAL PARENTS NEED TO KNOW ABOUT CHILD SUPPORT 7, available at <https://newyorkchildsupport.com/publications.html#broc> (follow “What Non-custodial Parents Need to Know About Child Support” hyperlink) (“The guideline was put in the law to make sure that people pay an amount for support that is actually close to what it costs to care for a child.”) and DAVID W. DLUGOLECKI, N.Y. STATE OFFICE OF TEMP. AND DISABILITY ASSISTANCE, NEW YORK CHILD SUPPORT STANDARDS ACT QUADRENNIAL EVALUATION, at vi (2001), available at <https://newyorkchildsupport.com/pdfs/CSSARReport110102.pdf> (“The guidelines, as written, produce awards roughly in line with the accepted standard of requiring the noncustodial parent to pay in support what he or she would have contributed to the children in an intact family.”). These three descriptions are mutually inconsistent, and as one of us argues in another piece, only the third description could possibly be interpreted in a manner consistent with New York’s actual guidelines. *See* Ellman, *supra* note 9, at 179–80.

avoids the political contentiousness that might arise from an effort to set forth one clear statement that resolves the appropriate tradeoff in financial well-being between the relevant parties. The disinclination to confront these inevitable tradeoffs was facilitated by two studies that the Department of Health and Human Services funded in the late 1980s.²⁸ The studies, which were meant to assist states in complying with the forthcoming guidelines requirement, focused on estimating how much parents in intact families spend on their children, rather than estimating how much children cost. The Williams study, recognizing that “there is no absolute standard for the ‘cost’ of rearing a child,” concluded that “economic studies are able to infer the ‘cost’ . . . at a given income level only by observing the actual expenditures allocated to a child in existing households.”²⁹ The Betson study simply conflated the concepts of cost and expenditure.³⁰ While offering a method for estimating expenditures on children in intact families, the study’s title and text both refer repeatedly to the costs of children, as if costs and expenditures were the same.³¹ Of course, they are not. But, as the quote from Williams suggests, the shift from cost to expenditure (Williams uses Betson’s method)³² seems to avoid the need to make a value judgment about the appropriate living standard, a judgment that would be necessary if one sought to estimate cost. Perhaps in part because of the mistaken impression that it is value-neutral, the Williams-Betson method is employed by most states, and we refer to it here as the conventional method.³³

²⁸ ROBERT G. WILLIAMS, DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS PT. II, REPORT TO U.S. OFFICE OF CHILD SUPPORT ENFORCEMENT (Policy Studies Inc. 1987) (formally issued by an Advisory Panel assembled by the National Center for State Courts, but funded by the federal Office of Child Support Enforcement); DAVID M. BETSON, *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey* (Institute for Research on Poverty Special Report #51, 1990) (prepared under a contract with the University of Wisconsin-Madison’s Institute for Research on Poverty for a final report to the U.S. Department of Health & Human Services (HHS), Office of the Assistant Secretary for Planning and Evaluation).

²⁹ WILLIAMS, *supra* note 28, at II-ii.

³⁰ See BETSON, *supra* note 28; see also Ellman, *supra* note 9, at n.8.

³¹ Even though the title of the Betson report, as well as the text, refers to the cost of children, the report describes itself as a response to a provision in section 128 of the Family Support Act of 1988 that requires HHS to detail “the patterns of expenditures on children in 2-parent families [and] single-parent families.” Pub. L. No. 100-485 § 128. And indeed, the report’s methodology is aimed at determining an estimate of expenditures. BETSON, *supra* note 28, at 6–8.

³² See WILLIAMS, *supra* note 28; see also Ellman, *supra* note 9 (explaining that Williams generally bases his child support guideline recommendations on estimates of child expenditures provided to him by Betson).

³³ Williams’s company, Policy Studies, Inc., has historically been the dominant provider of consulting services to states reexamining their support guidelines. See Ellman, *supra* note 9, at 172 n.9. Policy Studies, Inc. has recently come under new management, however, and its new website no longer features its work on support guidelines. See Welcome to PSI, <http://www.policy-studies.com> (last visited Nov. 26, 2007). Jane Venohr, PSI’s lead author for its guideline analyses in recent years, is now employed at the Center for Policy Research. See Contact Us, http://www.centerforpolicyresearch.org/contact_us.htm (last visited Nov. 26, 2007).

Of course, this method cannot really be “value-neutral” because the choice of how much to spend on children reflects a value choice. The method’s appeal, however, lies in the illusion that the guidelines’ writer is off the policy hook. It sets the guideline amounts by reference to the average spending decisions of parents in intact families—as estimated by the consultant, rather than by the policy judgments of the guidelines’ writer.³⁴ It therefore seems that the policy choice is made, in effect, by the aggregate behavior of parents in intact families and the consultant merely measures that behavior and translates it into support guidelines.

Some courts and state officials take the illusion a step further, apparently believing that the conventional method gives children the same living standard they would have if their family were intact—that the same amount of money will be spent on them as would have been spent had their parents remained together. As a Maryland court put it, “[t]he conceptual underpinning [of Maryland’s child support guidelines] is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child’s parents remained together.”³⁵

But unless their two incomes rise, the two post-separation households cannot both achieve the same living standard as the single pre-separation household. To ensure that the custodial household suffers no living-standard decline at all, state guidelines would have to impose a severe living standard decline on the support obligor, but (as we shall see) that is not in fact what they do. Nor does it seem likely that policymakers would want to do this. How then can policymakers and judges be under the illusion that existing guidelines preserve the child’s pre-separation living standard?

The sleight of hand takes place in the course of measuring expenditures on the child. To conclude the child will receive “the same proportion of parental income” after parental separation as before requires having previously established a definition of “parental expenditures on the child” that distinguishes them from other parental expenditures, as well as a method for measuring the proportions of parental income spent on the child and on other things. The definition one would necessarily have to employ for support guidelines to do what the Maryland court believed its guidelines did, is to count all pre-separation expenditures that conferred a benefit on the child, and thus contributed to the child’s living standard, as an expenditure on the child. Only if expenditures are defined in this way could one say that ensuring equal expenditures (“same proportion of total parental income”) on the child before and after separation will also ensure equal living standards for the child at these two times. But while this might be the definition implicitly

³⁴ *Id.* at 168, 178–79.

³⁵ *Voishan v. Palma*, 609 A.2d 319, 322 (Md. 1992); *see also* *K. v. K.*, 373 N.Y.S.2d 486, 494 (N.Y. Fam. Ct. 1975) (stating that the objective of a child support order is to emulate the standard of living of the intact family); City of New York, *supra* note 27 (articulating this same belief at the city departmental level).

assumed by the Maryland court (and by others who share their belief), it is not the definition of expenditures on the child actually used in the conventional methodology, and that is why the usual state guidelines do not in fact yield the result that the Maryland court assumes they do.³⁶ Understanding how the conventional method in fact defines and estimates child expenditures is thus central to understanding why it produces the kind of guidelines that it does.

Essential to the illusion that the conventional method is value-neutral is the assumption that the task of estimating the average expenditures of intact families on their children is just a technical exercise that requires no policy choices. That assumption is wrong because, as we have just seen, one cannot estimate child expenditures without first choosing a definition. The definitional choice is a matter of child support policy, not something one looks up in a technical manual on economic statistics. Which definition of child expenditure is appropriate depends on the policy purpose for which one is measuring it. The conventional method does not avoid value judgments, but simply hides them in this definitional choice. What parents spend on their children cannot be tallied without first deciding what counts as a child expenditure, and more than arithmetic is involved.

Consider, for instance, a couple that spends the same amount on rent and utilities after having a child as they did when childless. Now they separate, and we want to know what they spent on their child when together. If we wish to capture any expenditure that conferred benefit on the child, then a large portion of the rent and utilities should be included. Indeed, we might even say that all of it should be included, because we might believe the child benefited from all of it. Of course, other family members also benefited from having a place to live and from having lights and heat, but the benefit to them does not reduce the benefit to the child. If less is spent on these items, all family members experience a decline in living standard. There really is no inherently correct way to allocate the cost of such joint consumption items among the joint consumers. The allocation rule one employs must be based on the policy purpose for which one is making the allocation. If the policy purpose is, for example, to ensure the economic well-being of children in constructing child support guidelines, then one will likely want to consider most of these expenditures to be expenditures on the child.

Unfortunately, consultants who prepare the estimates of child expenditures—used to construct the support guidelines they recommend—do not bring this definitional question to the attention of child support policymakers. Instead, as we shall explain further below, the conventional method simply assumes that “child expenditures” is best defined as the *marginal* expenditures on the child. That is, how much more did the couple spend on rent and utilities after they had their child? In our example, the answer

³⁶ See *infra* Part I.B (explaining the definition employed by the conventional methodology and its impact on the guideline figures).

would be zero. None of the pre-separation parental expenditures on rent and utilities would count as an expenditure on the child. A guideline based on that estimate of parental expenditures is going to produce a very different result than one based on whether an expenditure conferred a benefit on the child.³⁷ Though marginal analysis yields powerful insights in many areas, a marginal analysis of child expenditures marginalizes children.

Most states employ “income shares” guidelines that are generated by consultants who estimate marginal child expenditures and then allocate responsibility for those marginal expenditures between the two parents in proportion to their incomes.³⁸ The noncustodial parent pays his share to the custodial parent as the support order.³⁹ This income-proportional allocation of child expenditures between the parents seems appropriate, but an appropriate allocation of a mistaken estimate of child expenditures yields an inappropriate result. Items not counted as child expenditures are not part of the estimate and thus are not allocated between the parents. Thus, applying the income shares model to our hypothetical would require the support obligor to pay the custodial parent very little for rent and utilities if the custodial parents do not spend much more on those items due to the child’s presence. But if the custodial parent does not have sufficient income of her own to pay for rent and utilities expenses—the cost were she by herself—then she and the child may both end up out on the street.

Building on this insight, the following section looks more carefully at what actually happens under current support guidelines.⁴⁰

B. *Support Levels Called for Under Current Guidelines*

We have already described the conceptual problem inherent in the conventional method’s assumption that support guidelines are properly based on

³⁷ See Ellman, *supra* note 9, at 173–79, 182–88, 195–96 nn.15–16 (discussing alternative methods for estimating expenditures on children and their varying results and assumptions).

³⁸ See generally IRA MARK ELLMAN ET AL., *supra* note 10 (explaining the income shares model); WILLIAMS, *supra* note 28, at II-69 (same). See also MORGAN, *supra* note 11, § 1.03(a)(3)(i) (describing the income shares model and comparing the calculation of child support under income shares guidelines in Alabama, Colorado, and Virginia).

³⁹ Ellman, *supra* note 9, at 174. The Arizona Child Support Guidelines, for example, explain in ¶¶ 5–13 how to calculate “Total Child Support Obligation,” and then in ¶ 14, they explain how that obligation is to be discharged. Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320 (2006), available at <http://www.supreme.state.az.us/dr/childsup/CSG2004.pdf#Page=13> (“The court shall order the noncustodial parent to pay child support in an amount equal to his or her proportionate share of the Total Child Support Obligation. The custodial parent shall be presumed to spend his or her share directly on the children.”). The Arizona Supreme Court establishes the Arizona Child Support Guidelines and reviews them at least once every four years to ensure that they result in appropriate award amounts. ARIZ. REV. STAT. § 25-320(D) (2006). See Supreme Court of the State of Arizona, Administrative Order 2004-29, Adoption of Revisions to the Arizona Child Support Guidelines (2004), available at <http://www.supreme.state.az.us/orders/admorder/Orders04/2004-29.pdf> (adopting the most recent Arizona Child Support Guidelines, effective January 1, 2005).

⁴⁰ See Ellman, *supra* note 9 (examining the conventional method in greater detail than this Article).

the marginal expenditures a pre-separation childless couple must make in order to maintain the same standard of living after children are added to their household.⁴¹ Below we also discuss the additional technical problems posed by the usual implementation of this marginal expenditure measure.⁴² But we first discuss how the method works in practice by examining the child support amounts that it yields in selected cases. Consider Table 1, which sets out three cases, each involving a custodial parent (“CP”) who lives with the couple’s one child and earns \$1,000 monthly. The cases differ only in the income earned by the non-custodial parent (“NCP”), who lives alone and who earns either \$500 monthly (Case 1), \$2,500 monthly (Case 2), or \$6,000 monthly (Case 3). Table 1 uses the Arizona support schedule,⁴³ but similar calculations using the guidelines of other states are presented in the Appendix. Arizona is not atypical. It is an income shares state⁴⁴ with guidelines based on the conventional methodology, and it revised its guidelines in 2004.⁴⁵ The overall message of Table 1 does not depend on which state’s guidelines are used.

Table 1 shows the NCP’s required monthly child support payment, both in dollars and as a percentage of the NCP’s income. The last two columns of the table report the incomes of the custodial and noncustodial households after the child support payment is made, shown as a percentage of the federal government’s poverty threshold for a household of that composition.⁴⁶

⁴¹ See *infra* Part I.C; see also Ellman, *supra* note 9.

⁴² Ellman, *supra* note 9 at 189–215.

⁴³ Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320 (2006). Arizona normally reduces the support award to reflect the time a child spends with the support obligor under the visitation schedule. *Id.* at ¶ 11. Table 1 does not include a visitation adjustment. If it were included, the support amounts shown in the table would be lower. For example, if the support obligor were to see the child between 88 and 115 days each year—a range that encompasses most cases—the Guidelines would reduce the support amount in Case 1 by \$53, the amount in Case 2 by \$106, and the amount in Case 3 by \$148. On the other hand, the Guidelines allow the court to increase the child support award to reflect the obligor’s proportionate share of child care costs “appropriate to the parents’ financial abilities,” and they require an increase to reflect the obligor’s share of the cost of health insurance. *Id.* at ¶ 9.

⁴⁴ Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320 (2006).

⁴⁵ Supreme Court of the State of Arizona, *supra* note 39.

⁴⁶ The U.S. Census Bureau annually revises and reports the federal poverty threshold. U.S. Census Bureau, Poverty Thresholds, Poverty Thresholds by Size of Family and Number of Children, <http://www.census.gov/hhes/www/poverty/threshld.html> (last visited November 15, 2007) (charts showing annually revised and reported poverty threshold from 1980 to 2006). The poverty threshold is set by determining the cost of the “market basket” necessary to provide a family of the specified size with a basic but nutritionally adequate diet. That amount is then multiplied by a standard constant, originally set at three, to get the total household income required to maintain a family of that size above the poverty level. See Gordon M. Fisher, *The Development and History of the Poverty Thresholds*, 55 SOC. SEC. BULL. No.4, at 3-14 (1992). But see MEASURING POVERTY: A NEW APPROACH (Constance F. Citro & Robert T. Michael eds., 1995) (criticizing the Census Bureau’s calculation method). There is no doubt that the federal poverty threshold is an inapt device for comparing the living standards of households in the upper half of the income distribution. It is nonetheless a standard measure that is easy to understand and provides a useful, if imperfect, way to compare the living standards of households, especially those toward the lower end of the income distribution. See generally U.S. DEP’T OF HEALTH AND HUMAN SERVICES, FURTHER RESOURCES ON POVERTY

For ease of exposition, we refer to the custodial parent in these examples as the mother, and the noncustodial parent as the father, an assumption that conforms to the actual facts in the great majority of such cases.⁴⁷

TABLE 1: LOW-INCOME CUSTODIAL PARENT IN THREE CASES (IN EACH CASE, CP LIVES WITH ONE CHILD AND EARNS \$1000 MONTHLY BEFORE CHILD SUPPORT)

Case Number	NCP's Income, Monthly (Before Paying Child Support)	Child Support Amount, Monthly (Under Arizona Guidelines)	Child Support Amount As % of NCP's Income	CP's Income, after Child Support Payment, As % of Poverty Threshold	NCP's Income, after Child Support Payment, As % of Poverty Threshold
1	\$ 500	\$110	22%	107%	50%
2	\$2,500	\$471	19%	142%	260%
3	\$6,000	\$781	13%	173%	668%

Table 1 Notes:

1. Income is gross income (before taxes).
2. Poverty threshold calculations are based on 2002 data.⁴⁸

Case 1 represents the all too common situation in which both parents are poor and the father earns even less than the mother. Their combined monthly income of \$1,500 does not and cannot possibly support two households above the poverty line. The fifth column shows that after the child support payment of \$110, the child's total household income of \$1,100 barely exceeds the official federal estimate of the amount a household of this composition requires to avoid poverty—the household's income is only 107% of the poverty threshold.⁴⁹ The first child's household is thus in relatively desperate straits. The father is even worse off, however, as the \$390

MEASUREMENT, POVERTY LINES, AND THEIR HISTORY, <http://aspe.hhs.gov/poverty/contacts.shtml> (last visited November 15, 2007); Kathleen Short, *Experimental Poverty Measures: 1999* (U.S. Census Bureau, Current Population Reports, Publ'n No. 60-216, 2001).

⁴⁷ Although based on research that is somewhat dated, many studies show that 90% of custodial parents are mothers. See ELLMAN ET AL., *supra* note 10, at 571–72. According to some authorities, this figure is dropping. See Jane C. Venohr & Tracy E. Griffith, ARIZONA CHILD SUPPORT GUIDELINES, FINDINGS FROM A CASE FILE REVIEW (2003), available at <http://www.supreme.state.az.us/dr/Pdf/psi2.pdf> (“The obligee is female in 90 percent of the [Arizona] child support orders examined in 2002. This is somewhat less than the percentage in the 1999 [Arizona] sample, which was 93 percent, but it is more than the national estimate, which indicates 85 percent of those eligible for child support are female . . . [though the national figure] is based on a slightly different measurement.”).

⁴⁸ Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320 (2006). The 2004–2007 Arizona Child Support Guidelines are based on an economic consultant's report dated February 2003. The 2002 poverty threshold figures are contemporaneous with the economic data relied upon by the consultant that developed the guidelines. Jane C. Venohr & Tracy E. Griffith, ECONOMIC BASIS FOR UPDATED CHILD SUPPORT SCHEDULE, STATE OF ARIZONA 3 (2003), available at <http://www.supreme.state.az.us/dr/Pdf/psi1.pdf>.

⁴⁹ See U.S. Census Bureau, Poverty Thresholds, *supra* note 46.

left after he pays the support payment leaves him with an income that is half the poverty threshold for a single individual. In fact, Arizona would probably excuse this father from making more than a nominal support payment. Like most states,⁵⁰ the Arizona guidelines provide for a “self-support reserve.”⁵¹ The details of these provisions vary among the states, but their general purpose is to shield obligors from support orders that would impoverish them.⁵² In Arizona, a trial court is authorized to reduce the support payment to zero if the obligor has less than \$775 in monthly gross income.⁵³ This father qualifies for that reduction, which may be granted at the court’s discretion.

Of course, if the court does not order that any support be paid, then the child’s household will also fall below the poverty threshold of \$1,037. The Arizona guidelines rightly observe that in such cases, it is “evident that both parents have insufficient income to be self-supporting.”⁵⁴ It is also evident that the guidelines’ allocation of this shortfall is not based exclusively on the child’s well-being. There is another principle operating here, what we call the “Earner’s Priority Principle” (“EPP”). The Earner’s Priority Principle is no more than a label for the simple idea that everyone, including a noncustodial parent, ordinarily has the first claim to his own income.⁵⁵ This priority is not absolute—otherwise, no support could ever be ordered—but it appears to have special force in the case of the poor obligor. That appears to be the message of the self-support reserve, as discussed further below. The self-support reserve thus provides an example of the tradeoffs in child well-being and fairness that must take place in the setting of child support amounts.

In Case 1, the child support system is arguably unimportant. If neither parent has much money, the child’s well-being depends on finding a third source of funds, whether a new spouse for one of the parents, private charity, or a public income-support system. Moving money around among desperately poor households cannot contribute much to social welfare. For our purposes, therefore, Cases 2 and 3 are more interesting. While the mother’s income is no different in these cases than in Case 1, the father earns much

⁵⁰ Twenty-eight states provide a self-support reserve for the non-custodial parent. Jane C. Venohr & Tracy E. Griffith, *Child Support Guidelines: Issues & Reviews*, 43 FAM. CT. REV. 415, 425 (2005).

⁵¹ Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320, ¶ 15 (2006).

⁵² Venohr & Griffith, *supra* note 50, at 425 (“The self-support reserve ensures that the nonresidential parent’s income after payment of child support is sufficient to at least provide a subsistence level of living.”).

⁵³ Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320, ¶ 15 (2006). The statute directs the court to subtract the self-support reserve of \$775 from the obligor’s monthly income. Whenever the remainder, called the “resulting amount” in the Guidelines, is less than the support order called for in the Guidelines, the court is authorized (but not required) to reduce the order to this “resulting amount.” In Case 1, the resulting amount is a negative number, which means the court would be authorized to reduce the order to zero. The Guidelines allow the court discretion in these cases.

⁵⁴ *Id.*

⁵⁵ For further discussion of the Earner’s Priority Principle and its application to child support guidelines, see *infra* text accompanying notes 123–30.

more money and can therefore pay amounts that would make an impact on the child's well-being. Yet the current child support schedule may do less for the custodial household in Cases 2 and 3 than might be expected. In Case 2, the larger support payment lifts the living standard of the custodial household from 107% of the poverty threshold to 142%. Yet the father's living standard improves much more, from half the poverty level in Case 1 to more than two and a half times the poverty level in Case 2. The father is hardly rich, but he has a degree of financial security, especially compared with the child, who is still in a financially precarious state.⁵⁶ It seems that the child in Case 2 would benefit substantially from a larger support payment and that the father is capable of providing it.

Case 3 makes the same point more dramatically. The father is earning twelve times the amount earned by the father in Case 1—a solidly middle class income that leaves a single individual in comfortable circumstances. But the higher required child support payment still leaves the child's household at less than twice the poverty threshold. The father, by contrast, has an income nearly seven times the poverty threshold after making the support payment, and thus enjoys a leap in his financial well-being in contrast to the father in Case 1. The Earner's Priority Principle does not justify this large disparity between the child's living standard and the father's, nor does it seem likely that this disparity would seem appropriate to many people asked to balance the interests of the child and each of the parents.

Because the method employed to generate these support amounts (described below in Part I.C) does not usually present this balancing question to decisionmakers, the state officials charged with adopting the guidelines are unlikely to address it.⁵⁷ The operating assumption of the current system in Arizona—as in most states—is that a guideline grid based upon the consultant's estimates of child expenditures yields generally appropriate support

⁵⁶ One recent analysis concludes that families with incomes up to twice the official poverty level still suffer from material hardship that has a negative impact on children. See Elizabeth Gershoff et al., *Income is Not Enough: Incorporating Material Hardship Into Models of Income Associations with Parenting and Child Development*, 78 CHILD DEV. 70, 71 (2007). The ALI concluded that many social welfare experts believe a family must have an income of 150% of the federal poverty threshold to avoid poverty. AM. LAW INST., *supra* note 6, at 582 (citing DIANA M. DiNITTO, SOCIAL WELFARE: POLITICS AND PUBLIC POLICY ch. 3 (4th ed. 1995); PATRICIA RUGGLES, DRAWING THE LINE: ALTERNATIVE POVERTY MEASURES AND THEIR IMPLICATION FOR PUBLIC POLICY 2 (1990)). Today's federal poverty threshold levels reflect the same purchasing power as did the original 1963 threshold levels (updated over the years using the Consumer Price Index). The poverty threshold, however, is now out of date with respect to the standard of living; the equivalence scale used to adjust for family type and size has anomalies; and there is no adjustment for geographic differences. Constance F. Citro, Introductory Remarks at the Institute for Research of Poverty's Conference on Improving the Poverty Measure After 30 Years (April 16, 1999) (transcript available at <http://www.irp.wisc.edu/research/method/citrointro.htm>).

⁵⁷ This was certainly the experience of one of the authors, who served in 2002–2004 on the workgroup charged with doing the quadrennial review of Arizona's support guidelines. The consultant's report to the Arizona Supreme Court, described in detail in Ellman, *supra* note 9, never raised this balancing question, nor was it considered by prior committees; it was discussed by the Child Support Committee only because it was raised by the author.

payments without the need to ask such questions. Table 1 shows that this operating assumption is probably not correct. In fact, the surprising results shown in Table 1 are inevitable under the conventional methodology employed in most states for estimating child expenditures to generate support guidelines. The next section explains why.

C. *Why Current Methods Yield Surprising Results*

This section takes a closer look at the conventional method to see why it yields the kind of results illustrated by Table 1. We already know that the conventional method bases support guidelines on child expenditures⁵⁸ and measures such expenditures by asking how much more an intact, two-parent household with children must spend for the parents to enjoy the same living standard as the childless couple.⁵⁹ The conventional method repeats this inquiry over a range of family incomes, because the dollar amount of the marginal expenditures on children is assumed to vary with the parents' income.⁶⁰ (Expenditure levels are converted to equivalent income levels to actually create the guideline grid.) The assumption that marginal expenditures are the correct measure of expenditures on children is the main reason for the results we have just observed. The impact of that assumption is then enlarged by problems in the data upon which this method must rely.

The data problems are straightforward. The only source of comprehensive data that ties expenditures to household income is the Consumer Expenditure Survey, which gathers most of its data from interviews in which consumers are asked to recall their expenditures on each item in a list that the survey designers hope is a comprehensive inventory of all the categories

⁵⁸ See Ellman, *supra* note 9, at 171–74 & n.13, 186, 196–97.

⁵⁹ Ellman, *supra* note 9, at 174–75, 182–83, 189–95. This method requires the ability to determine when households of different composition (childless, one child, two children, etc.) have the same living standard. But there are competing “equivalence scales” employed to do this, and it turns out that the choice between them is largely arbitrary. For a full treatment of this problem, see Ellman, *supra* note 21, at 199–215.

⁶⁰ Not every economist agrees that marginal expenditures are the appropriate benchmark. The best-known alternative is presented in an annual report by Mark Lino, recommending the Agriculture Department's approach. See U.S. DEPARTMENT OF AGRICULTURE, CENTER FOR NUTRITION POLICY AND PROMOTION, EXPENDITURES ON CHILDREN BY FAMILIES: 2001 ANNUAL REPORT, MISC. PUBL'N NO. 1528-2001 (2002). (For a published version of the prior year's equivalent study, see Mark Lino, *Expenditures on Children by Families: U.S. Department of Agriculture Estimates and Alternative Estimators*, 11 J. LEGAL ECON. 31, 31 (2001).) Even if one is committed to employing a marginal expenditure approach, there are many methodological choices that must be made in generating estimates of marginal expenditures, and different choices lead to very different estimates. Debate over the proper marginal expenditure methodology is usually cast in technical terms, but where the estimate is used to construct child support guidelines it is in fact a policy choice, just as much as the choice between marginal expenditures and other methods such as Lino's. See Ellman, *supra* note 9 (describing the technical issues involved in, and the policy implications of, the choice between methods of marginal analysis).

of expenditures that consumers make.⁶¹ These expenditure data systematically undercount actual consumer expenditures in higher income families—the higher the household income, the higher the proportion of the household's expenditures that will be erroneously omitted from the expenditure tabulation.⁶² The conventional method effectively translates this Consumer Expenditure Survey undercount into an undercount of expenditures on children, so that as household income goes up, the percentage of household income that the method treats as spent on children declines precipitously.⁶³ That is one important reason why most states' guidelines call for support payments that fall, as a percentage of obligor income, as the obligor parent's income rises.⁶⁴ In the three cases in Table 1, for example, the support order ranges from 22% of obligor income for the lowest-income family to 13% for the highest-income family. Support payments therefore do not rise proportionately with the obligor parent's income—far from it.

But this data problem is only a sub-plot; the conventional method's focus on marginal expenditures is the main story.⁶⁵ To see why, let us elaborate on the brief example we considered above.⁶⁶ Imagine a couple who move from a one-bedroom to a two-bedroom apartment after they have a child. Their rent increases from \$1,000 a month to \$1,200. A marginal expenditure analysis would find that the housing expenditure on the child is the difference in rent, or \$200. A support guideline based upon a marginal expenditure methodology will therefore allocate only that \$200 between the parents. The method employed to generate most income share guidelines does not actually examine individual expenditures in this way. Instead, as explained above, it attempts to gauge the aggregate marginal expenditures on children across all persons within a set range of incomes, by asking how much more a two-parent household with children must spend, as compared with a childless couple, to enjoy the same living standard. The principle, however, is the same, and the method's impact is most easily understood if one imagines how it would work in the context of particular expenditure categories. In the

⁶¹ For the Consumer Expenditure Survey, the U.S. Census Bureau—under contract with the U.S. Department of Labor, Bureau of Labor Statistics—surveys information on household and family characteristics, expenditures, and income. Data are collected by a quarterly interview survey and a weekly diary survey. Bureau of Labor Statistics, U.S. Department of Labor, Consumer Expenditure Survey, Frequently Asked Questions, <http://www.bls.gov/cex/csxfqs.htm#q10> (last visited November 15, 2007).

⁶² See Ellman, *supra* note 9, at 34–36.

⁶³ Of course, at very high incomes, savings rates increase, and expenditures as a percentage of income thus decline. The general trend, of an inverse relationship between household income and the percentage of income spent on children, is therefore not implausible. The CES figures, however, greatly exaggerate this relationship because of the expenditure undercount at higher income levels. The CES figures could only be true if one also assumed savings rates among middle class families that are implausibly high. See Ellman, *supra* note 9, at 33–36.

⁶⁴ See *infra* Appendix A.

⁶⁵ The discussion that follows is a simplified schematic representation of the methodological points. See Ellman, *supra* note 9, at 169–99 (providing further discussion of the methodological points).

⁶⁶ See *supra* text accompanying note 37.

income shares model used by most states, the \$200 marginal housing expenditure in this example would be allocated between the parents in proportion to their incomes. So if Mom, the custodial parent, earns \$1,000 a month, and Dad, the noncustodial parent, earns \$3,000, Dad earns 75% of the parental income, so his share of this marginal housing expenditure would be 75% of \$200, or \$150. He would pay this to Mom in child support, as his share of the child's \$200 housing expenditure.

But even after receiving this payment, Mom now has only \$1,150 a month. She cannot possibly rent an apartment anything like the one that the couple rented when they were together. She may have Dad's contribution to the \$200 more that their two-bedroom apartment cost, but nothing from him toward the \$1,000 that the initial one-bedroom cost. But of course she alone does not have the income (\$4,000) that allowed the couple to rent the one-bedroom apartment in the first place, much less the larger two-bedroom apartment. It is as if the calculation assumed that somehow, the extra bedroom for the child could be rented separately from the apartment itself, and this bedroom is all the child needed. Obviously, the quality of housing enjoyed by both the child and the parents, when they were together, relied upon their total joint income, not just the income needed to move from a smaller to a larger apartment. So while the child necessarily benefited from all of the family's housing expenditures, this method allocates only the marginal expenditure of \$200 between the parents. The example shows why a method for generating guidelines that bases support amounts on marginal child expenditures will necessarily make the economic welfare of the child after separation dependent primarily on the pre-support-payment income of the custodial parent. If the custodial parent's own income is high, and the base is present, the child's well-being will not be endangered. If the custodial parent's income is low, the child will suffer a serious economic decline. The impact of the noncustodial parent's income on the child is, by comparison, much smaller.

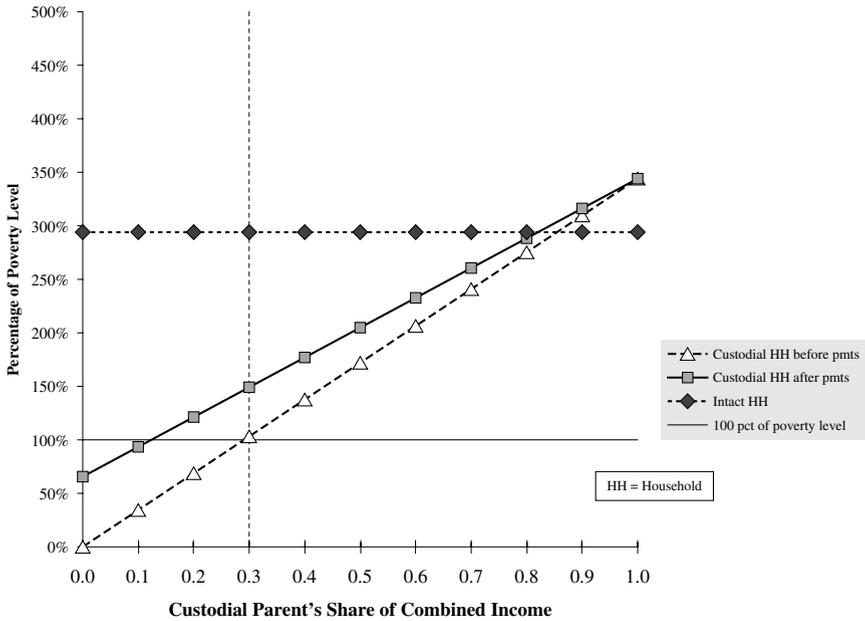
Table 1 gave us a window into this reality. Figure 1 shows this principle over a wider range of situations. Once again, Arizona is used as an example. Figure 1 compares eleven custodial households, each consisting of one parent and one child. It assumes that in all eleven cases, the combined income of the two parents is the same: \$3,550 per month. That income is just over 300% of the 2002 poverty threshold for the intact household of two parents and one child⁶⁷ and is approximately equal to the median income of all American households for that year.⁶⁸ While these eleven sets of parents all have the same total income, they differ in the proportion of their income earned by the custodial parent, from zero at the left end of the horizontal axis

⁶⁷ The 2002 poverty threshold income for a household consisting of two parents and one child was \$1,206.67 per month. U.S. Census Bureau, *Poverty Thresholds*, *supra* note 46.

⁶⁸ The 2002 United States median income was \$3,534.08 per month. U.S. Census Bureau, *Historic Income Tables—Households*, tbl. 5-8, <http://www.census.gov/hhes/www/income/histinc/h08.html> (last visited November 15, 2007).

to 1.0—all of it—at the right end. The two diagonal lines plot the custodial household income for each of these eleven households, not in dollars but as a percentage of the poverty threshold for a household with one parent and one child. The upper diagonal line plots this percentage for the custodial household income after receipt of the support payment called for in the Arizona support guidelines,⁶⁹ while the lower line plots it for the income before the support payment receipt.⁷⁰

FIGURE 1: RANGE OF CUSTODIAL HOUSEHOLD OUTCOMES –
EXAMPLE OF ONE-CHILD FAMILY WITH \$3550 COMBINED INCOME
(MEASURED AS PERCENTAGE OF POVERTY LEVELS)



Let us then compare the case in which the custodial mother earns 70% of the total parental income of \$3,550—about \$2,500 a month—with the more typical case in which she earns 30% of the total parental income, or

⁶⁹ Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320 (2007). See also Arizona Supreme Court, Arizona Child Support Guidelines Calculator, <http://www.supreme.state.az.us/childsup/> (last visited Oct. 5, 2007) (providing a convenient interactive document for calculating the amount of child support).

⁷⁰ The support amounts used in Figure 1, as in Table 1, *supra* Part I.B, do not reflect likely adjustments for visitation with the noncustodial parent and for the costs of child care and health insurance. The likely visitation adjustment for the parental incomes examined in Figure 1 is \$108 per month. See *supra* note 43.

about \$1,050 a month.⁷¹ A custodial household with a \$1,050 monthly income is barely above the poverty threshold. Receipt of the child support payment raises it to 150% of the poverty threshold, certainly a help. Now consider the other case, in which Mom earns \$2,500, or 70% of the same total parental income. This household is at about 230% of the poverty threshold before receiving any child support payment, and over 250% afterward. Thus, despite the fact that together, the parents in each case have the same total income, the children in our two sample cases come out very differently after divorce. This seeming discrepancy is an unavoidable consequence of the marginal expenditure method. A support guideline that allocates only the marginal expenditures on children leaves most household expenditures out of the calculation and thus out of the support payment. As Figure 1 shows, the child's living standard will depend primarily on the share of the total parental income earned by the custodial parent.

In the extreme cases, where the custodial mother earns either none or all of the parental income, the difference is enormous. A child living with a stay-at-home mother—not an entirely fanciful example in the case of very young children—sees her household living standard decline from the median (300% of the poverty threshold) when the family was intact to a catastrophic 70% of the poverty threshold after the parents' separation. At the other extreme, where the custodial parent earns all \$3,550 of the parental income, at the right side of Figure 1, our two lines converge, because at that point her household income after the support payment is the same as her income before the payment—the full \$3,550 of parental income. At this point, the custodial household is better off economically than the pre-separation intact household, because the custodial household is smaller but has the same income as the intact household.

In sum, the conventional method produces support guidelines in which (1) children's living standards depend primarily on the income of the parent with whom they live, (2) children with low-income custodial parents have a low standard of living, no matter the income of their other parent, and (3) dramatically different living standards are created for children whose respective sets of parents earn the same total income. These outcomes result primarily from two assumptions that underlie the conventional method used in most states: (1) that child support amounts should be based upon child expenditures in intact families, as deduced from data in the Consumer Expenditure Survey; and (2) that only the family's marginal expenditures on children should count as child expenditures, thus excluding many household expenditures that confer benefits upon children.⁷² Because this marginal expenditure method does not consider the impact of support levels on child

⁷¹ In Arizona, a review of year 2002 child support case files indicated that on average, obligor income was 59% of combined parent income; in other words, average custodial parent income was 41% of combined parent income. Venohr & Griffith, *supra* note 47, at 8.

⁷² See Ellman, *supra* note 9, at 173–74, 182–83, 189–93, 207–13.

well-being, these results are not surprising. But child well-being should be at least one reason, if not the main reason, we require child support payments. Of course, child well-being cannot be the only policy concern of the guideline writer. But support guidelines generated through the marginal expenditure method cannot reflect any systematic policy judgment about the appropriate and inevitable tradeoffs between child well-being and other goals or constraints that policymakers may wish to take into account.⁷³ Each state's guidelines instead reflect the particular methodological choices that the state's consultant made to generate the expenditure estimates.⁷⁴ The choice is ostensibly made on "neutral" technical grounds,⁷⁵ which means the consultant never directly faces the child support policy questions, nor directs the policymaker's attention to them.

Policymakers must consider making a fundamental shift in the method employed for constructing support guidelines. The current method looks backward, basing support orders on marginal expenditures in an intact family that no longer exists, and which never existed in an increasing proportion of child support cases.⁷⁶ It would be better to look forward, assessing the impact of the support guidelines on both the parents and their children, in their separate household situations, at the time the support order is made. This new approach would ask the guideline writer to make an explicit and systematic evaluation of the tradeoffs implicit in any set of guidelines. How would one know when the "right" tradeoff between the two post-separation households had been achieved? To consider that question, the writers of guidelines must first identify their purpose in requiring child support.

⁷³ The conventional method does not consider other policy goals and constraints even though the inevitability of such tradeoffs was noted by Betson himself in an article he coauthored early in the guidelines-development era. Betson et al., *supra* note 6, at 18–19.

⁷⁴ See, e.g., Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320 (2007) ("Information regarding development of the guidelines, including economic data and assumptions upon which the Schedule of Basic Support Obligations is based, is contained in the February 6, 2003 report of Policy Studies, Inc., entitled Economic Basis for Updated Child Support Schedule, State of Arizona."); see also Venohr & Griffith, *supra* note 47, at 5–7, 39–40 (describing the report by Policy Studies, Inc. as including sections on methodological choices and assumptions). Perhaps surprisingly, given the widespread use of the Williams-Betson methodology, plugging any given set of family facts into the guidelines of the various states yields a remarkably wide range of outcomes. See, e.g., Maureen Pirog et al., *Presumptive State Child Support Guidelines: A Decade of Experience*, 12 POL'Y CURRENTS 16 (2003) (providing periodic reviews that demonstrate a variety of results). These differences appear to result from non-systematic variations in the details of the methodology (as in the choice of equivalence scale used to determine the incomes at which families of different composition enjoy the same living standard) and varying changes to the methodology that states employ, reflecting, perhaps, an intuition by states that the conventional method's results, if unmodified, do not seem right.

⁷⁵ See Ellman, *supra* note 9, at 215–16.

⁷⁶ In 2004, 35.8% of U.S. births were to unmarried women. Joyce A. Martin et al., *Births, Final Data for 2004*, 55 NAT'L VITAL STAT. REP. 2 (2006), available at http://www.cdc.gov/nchs/data/nvsr/nvsr55/nvsr55_01.pdf.

II. THE PURPOSES OF CHILD SUPPORT

Child support laws reflect the widespread belief that state support of children is appropriate only if parental support is impossible—what might be called the principle of the primacy of the parents' support obligation. Whatever difficulty may exist in justifying or explaining the primacy of the parental support obligation,⁷⁷ there is no doubt that policymakers follow it.⁷⁸

While the primacy principle may explain why the law requires support at all, it does not help much in determining support amounts. A systematic approach to setting support levels requires a closer examination of the support order's purpose. We suggest that support awards are meant to accomplish three purposes, and that the appropriate amount of the award depends upon the particular blend of these three purposes applicable to any particular case. The three purposes are: (1) to protect the well-being of the child who is the order's intended beneficiary (the "well-being" component); (2) to enforce the social consensus that both parents have a support obligation, even if the child lives primarily with one parent (the "dual-obligation" component); and (3) to limit the size of the gap between the child's living standard and the higher living standard of the support obligor (the "gross-disparity" component). In this section we elaborate on these three components, exploring their rationales and how each contributes to determining the appropriate size of the total support award. However, claims arising from all three components are also limited by the Earner's Priority Principle, and we elaborate further upon these limits in the last part of this section.

⁷⁷ See Ira Mark Ellman, *Thinking About Custody and Support in Ambiguous-Father Families*, 36 FAM. L.Q. 49 (2002) (detailing that legal parenthood is not always the same as biological parenthood). The problem of defining the legal parents is highlighted when one considers that a support obligation can result from involuntary parenthood, see, e.g., *Hermesman v. Seyer*, 847 P.2d 1273 (Kan. 1993); *County of San Luis Obispo v. Nathaniel J.*, 57 Cal. Rptr. 2d 843 (Cal. Ct. App. 1996); *Jevning v. Chichos*, 499 N.W.2d 515 (Minn. Ct. App. 1993) (ordering a boy who was the victim of statutory rape by an adult woman to pay child support for the resulting child, even when the mother had been convicted of rape), while the voluntary creation of a child may alone be insufficient to justify a support order (for example, in the consensual use of sperm for artificial insemination). See generally Scott Altman, *A Theory of Child Support*, 17 INT'L J.L. POL'Y & FAM. 173 (2003) (reviewing arguments that can be offered for the support obligation); see also Sally Sheldon, *Unwilling Fathers and Abortion: Terminating Men's Child Support Obligations?*, 66 MOD. L. REV. 175 (2003) (examining the basis of paternal obligation where women retain sole control over the abortion decision).

⁷⁸ The remarkably successful joint federal and state effort to enforce the payment of child support awards (rather than simply to provide taxpayer-funded public assistance to custodial households that are not receiving the child support they have been awarded) demonstrates policymakers' belief in this principle. See *supra* note 17. See also AM. LAW INST., *supra* note 6, at § 3.04 cmt. b ("Society has an interest in not being called upon to support children whose parents have adequate resources to shoulder the burden themselves."); *id.* at § 3.04 cmt. h ("What distinguishes the United States from other wealthy Western countries is its disinclination to act as a primary guarantor of children's economic adequacy. Americans believe that parents are primarily responsible for the economic well-being of their children and that the state's role, at most, is secondary and residual.").

This Article's goal is both normative and descriptive. We believe these principles in fact capture the policy concerns that lawmakers ought to be thinking about, even though some may resolve them differently than others. But we also believe that lawmakers' varying judgments about the appropriate level of support in particular cases are in part a function of their varying judgments about these principles: their measures of the three support components, as well as variations in the relative weights assigned to them and to the EPP. In other words, we believe that these principles capture the main factors that influence people's judgments about the fairness of child support awards. Thus, we also offer an empirically testable theory of how people think about child support. Policymakers need to understand how people think about child support, because the setting of child support awards involves the kinds of tradeoffs among people's interests that are unavoidably political in nature.⁷⁹

The discussion that follows makes two simplifying assumptions. First, we assume that the custodial household contains only the custodial parent and the children who are the intended beneficiaries of the support order, and that the noncustodial parent lives alone in a household of one. This simplifying assumption is wrong in many, if not most, actual cases, yet it is the implicit assumption of existing law,⁸⁰ and we initially take existing law on its own terms. We will later consider how the principles we develop in this simplified context apply to claims that the support amount should be altered to reflect the presence of additional persons in either household. Our second simplifying assumption is that the child lives primarily with one parent, and that the child's well-being is therefore affected primarily by the environment in that custodial household and is less affected by the environment in the other parent's household. This assumption is also wrong in some cases. While the principles developed here could also be extended to joint custody cases, we defer that exercise to another day.

⁷⁹ One of us is currently engaged (in collaboration with two social psychologists) in an empirical study that tests the model offered here, and initial results have been promising. See Ellman et al., *supra* note 2. Analysis of the initial data from this study shows that the respondents followed a predictable and rational course in their "intuitive lawmaking" (i.e., in their determination of appropriate child support awards in various hypothetical cases); their determinations were not scattered in a random fashion across cases, but varied systematically with their views about the principles that govern the size of child support awards, as well as with the incomes of the parents in the child support cases. *Id.* at 23–45. At this point further data analysis is necessary to determine, for example, the extent to which different beliefs about the amount of money required to ensure child well-being affect judgments of appropriate support amounts in particular cases. But in general, it does appear that the well-being, gross-disparity, and dual-obligation components are fundamental factors in how people think about these issues.

⁸⁰ The Arizona Child Support Guidelines, for example, state: "A parent's legal duty is to support his or her natural or adopted children. The 'support' of other persons such as stepchildren or parents is deemed voluntary and is not a reason for an adjustment in the amount of child support determined under the guidelines." Arizona Child Support Guidelines, ARIZ. REV. STAT. ANN. § 25-320(2)(D) (2004). See also *supra* text accompanying notes 23-25. See generally *infra* Part II.B.

A. The Child Well-Being Component

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

Not surprisingly, the impact of money on child well-being varies with the measure of well-being, so the answer we get depends on the question we ask.⁸¹ The existing literature suggests that family income has a positive effect on children's cognitive outcomes and educational attainment, and thus on their eventual socioeconomic status as adults.⁸² Many studies find results consistent with this suggestion, whether they measure children's scores on various tests of cognitive functioning, children's school performance, the years of education they complete by adulthood, or their income as adults.⁸³ While the effect is found across many studies, there is variation in the size of the effect.⁸⁴ A review of these studies finds that the size of the effect is smaller than might be expected, but not so small as to be trivial, nor an artifact of the inquiry's design or a chance fluctuation.⁸⁵ The effect of income

⁸¹ The observations made here summarize the findings in Preethy George & Ira Ellman, *A Sample From the Literature on the Relationship Between Income and Child Well-Being* (2005) (unpublished article, on file with the authors). See also Juliana M. Sobolewski & Paul R. Amato, *Economic Hardship in the Family of Origin and Children's Psychological Well-Being in Adulthood*, 67 *J. MARRIAGE & FAM.* 141 (2005); Rashmita S. Mistry et al., *Family Income and Its Relation to Preschool Children's Adjustment for Families in the NICHD Study of Early Child Care*, 40 *DEVELOPMENTAL PSYCHOL.* 727 (2004).

⁸² George & Ellman, *supra* note 81, at 1-4.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Some studies have found relatively small effect sizes. See, e.g., SUSAN E. MAYER, *WHAT MONEY CAN'T BUY: FAMILY INCOME AND CHILDREN'S LIFE CHANCES* (1997). However,

on children's psycho-social well-being, in contrast to their cognitive functioning or ultimate socioeconomic status, is less clear. There is evidence that a lower income increases parental stress, which is associated with parental conflict in two-parent families, the occurrence of which is in turn associated with less favorable psycho-social outcomes for children.⁸⁶ The relevance of such data to single-parent families, however, is unclear. Thus, any effort to relate income to an aggregate measure of well-being requires both data and value judgments about the proper weighting of the relative importance of these various well-being measures. Good data is difficult to get and the value judgments are always debatable.

Most methodologically sophisticated studies examine primarily low-income families that fall close to the poverty line,⁸⁷ and one cannot necessarily extend their findings about income's effect to middle or upper class families. In general, however, there is more evidence of a positive impact of money on children's well-being when additional funds are added to a low-income family than when they are added to a family with a higher income.⁸⁸ There is also some evidence that child support dollars have a greater positive impact on children's outcomes than dollars from other sources, although there are great methodological challenges with studies of this kind.⁸⁹

Figure 2 offers a schematic representation of relationships that might exist between an unidentified measure of child well-being and household income. (For this purpose, we assume that household income and household expenditures rise and fall together, and therefore we use the terms interchangeably.) The dashed line represents the case in which child well-being is poor at very low income levels and remains poor until household income reaches a threshold level. Above the threshold, additional income has a simple linear relationship with child well-being: every additional dollar of income yields an equivalent increase in child well-being. The solid line represents the case in which the relationship above the threshold is not linear. In this case, initial dollars above the threshold yield larger increases in child well-being than do later dollars. The higher the household income, the smaller the impact of additional income on child well-being.

Data limitations, as well as the conceptual complications involved in aggregating well-being measures into an overall index, make it impossible to

reviews of the literature leave little doubt that there is an effect. See Gershoff et al., *supra* note 56, at 71.

⁸⁶ Sobolewski & Amato, *supra* note 81, at 142–43.

⁸⁷ See George & Ellman, *supra* note 81.

⁸⁸ See Eric Dearing et al., *Change in Family Income-to-Needs Matters More for Children with Less*, 72 CHILD DEV. 1779 (2001); Mistry et al., *supra* note 81.

⁸⁹ See, e.g., Sara S. McLanahan et al., *Child Support Enforcement and Child Well-Being: Greater Security or Greater Conflict?*, in CHILD SUPPORT AND CHILD WELL-BEING 239, 249 (Irwin Garfinkel et al. eds., 1994); Hirokazu Yoshikawa, *Welfare Dynamics, Support Services, Mothers' Earnings, and Child Cognitive Development: Implications for Contemporary Welfare Reform*, 70 CHILD DEV. 779, 782 (1999); Virginia W. Knox & Mary Jo Bane, *Child Support and Schooling*, in CHILD SUPPORT AND CHILD WELL-BEING 239, 285 (Irwin Garfinkel et al. eds., 1994).

FIGURE 2: HOUSEHOLD INCOME AND CHILD WELL-BEING (ILLUSTRATIVE)



Notes for Figure 2:

The dashed line shows a case in which per-dollar gains in child well-being are constant across incomes, after an initial income threshold is passed.

The solid line shows a case in which per-dollar gains in child well-being are not constant across incomes.

offer a definitive description of the well-being–income function that relates specified dollar amounts to aggregate well-being. But the available evidence does suggest that (1) at least some important aspects of child well-being are affected by income⁹⁰ and (2) the relationship between income and these aspects of child well-being is better represented by the solid line in Figure 2 than by the dotted line.⁹¹ The data are less helpful in locating Points A and B on the solid line—the income level at which returns (in terms of child well-being) on additional dollars begin to decline (Point A) and the income level at which returns on additional dollars become small enough to ignore for policy purposes (Point B). One study of both cognitive functioning and behavior in three-year-olds located Point A at the poverty threshold and Point B at five times the poverty threshold.⁹² For a family of four in 2002, the year

⁹⁰ See generally George & Ellman, *supra* note 81; Elizabeth Gershoff et al., *supra* note 56. Examples of particular studies include SUNIYA S. LUTHAR, POVERTY AND CHILDREN'S ADJUSTMENT (1999); Sobolewski & Amato, *supra* note 81; and Vonnie C. McLoyd, *Socioeconomic Disadvantage and Child Development*, 53 AM. PSYCHOL. 185 (1998).

⁹¹ See Mistry et al., *supra* note 81.

⁹² In Mistry et al., *supra* note 81, the researchers found a relationship between cognitive functioning and household income in children thirty-six months old. They also found a relationship between household income and behavior problems, as reported by the mother, which appeared to result from the impact of income on maternal health and on the mother-child relationship. To compare the impact of income across households of different size and compo-

in which these data were collected, the poverty threshold was \$18,244,⁹³ and five times that amount is \$91,220. By way of comparison, the median income in the United States for a family of four in 2002 was \$62,732, ranging from \$82,406 in New Jersey to \$47,550 in West Virginia.⁹⁴ Clearly, given the quantity and quality of available data, as well as the conceptual problems of choosing measures of child well-being and aggregating them into a single weighted measure, these numbers are, at best, suggestions. Nonetheless, child support guidelines are written and revised somewhere every year, and each revision reflects explicit or implicit judgments about the importance of money to child well-being. Given that reality, information of this kind should be useful to policymakers in supplementing the intuitions that would otherwise form the sole basis for their judgments.

Looking at these data, a policymaker might conclude that if the purpose of child support is to advance child well-being, then we can justify requiring support amounts that raise the income of custodial households whose income would otherwise fall short of a point somewhat above the median family income, because it seems likely that non-trivial gains in child well-being will result. The data also suggest that payments are especially important to child well-being at lower levels of custodial household income. These conclusions may seem obvious. Yet we learned in Part I that current support guidelines in most states are inconsistent with them because the guidelines set support payments to low-income custodial households at levels that leave them well short of maximizing child well-being. Of course, there may be other relevant principles that explain and justify those results, as discussed below.

Consider Figure 2 again. Let us call Point B the “well-being maximum”—shorthand for the level of custodial household income at which the further advances in child well-being that might be realized from additional dollars are too small to justify imposing child support obligations. All child support guidelines unavoidably, even if only implicitly, assume some value for the well-being maximum because they generally do not require support payments that continue to rise with income no matter how high the income level.⁹⁵ The question is where a policymaker should locate this point. Guide-

sition, the researchers used a “needs” ratio for each of the 1,300 families in their sample by dividing the family’s actual household income by the appropriate poverty threshold for the family—essentially equivalent to family income as a percentage of the poverty threshold. They found the impact of income on these well-being measures began to decline when household income rose above poverty level, and largely disappeared for families above 500% of the poverty threshold—about \$92,000 for a family of four in 2002, the year in which Mistry’s data were collected.

⁹³ See U.S. Census Bureau, *Poverty Thresholds*, *supra* note 46.

⁹⁴ U.S. Census Bureau, *Housing and Household Economic Statistics Division, Income Surveys Branch*, <http://www.census.gov/hhes/www/income/4person.html> (last visited November 14, 2007).

⁹⁵ See, e.g., ARIZ. REV. STAT. ANN. § 25-320(8) (2007) (setting a cap at \$20,000 a month and imposing this level of obligation on all obligors above the cap, unless case-by-case analysis suggests more is warranted); ADMIN OFFICE OF THE TRIAL COURT, COMMONWEALTH OF

lines committees, like policymakers generally, usually must act on imperfect information. For the purpose of this discussion, let us assume that the well-being maximum is reached at about the 75th percentile in family household income. That means that when the custodial household income is below the 75th percentile, child well-being can offer some justification for requiring support. The power of the justification, however, will gradually decline as the 75th percentile is approached, so that countervailing policy factors (like the EPP, as we discuss below) become correspondingly more important. On the other hand, the gross-disparity and dual-obligation components may justify awards even when the well-being component does not.

While the well-being component gradually loses force as the 75th percentile is approached, both data and intuition suggest that it has compelling importance at lower levels of custodial household income. Because child well-being falls off particularly steeply below Point A, the well-being component has its greatest force in this income range. Given that all child support awards impose tradeoffs between the obligor and obligee households, it is especially important to distinguish cases in which additional support dollars are very important to child well-being from cases in which they are less important. Points A and B in our curve locate these boundaries. It is, of course, a tricky business to make interpersonal comparisons of well-being, and surveying the considerable literature on that question is beyond this Article's scope.⁹⁶ So long as families have finite resources, however, confronting tradeoffs between the obligor and obligee cannot be avoided in setting support levels.

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

MASS., MASSACHUSETTS CHILD SUPPORT GUIDELINES II(c) (2005), <http://www.mass.gov/courts/formsandguidelines/csg2006.html> (last visited November 14, 2007) (providing a statutory cap if the parties' combined gross income exceeds \$135,000, or where the non-custodial parent's income exceeds \$100,000, although "[a]dditional amounts of child support may be awarded at the judge's discretion."); N.Y. DOM. REL. LAW § 240(1-b)(c)(3) (Consol. 2005) (giving the court discretion to award support where the combined parties' income exceeds \$80,000 after it has considered "the factors set forth in paragraph (f) of this subdivision [pertaining to the parties' and the child's financial status and living standards] and/or the child support percentage."); OKLA. STAT. tit. 43, § 119(B) (2001) (providing that when the parties' "combined gross monthly income exceeds Fifteen Thousand Dollars (\$15,000.00), the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars (\$15,000.00) and an additional amount determined by the court."); S.D. CODIFIED LAWS § 25-7-6.9 (1999) (setting the child support obligation at "an appropriate level" where the parties' combined income exceeds \$10,000 a month, "taking into account the actual needs and standard of living of the child."); WIS. STAT. § 767.25(1m) (2004) (setting no statutory cap but allowing the court to "modify" the child support award if "the court finds . . . that use of the percentage is unfair to the child or to any of the parties" after a consideration of various financial factors, including the parties' incomes and living standards).

⁹⁶ For a collection of writings on this problem that includes leading commentators of various persuasions, see *INTERPERSONAL COMPARISONS OF WELL-BEING* (Jon Elster & John Roemer eds., 1991).

Principle 1. Protecting child well-being, an essential purpose of child support, has particular force when the income of the custodial household would otherwise deny the child a minimum decent living standard (located at Point A in Figure 2). The impact of additional dollars on child well-being declines gradually as custodial household income increases, until additional dollars have too small an impact on measurable child well-being to be of public policy importance. This upper income bound (located at Point B in Figure 2) can be called the well-being maximum. Policymakers cannot avoid making judgments about the locations of Points A and B, despite their inevitably imperfect information.

Comment: We can assume for discussion purposes that Point A is located at 150% of the poverty threshold for a family of the size and composition of the custodial household.⁹⁷ Although this is a reasonable working assumption for this discussion, it is hardly inevitable. The key is to identify the income required by a family of a given size to provide a child with the necessities without which the child's chances in life will be significantly compromised. Whether that is best understood as a certain percentage of the poverty level is certainly debatable, and depends among other things on how one defines poverty level, a question of continuing debate.⁹⁸ Policymakers constructing support guidelines will need to decide what necessities a child must have to be at Point A, as well as the cost of that living standard in their local environment. Consultants can assist with the determination, but they cannot make it because the choice of living standard for Point A is necessarily a value judgment that, among other things, will unavoidably be based on imperfect knowledge.

Point B is, if anything, even less well defined than Point A and requires asking at what income level a family has sufficient funds such that additional income will not appreciably add to the child's development and well-being. Some may believe that more money is always better for the child. Most people, however, probably believe that there is an income level above which more money will add only very limited gains, and that level is their Point B. Once again, consultants can assist with locating Point B, but they cannot alone make this determination because value judgments will be unavoidable in making use of the limited data that are available on the question. The working assumption of this Article, for the purposes of discussion, is that Point B lies above median household income, but no higher than the

⁹⁷ The ALI describes an income level at 150% of the poverty threshold as providing the "minimum decent standard of living." AM. LAW INST., *supra* note 6, at 582. The ALI identifies two main claims of the child that the support system should take account of: (1) a minimum decent standard of living when the combined income of the parents is sufficient to achieve such result without impoverishing either parent; and (2) a standard of living not grossly inferior to that of either parent. *Id.* at § 3.04(1).

⁹⁸ See *supra* note 46.

75th income percentile (for two-parent families with the same number of children as the custodial household).

B. The Dual-Obligation Component

A second function of child support laws is to enforce a societal consensus that both parents have a moral obligation to support their children, even if the child lives primarily with one parent. The dual-obligation component is one reason why states require support payments to custodial households whose income already exceeds plausible estimates of the well-being maximum (Point B on our curve). In such cases, the explanation for child support is not the child's well-being, which is ensured whether or not support is paid. The explanation instead lies in society's determination that the noncustodial parent should be required to contribute his fair share to the child's support. The custodial parent, who would otherwise shoulder all of the cost of providing for the child, is entitled to receive this contribution.⁹⁹

The child well-being and dual-obligation components protect different private interests. The private interest protected by the well-being component is the child's, maximizing his or her cognitive, psychological, and social development. The private interest protected by the dual-obligation component is the custodial parent's, ensuring that she does not shoulder an unfairly disproportionate financial burden in order to provide for the child's well-being.

The dual-obligation component of a child support award is important not only because we believe both parents should contribute to a child's support. It may also be essential to maintaining the noncustodial parent's social status as a parent; excusing the noncustodial parent from any support obligation might undermine that status in the eyes of the child as well as other family and friends.

Neither this concern with parental status, nor the determination to require both parents provide support, helps to identify the appropriate amount of the dual-obligation component. Even nominal awards may be sufficient to satisfy both concerns. The dual-obligation principle therefore provides a less compelling justification for any particular amount of support than is provided by the well-being principle. That means it may yield to counter-considerations more easily than would the well-being component, at least as far as the amount of support required to vindicate it. This point is explored more fully below when we consider the principal counter-consideration, the EPP.

The first requirement for calculating the dual-obligation component is to determine the total support burden to which the noncustodial parent is required to contribute. One might first assume that the noncustodial parent should contribute his fair share of all the additional expenditures the custodial parent makes on account of having the child in the custodial parent's household. While this approach will usually work, one must take account of

⁹⁹ See *supra* notes 17 and 78.

the wealthy custodial parent whose expenditures on the child exceed the well-being maximum (Point B). The law has little basis for imposing an obligation on the other parent to share the cost of that excess. We therefore conclude that the dual-obligation component should ensure that the noncustodial parent pays his fair share of additional expenditures incurred by the custodial parent, up to the point at which the custodial household reaches the well-being maximum. The location of Point B is thus required to calculate the dual-obligation component. The Point B ceiling aside, our calculation of the dual-obligation component seems to mimic the marginal expenditure calculation that lies behind the conventional method, criticized in Part I, which is currently used to generate support guidelines. But while a marginal child expenditures measure is not *alone* adequate to determine the proper amount of child support, it is the appropriate measure of the dual-obligation component of the support amount, the purpose of which is partial reimbursement of the custodial parent, not child well-being.¹⁰⁰

The second step is to decide on the noncustodial parent's share of the marginal expenditures incurred by the custodial parent. The conventional income shares system of support would assume that each parent's share should be proportional to his or her income.¹⁰¹ There is, however, an important difference between the dual-obligation and well-being components that should be noted. In our discussion of the well-being component we observed that because members of a household generally share a living standard, child support payments will necessarily confer benefits on the custodial parent (just as other sources of custodial parent income, such as alimony, will necessarily confer benefits on the child). In setting the well-being component of the support award, the policymaker must therefore determine the appropriate tradeoff in choosing between a higher award, which invites obligor objections to the benefits it unavoidably bestows on third parties like the custodial parent, or a lower award, which can compromise child well-being. No similar tradeoff arises, however, in determining the dual-obligation component. So long as it covers only the noncustodial parent's share of the additional (marginal) expenditures the custodial parent incurs on account of the child's presence in the household, the possibility of a windfall benefit for the custodial parent cannot arise.

The relative importance of the well-being and dual-obligation components depends largely on the income of the custodial parent. If the custodial household is above the well-being maximum before any support payment, then the support order is entirely justified by the dual-obligation component (unless it also includes a gross-disparity component, considered in the next

¹⁰⁰ The conventional method, of course, looks at marginal expenditures in the mythical intact family that does not exist at the time of the support order. The argument here suggests looking instead at the marginal expenditures the custodial parent will incur on the child's behalf in the one-parent household that exists at the time the order would be in effect.

¹⁰¹ We accept that assumption now but revisit it below when we consider the Earner's Priority Principle. See discussion *supra* Part I.B (concerning Table 1, Case 1).

section). If, on the other hand, the custodial household's income falls well short of the well-being maximum even after the support payment is included, then the entire support payment can be justified by the well-being component. In the intermediate case, as the custodial household income alone approaches, but does not reach, the well-being maximum, the support award may consist of both a well-being component (which is the additional income needed to bring the custodial household up to the well-being maximum) and a dual-obligation component, consisting of the additional amount required if the well-being component alone does not cover the noncustodial parent's fair share of the custodial parent's expenditures on the child before any support payment.

Principle 2 set forth below summarizes this discussion of the dual-obligation component:

Principle 2: Where the custodial household has sufficient income to enjoy a living standard at or above the well-being maximum, a support award is justified to ensure that the other parent contributes his or her fair share to the expenditures required to bring the custodial household to (but not beyond) that level. The appropriate award is the obligor's fair share of the marginal expenditures made necessary by the child's presence in the custodial household. This should be determined by comparing the expenditures required for the custodial household to live at the well-being maximum with the expenditures required to provide the same living standard to the same household without the child. Where the custodial household has sufficient income to approach, but not quite reach, the well-being maximum, the support award will have both a well-being component and a dual-obligation component.

Comment. For cases in which the custodial household approaches but does not reach the well-being maximum, the combined effect of the well-being and dual-obligation components can be calculated through the method noted in the margin.¹⁰²

¹⁰² If:

P = the noncustodial parent's fair share, equal to the noncustodial parent's proportionate share of total parental income, expressed as a percentage;

M = the marginal expenditure rate, i.e., the percentage of total household expenditures made necessary by the presence of the child or children in the household;

B = the income level at which the well-being maximum is reached for the number of children in question in a one-parent custodial household;

C_p = custodial parent income;

Then:

(1) Where $C_p > B$, the award consists entirely of the dual-obligation component, or $P \times M \times B$;

(2) Where $C_p < B$, the award equals the sum of the appropriate well-being and dual-obligation components, or $P(B - C_p) + P \times M \times C_p$.

C. The Gross-Disparity Component

The first two principles seek to ensure, respectively, (1) that the custodial household has the income necessary to ensure measurable child well-being, and (2) that the obligor contributes his proportionate share of these well-being expenses, even if the custodial household has sufficient income to meet them on its own. We now consider a third group of cases involving noncustodial parents whose income well exceeds what is required to provide for measurable well-being. For the purpose of this discussion, let us continue to assume that Point B in Figure 1—the well-being maximum—is reached at family incomes at the 75th percentile, which was about \$60,000 in 1997.¹⁰³

Some states cap awards so they do not increase beyond specified income levels,¹⁰⁴ while others provide the court discretion in requiring a larger award.¹⁰⁵ But the typical state guidelines call for awards that continue to rise with obligor income even if the custodial household is above the 75th income percentile.¹⁰⁶ The question is, why? Evidence of popular views is largely unavailable. The few available studies show that respondents favor support awards that increase with obligor income, but these studies do not typically ask about incomes above the 75th percentile.¹⁰⁷ The American Law

The actual support order should be lower than these preliminary computations in the case of lower income obligors, on account of the EPP. *See infra* Part II.D.

¹⁰³ YONG-SEONG KIM & FRANK P. STAFFORD, UNIV. OF MICH. INST. FOR SOC. RESEARCH, *THE QUALITY OF PSID INCOME DATA IN THE 1990'S AND BEYOND* (2000), http://psidonline.isr.umich.edu/Guide/Quality/q_inc_data.html (last visited November 14, 2007).

¹⁰⁴ *See, e.g.*, NEV. REV. STAT. § 125B.070(2) (2005) (“If a parent’s gross monthly income is equal to or greater than \$14,583, the presumptive maximum amount the parent may be required to pay . . . is \$800.”); MINN. STAT. § 518.551(5)(b) (2005) (“Guidelines for support for an obligor with a monthly income in excess of the income limit currently in effect . . . shall be the same dollar amounts provided for in the guidelines for an obligor with a monthly income equal to the limit in effect.”). *See also* Laura W. Morgan, *Child Support in High-Income Cases: A State-by-State Survey* (2003), <http://www.supportguidelines.com/articles/art200302.html> (last visited November 14, 2007).

¹⁰⁵ *See, e.g.*, COLO. REV. STAT. § 14-10-115(10)(a)(II)(E) (2006) (“The judge may use discretion to determine child support in circumstances where combined adjusted gross income exceeds the uppermost levels of the guideline. . . .”); Kan. Jud. Branch, *KANSAS CHILD SUPPORT GUIDELINES* § III(B)(3), <http://www.kscourts.org/Rules-procedures-forms/Child-support-guidelines/general-instructions.asp> (last visited November 14, 2007) (“If the Combined Child Support Income exceeds the highest amount shown on the schedules, the Court should exercise its discretion by considering what amount of child support should be set in addition to the highest amount on the Child Support Schedule.”). *See also* Morgan, *supra* note 104.

¹⁰⁶ *See supra* note 95.

¹⁰⁷ For example, a 1985 telephone survey of randomly chosen Wisconsin residents presented them with a variety of vignettes in which the parents had varying incomes: the noncustodial fathers in the examples earned from \$500 to \$5,000 a month, and the mothers earned between nothing and \$1,500. The respondents favored support amounts that increased with the obligor-father’s income through this entire range. Nora Schaeffer, *Principles of Justice in Judgments About Child Support*, 69 *SOC. FORCES* 157 (1990), *reprinted in* *CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN* 339–55 (Irwin Garfinkel et al. eds., 1992). The authors indicate that some respondents were asked to identify the appropriate support amount in dollars, while others were asked to identify it as a percentage of the father’s income. The average response (for a one-child family, across all income amounts) of those who answered in dollars, when converted to

Institute recommends that, once the custodial household has been assured a minimum decent living standard, additional support amounts are appropriate to provide the child “a standard of living not grossly inferior to that of either parent. . . .”¹⁰⁸ This clause, which by its terms becomes applicable only when the support obligor’s income exceeds both the custodial parent’s income and the level needed to ensure the child a minimum decent standard of living, would also explain support awards that raise custodial household income above the well-being maximum.¹⁰⁹ The ALI’s position could be described as a compromise between fully honoring the child’s claim to the same living standard as the financially comfortable noncustodial parent, and fully honoring the support obligor’s objections to providing support beyond that needed to ensure measurable child well-being. But is such a claim for the child valid, and is such a compromise appropriate?

The law does not generally intervene in parents’ decisions about their children, short of parental behavior sufficiently aberrant to be considered abuse or neglect.¹¹⁰ This general rule applies to ordinary decisions parents make about what to buy for their children: should they buy the child a new bicycle, or private music lessons? The child disappointed in the parents’ decision cannot appeal to superior court. If the parents endanger the child’s health by providing an inadequate diet or declining to obtain required medical care, that may be another matter. So one might say that we do not require parents in intact families to provide their child more than basic needs. That rule, however, is not based on a considered judgment that basic needs are all a child is entitled to. It is rather a particular instance of the law’s more general reluctance to intervene in intact families.¹¹¹ The law therefore defers to a very wide range of parental choices concerning expenditures on their chil-

percentages, was 21.4%, while the average for those who answered directly in percentages was 24.7%. As paternal income reached the highest amounts respondents were asked about, there was a drop-off in the percentage of the father’s income that respondents thought he should be required to pay in support, but the dollar amount of the award generally continued to go up with paternal income. These surveys also found considerable dispersion in the answers given by respondents, making the group means less meaningful.

¹⁰⁸ AM. LAW INST., *supra* note 6, § 3.04(1).

¹⁰⁹ *See, e.g., In re Marriage of Wittgrove*, 16 Cal. Rptr. 3d 489, 491, 493-95 (Ct. App. 2004) (upholding the trial court’s (temporary) child support award of \$13,488 monthly, where the noncustodial father’s annual income exceeded \$2 million); *Johnson v. Superior Court*, 77 Cal. Rptr. 2d 624 (Cal. Ct. App. 1998) (ruling on a noncustodial father’s objection to discovery as to the specifics of his income and lifestyle, after the trial court had awarded a *pendente lite* child support order of \$8,850 per month, plus \$2,500 per month for a nanny, based on the father having an annual income in excess of \$1 million).

¹¹⁰ The reluctance of American law to intervene in parenting decisions within intact families has constitutional dimensions as a result of a line of cases beginning with *Meyer v. Nebraska*, 262 U.S. 390 (1923), which held that “the right of the individual to . . . establish a home and bring up children” is a fundamental individual liberty protected by the due process clauses of the Fifth and Fourteenth Amendments to the Constitution. *Id.* at 399.

¹¹¹ For example, one spouse cannot seek increased support from the other during marriage; the spouse unhappy with the other spouse’s support must seek divorce. *See, e.g., McGuire v. McGuire*, 59 N.W.2d 336 (Neb. 1953).

dren—almost any parental choice that does not threaten the child's health or safety is accepted.¹¹²

The same kind of distinction arises with regard to parental decisions about where to live. If separated parents disagree, a noncustodial parent may seek a legal order barring the custodial parent from moving the child to a home in another city. It is inconceivable, however, that the state would intervene to overrule the decision of parents in an intact family to move together with their child from Los Angeles to New York. In separated families, however, when the parents do not agree, the law cannot simply defer to parental choice because the parents present competing choices.¹¹³ The law must therefore pick between the conflicting (and potentially self-interested) parental choices, even when both lie within the ordinary range of reasonableness that would bar intrusion into an intact family. This can happen in the context of custody (should the child live with the competent and loving mother in California or with the competent and loving father in New York?) or here, in the context of support (should parental expenditures on the child be limited to those that have a demonstrated impact on measurable well-being, or should the child be more fully protected from avoidable reductions in living standard?).

Embedded in this public policy choice is a reasonable debate over whether additional household income beyond the well-being maximum can be justified as serving an interest of the child's. Award proponents might argue that standard well-being measures simply fail to capture real well-being gains contributed by additional dollars in the higher-income range. Even affluent adults welcome additional income. The relationship between income and one's subjective sense of well-being is not linear, and research strongly suggests that additional income has more impact on subjective sense of well-being at lower income levels than at higher levels.¹¹⁴ But studies also find a positive correlation between income and happiness at higher income levels even after correcting for other factors, such as age, gender, and health, that influence such self-reports.¹¹⁵

One likely reason for the relationship between income and subjective sense of well-being is that additional income promises greater choice and control in one's life, and people like choice and control. There is evidence that a sense of control contributes to human health as well as happiness.¹¹⁶ Additional income may offer the same benefits to children, even if the choices are shared with, or even made by, their parents (or their custodial

¹¹² *Meyer*, 262 U.S. at 399–400.

¹¹³ Relocation disputes among divorced parents have long been a thorny and difficult issue for the courts. See ELLMAN ET AL., *supra* note 10, at 643–55.

¹¹⁴ BRUNO S. FREY & ALOIS STUTZER, *HAPPINESS AND ECONOMICS: HOW THE ECONOMY AND INSTITUTIONS AFFECT HUMAN WELL-BEING* 81–85 (2001).

¹¹⁵ *See id.* (describing the studies linking income and happiness).

¹¹⁶ *See* DANIEL GILBERT, *STUMBLING ON HAPPINESS* 20–23 (2006) (describing the experimental evidence on the impact of control, with references to the primary literature).

parent). For example, people may see value in a wider choice about where the child lives or what school the child attends, without requiring studies showing that such wider choice has an important positive impact on measurable child well-being. So, greater choice and control is one reason people may favor transfers to custodial households that have income beyond the measurable well-being maximum.

The relationship between income and subjective sense of well-being may also exist because people care more about relative income than absolute income.¹¹⁷ Income is important not only for the intrinsic value of the particular amenities that additional dollars may purchase, but because people's sense of well-being is strongly affected by their position relative to those immediately around them.¹¹⁸ Protecting this sense of relative well-being may not seem a very compelling social concern as a general matter. It is different, however, when the issue is the child's living standard relative to the noncustodial parent's, and especially when the child and the noncustodial parent previously lived in the same household and shared a living standard. In that case, the support obligor's living standard is a more natural benchmark against which to judge the child's. And the income gap may be more salient to the child when it exists not only with respect to the income of the absent parent's current household, but also with respect to the income of the child's own prior household. A living standard decline may thus be experienced as a decline in well-being, even if the new and reduced living standard is above the societal median. Those who have advanced to the median may enjoy a greater sense of well-being than those who have fallen to it.¹¹⁹ Finally, the normal process of accommodation to new circumstances may not work so well for a child who experiences a living standard decline from divorce if the child is regularly re-exposed to the gap between his or her current living standard and that of the noncustodial parent he or she visits. Indeed, if the noncustodial parent has new children living with him who share that parent's superior living standard, the salience of the gap may be increased still more.

Some will be less persuaded than others by the foregoing arguments for a gross-disparity component in determining child support awards. All the components of an award are limited by the Earner's Priority Principle, discussed more fully in the next section,¹²⁰ but the gross-disparity component is

¹¹⁷ See FREY & STUTZER, *supra* note 114, at 86–90 (describing studies). See also ROBERT H. FRANK, *LUXURY FEVER: WHY MONEY FAILS TO SATISFY IN AN ERA OF EXCESS* (1999).

¹¹⁸ See FRANK, *supra* note 117, at 109–21.

¹¹⁹ Cf. GILBERT, *supra* note 116, at 137–38 (suggesting that individuals prefer a job that promises raises to one with declining pay, even when the average income of the former is lower than that of the latter). People become habituated to things they like, *see e.g.*, *id.* at 129–30, and tend to judge current experiences against past experiences, *see e.g.*, *id.* at 140–43. This suggests that positive change is better than maintaining the status quo, and surely better than negative change. This is especially true given the normal human tendency toward loss aversion—to subjectively experiencing losses as having a greater magnitude than gains even when their magnitude is objectively the same. *See id.* at 146–47.

¹²⁰ See *infra* Part II.D.

especially sensitive to this counter-consideration. The gross-disparity component is easy to minimize or reject if one sees it as a claim to provide a child already in adequate circumstances with non-essential amenities, because the natural conclusion is that the support obligor is entitled to give himself priority in the use of his own earnings to provide such amenities. That conclusion is strengthened by the reality that it is not possible to ensure the child with a living standard close to the support obligor's without providing it to the custodial parent as well, an unintended (and some would say undeserving) beneficiary of the support payment. The skeptic's conclusion might then be that while we must tolerate this unavoidable diversion, so to speak, of the support payment when the child's measurable well-being lies in the balance, we should not tolerate it to provide the child with non-essentials.

People clearly vary in their resolution of these questions, and in the end, the guideline writer must make a value judgment about them. Systematically gathered information about the public's intuitions could aid that judgment considerably. Such studies might reveal, for example, that people view a child's claim to share the absent parent's living standard sympathetically, but ultimately reject it because of a strong objection to the custodial parent sharing the benefits of higher payments. One might then find wider support for the gross-disparity component of a child support payment if guidelines require that all or some portion of it be deposited into a segregated account dedicated exclusively for expenditures conferring benefit on the child alone—including perhaps expenditures we would not ordinarily require of the obligor, such as the cost of college or of private school.¹²¹

Principle 3 summarizes our discussion of the gross-disparity component:

Principle 3. Child support awards may include a component intended to protect children from declines in their living standard that leave them at a level below and grossly disparate from the living standard of the support obligor. This principle would apply even if the child's household already enjoys an income that exceeds the well-being maximum or would exceed it if this component were included in the award. Scientifically valid surveys of public views about the appropriate way to balance the conflicting claims that arise in connection with this component—including a provision for the segregation of such funds in separate accounts that might be applied to provide the child with beneficial goods or services beyond those available as a result of the standard support

¹²¹ There is evidence that one consequence of divorce is a reduction in the financial contributions of noncustodial parents to their children during their later adult years. Frank F. Furstenberg, Jr. et al., *The Effect of Divorce on Intergenerational Transfers: New Evidence*, 32 *DEMOGRAPHY* 319 (1995). This kind of program might be seen as an appropriate corrective to that tendency.

order—could assist guideline writers in determining the extent and nature of such awards.

D. The Earner's Priority Principle

The Earner's Priority Principle is a pompous name for an entirely obvious idea: everyone may keep what they have earned, in the absence of some very good reason to take it from them. Libertarians would certainly agree with this proposition,¹²² but it is hardly limited to them. Everyone requires some reason for coerced wealth transfers—something more sophisticated than “I want what you have, so the state should take it from you and give it to me.” Policymakers, therefore, must take account of this idea when formulating support guidelines. It might be admirable to give money to a custodial household if it makes a child happier, but is that a good enough reason, for example, to take most of the other parent's money? The premise that lies behind the EPP is that most Americans would think not, and the EPP is the name we give to the fundamental belief that lies behind that view. An additional premise here is that its power in the child support context varies with both the earner's circumstances and the child's. This is because the economic circumstances of each bear on whether a state-compelled transfer of resources is justified in the minds of most people. The EPP's power explains, among other things, why income shares states sometimes depart from their usual rule allocating the support burden between the parents in proportion to their incomes.

1. Obligors Cannot Be Impoverished

The self-support reserve, included in most state guidelines,¹²³ shields impoverished obligors from onerous support obligations. It is more than a child support analog to progressive taxation. Progressivity could explain the self-support reserve if it merely shifted most or all of the support burden from the impoverished noncustodial parent to a financially self-sufficient custodial parent. But most states also allow application of a self-support reserve when both the custodial household and the support obligor are financially stressed.¹²⁴ A progressivity principle cannot explain that practice. Although the state may be concerned about the practicality of collecting sup-

¹²² See ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* 150–53 (1974).

¹²³ See LAURA W. MORGAN, *CHILD SUPPORT GUIDELINES: INTERPRETATION & APPLICATION* § 1.03(a) (rev. ed. 2006), available at <http://www.supportguidelines.com/book/chap1b.html#1.03>.

¹²⁴ However, some states, including Arizona and Vermont, require the court to use its discretion before allowing the self-support reserve for the noncustodial parent by taking into consideration (among other things) the financial resources of the custodial parent and the financial impact of the reduced child support on the custodial parent's household. ARIZ. REV. STAT. ANN. § 25–320 ¶¶ 5–7 (2006); VT. STAT. ANN. tit. 15, §§ 656(b), 659 (2006).

port obligations from the impoverished, the entire explanation surely includes the belief that while the failure to provide funds to alleviate custodial household poverty is bad, taking funds from the impoverished obligor is even worse. The EPP is weightiest when the earner has the least.

2. *Obligors Are Entitled to Retain Some Priority in the Use of Their Own Income*

The EPP can matter even when the obligor is not impoverished. No state knowingly requires an obligor who is financially more comfortable than the custodial household to pay child support in amounts that would leave him worse off than the custodial household, even if doing so would improve child well-being and would not impoverish the obligor.¹²⁵ So the EPP also means that an obligor is not intentionally required to make the child financially better-off than himself. This is perhaps the minimal manifestation of the principle. A more aggressive version allows the higher income earner to retain at least some of any living standard advantage he may enjoy over the custodial household. The ALI supports this more aggressive version and requires additional support only to ensure that the child's living standard not be "grossly inferior" to the obligor's.¹²⁶ Rules requiring awards that establish equal living standards in the custodial and noncustodial households, though long urged by some, have never knowingly been adopted. The reason is surely, at least in part, opposition to equalizing the living standard of the two parents under the child support rubric. Equity theory teaches that people believe outcomes should be related to inputs, and that they feel distress when this is not the case, even if they are the beneficiary of the inequity.¹²⁷ The benefit to the custodial parent seems to constitute such an inequity. Some custodial parents will have claims in their own right to share the other parent's post-separation income, but alimony is the mechanism for such claims. If the custodial parent has no valid claim under that legal regime, realizing its equivalent through child support payments seems, to many, to be an unjustified windfall for the custodial parent and an unjustified injury to the child support obligor.

Every child support award requires compromise between (1) claims on behalf of the child, for funds necessary for well-being and for sharing the obligor's living standard, and (2) claims on behalf of the obligor who objects to coerced contribution to the custodial parent's living standard. The less compelling the child's claim, the more powerful the obligor's objection. The child's claim is most compelling when there is evidence that the child's well-

¹²⁵ The norm is in fact the contrary: the obligor whose living standard is higher than the custodial household's before the child support transfer will still have a higher living standard after the transfer.

¹²⁶ AM. LAW INST., *supra* note 6, at § 3.05(3)(b).

¹²⁷ See generally ELAINE HATFIELD WALSTER ET AL., EQUITY: THEORY AND RESEARCH (1978).

being would be endangered without greater levels of support. But as we move from awards protecting child well-being to awards ensuring the child a living standard comparable to the support obligor's, the EPP becomes relatively weightier.

3. *The Questionable Dual-Obligation Exception*

In cases in which the obligor's living standard is below the custodial household's before any support payment, most support guidelines require support obligations that push obligors even further below the custodial household living standard. This is particularly striking when obligors live far below the custodial household standard. So, for example, all support guidelines would require more than symbolic payment by a noncustodial parent earning \$25,000 annually to a custodial parent earning \$65,000.¹²⁸ Yet any payment would reduce the obligor's living standard even further below the custodial household's. This result seems to conflict with the EPP, and is especially difficult to defend when the custodial household is near or above the well-being maximum before any payment is made. Awards in these cases consist entirely of a dual-obligation component, a less compelling rationale for overriding the EPP than the concern about the child's well-being. A nominal award seems more appropriate in such cases, as it would be sufficient to serve the symbolic purposes of confirming the legitimacy of the noncustodial parent's parental status and upholding the principle that both parents must contribute to the child's support.

In fact, actual practice appears to conform to this recommendation favoring nominal awards,¹²⁹ even when the formal guidelines do not. Both

¹²⁸ Three sample calculations for a custodial parent with one child make the point. In a simple percentage-of-obligor-income system like Wisconsin's, the obligee's income has no effect on the payment required of the obligor. Wisconsin applies a percentage of the obligor's income (POOI) rate of 17% when there is one child, which in our example results in a basic payment of \$354 monthly before adjustments. Wis. ADMIN. CODE [DWD] § 40 (2004), available at http://dwd.wisconsin.gov/dwd/publications/dws/child_support/dwsc_824_p.htm#Guidelines. In income-shares states, an obligee's higher income reduces the obligor's payment rate, but hardly to the point where it becomes trivial. The Arizona guidelines, for example, would set the monthly payment at \$258 before adjustments (12.4% of the obligor's \$25,000 income). Arizona Supreme Court, Child Support Calculation, <http://www.supreme.state.az.us/childsup/pdf/arizsup22.pdf> (last visited November 16, 2007). Even in Massachusetts, which has an unusual formula that sharply reduces payments to high income obligees, this obligor's basic payment would be \$152 per month (7.3%). Massachusetts Department of Revenue, Child Support Guidelines Calculation Worksheet, <http://www.dor.state.ma.us/apps/worksheets/cse/guidelines-short.asp> (last visited November 16, 2007).

Note that the noncustodial parent with an annual income of \$25,000 (\$2083 per month) earns too much to benefit from a reduction in his support obligation by virtue of the self-support reserve recognized by most support guidelines, because his income is too far above the poverty threshold benchmark against which the self-support reserve is calculated. The 2006 poverty threshold for one person under age 65 was \$10,488 (\$874 per month). See US Census Bureau, 2006 Poverty Thresholds, <http://www.census.gov/hhes/www/poverty/threshld/thresh06.html> (last visited November 16, 2007).

¹²⁹ Judges and lawyers working in family courts have often reported this observation anecdotally to the authors. In Arizona, the most recent quadrennial case file review appears to

family law practitioners and judges observe that when the proposed obligor earns significantly less than the custodial parent, the parties usually agree to reduce or even waive the award called for by the guidelines.¹³⁰ The preceding analysis suggests it would be appropriate to revise existing guidelines to conform to this practice.

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

Principle 4. Child support awards should require no more than nominal amounts from impoverished obligors and should avoid reducing obligor incomes to below poverty levels. Operationalizing this principle requires policymakers to establish a poverty level that will be used. Guidelines should specify a gradual transition from nominal awards to more meaningful awards as obligor incomes rise above the specified poverty level.

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

support it. Arizona parents can stipulate to a child support amount that deviates from the child support guidelines. *See* ARIZ. REV. STAT. ANN. § 25–320, 25–530 (2006). Both parties must have knowledge of the award amount that would have been required by the guidelines and, with that knowledge, enter a written agreement, signed free of duress or coercion, agreeing to a different amount. *See id.* In a review of child support case files from 2002, the support amount awarded deviated from the guidelines in 22% of the cases. Venohr & Griffith, *supra* note 47, at 19. Of those deviating cases, 78% were because of parents’ agreements and 22% were court-determined deviations. *Id.* When parents entered agreements, 49% of the time it was for a downward deviation, and the average amount of the downward deviation was 48% of the guidelines amount. *Id.* at 20.

¹³⁰ *See supra* note 129.

III. CONSTRUCTING GUIDELINES CONSISTENT WITH POLICY

A. *Basic Principles*

The combined impact of all five principles is represented in Figure 3, a sixteen-cell matrix considering four levels of custodial parent income, going from low to high as one proceeds downward through the rows, and four levels of noncustodial parent income, going from low to high as one proceeds from the left to the right through the columns. The base amount of a support award is the dual-obligation component of support, which is calculated as the noncustodial parent's share of the custodial parent's marginal child expenditures. This base amount is then adjusted upward or downward to reflect the requirements of the well-being component, the gross-disparity component, and the EPP. Figure 3 presents an overall view of how these principles interact, and can direct attention to patterns that can help policy-makers decide which tradeoffs make the most sense.

For example, in cells 1 through 8, which represent lower levels of CP income, it would be desirable to obtain awards that raise the custodial household higher along the child well-being curve.¹³¹ Raising the household above Point A is especially important, but even beyond that, at these income levels additional dollars are likely to yield improvements in child well-being. This means that greater inroads in the EPP can be tolerated in cells 1 through 8 than in cells 9 through 16. Nonetheless, support levels will still be very low in cells 1 and 5, where the EPP is strongest because obligor income is so low, so in these cells it is unlikely that the support payment will contribute much to raising custodial household income above Point A. Public funds are probably necessary for children with parents at these income levels. Cells 2 and 6 will allow greater demands on the obligor, but it is still likely, especially in cell 2, that support payments will still leave custodial household incomes at somewhat dissatisfactory well-being levels. Other helpful patterns are revealed by the matrix: consider especially the following two.

1. *The Equal-Earner Diagonal: Cells 1, 6, 11, 16*

These cells all involve parents who are equal earners. For this situation, a support amount that leaves the custodial and noncustodial households with approximately equal living standards is fair, insofar as we can gauge it. While equal living standards may sometimes seem to be a windfall to the custodial parent to which the obligor will object, there will be no windfall if the parents are equal earners, as an equal living standard will naturally result if we require the equal-earning parents to make an equal economic sacrifice for the children. This result also allows the custodial household the highest living standard possible without requiring the obligor to live less well than

¹³¹ See *supra* Part II.A and Figure 2.

FIGURE 3: COMBINED IMPACT OF ALL PRINCIPLES ACROSS INCOMES

		NONCUSTODIAL PARENT INCOME			
		Low	Low Medium	High Medium	High
CUSTODIAL PARENT INCOME	Low	 1	 2	 3	 4
	Low Medium	 5	 6	 7	 8
	High Medium	 9	 10	 11	 12
	High	 13	 14	 15	 16
LEGEND					
Shading	As cells go from dark to light, the base award shifts from consisting primarily of the well-being component, to consisting primarily of the dual-obligation component. Intermediate shades consist mostly of one but may contain some of the other.				
	Award substantially augmented by gross-disparity component.				
	Award somewhat augmented by gross-disparity component.				
	Award substantially reduced by EPP.				
	Award somewhat reduced by EPP.				

the child and custodial parent. Nonetheless, even in this case, the EPP will, for the very low earning obligor in cell 1, bar a meaningful award, assuming we apply a self-support reserve.

2. *Cell pairs: 2 & 5, 3 & 9, 4 & 13, 7 & 10, 8 & 14, 12 & 15*

Total parental income, and thus the living standard of the intact family, is the same in both members of each of these cell pairs. What differs is the relative income contributions of the custodial and noncustodial parents. From the child's perspective, that does not matter, and Principles 1 and 3 therefore lead to the conclusion that the support award should yield the same post-payment income for the custodial household in both cells of each pair. No child support system in the country produces this result, however,¹³² and Principle 5 offers the best explanation for its rejection by policymakers. By focusing on these cell pairs, policymakers can resolve the relative weights they wish to give Principles 1, 3, and 5. Some variation in the relative weights is to be anticipated in a rationally designed system, because in some pairs, the claims of the child in the lower-earning custodial household are stronger than in other pairs. The children in cells 1, 5, and 9 have stronger Principle 1 claims, for example, than the children in cell 12, whose claims are grounded more in Principle 3. Having resolved these weights across all these cell pairs would, however, permit reasonable interpolations to fill in the remaining cells in the grid.

An essential aid to policymakers implementing the approach suggested here is a simple spreadsheet template that shows them the child support results that flow from choices they make about the value of Points A and B, the income required by a single noncustodial parent to maintain a minimum decent living standard, and the marginal expenditure rate for a given number

¹³² A child support system that allocates only the marginal expenditures on children cannot possibly produce this result. See *supra* Figure 1 and accompanying discussion.

of children in a single parent household.¹³³ An example of such a spreadsheet template is available from the authors.¹³⁴

¹³³ The literature contains various estimates of such marginal expenditure rates. For child support purposes, consultants generally rely on an equivalence scale methodology to derive marginal expenditures, but the choice of equivalence scale—there are many candidates—is largely arbitrary and provides differing results. See Ellman, *supra* note 9, at 189–99. For a more ambitious investigation into the matter, see EDWARD LAZEAR & ROBERT MICHAEL, ALLOCATION OF INCOME WITHIN THE HOUSEHOLD (1988). While they do not rely directly on an equivalence scale method, Lazear and Michael base their calculations on the allocation of clothing expenditures among members of the household, using data from the Consumer Expenditure Survey. Their calculations are thus subject to the same concerns about accuracy that also apply to calculations based upon the Rothbarth equivalence scale. See Ellman, *supra* note 9. All these estimates purport to tell us only the mean marginal expenditure rate; to the extent this mean is relied upon to set policy, the amount of dispersion around that mean may matter. Bassi and Barnow, relying on figures in Chapter 7 of LAZEAR & MICHAEL, *supra*, estimate that if the mean expenditure on two children in a two-parent household is 27% of all expenditures, employing a range from 15%–36% of all expenditures would capture 80% of those families, with the remaining 20% evenly divided between those below 15% and those above 36%. Laurie J. Bassi & Burt S. Barnow, *Expenditures on Children and Child Support Guidelines*, 12 J. POL'Y ANALYSIS & MGMT. 478, 486 (1993). It is precisely because estimates of marginal expenditure rates on children are subject to such dispute that the choice of rate is necessarily a policy decision that reflects a view on the best compromise in the face of imperfect information. Technical consultants can inform that policy choice, but they cannot make it.

¹³⁴ The spreadsheet uses the income required by the single noncustodial parent to achieve a minimum decent living standard to set the self-support reserve that the guidelines will allow him to set aside. The marginal expenditure rate is applied to the custodial parent's income to generate an estimate of that parent's marginal expenditures on the child, which are then allocated between the two parents in proportion to each parent's income, yielding the dual-obligation component of the applicable support payment. The spreadsheet uses the self-support reserve chosen by the policymaker to reduce the calculated dual-obligation component as appropriate for low-income obligors. The chosen value for Point B yields the maximum value for the dual-obligation component, because that component should not include any marginal expenditure on the child for income exceeding Point B.

Once the spreadsheet generates the value of the dual-obligation component for any particular set of parental incomes and household composition, the chosen values for Points A and B provide benchmarks to the policymaker who must decide the extent to which the actual support award should depart from the amount needed to achieve at least Point A and if possible Point B. The spreadsheet provides the user with the custodial household's income, after the addition of the dual-obligation support payment, as a percentage of both Point A and Point B. These benchmark figures are automatically updated as the user adjusts the dual-obligation figures to account for the well-being and gross-disparity components. At the same time, the spreadsheet provides the user with both the custodial household income and the obligor's income as percentages of the total income needed to maintain a minimum decent living standard. It also shows the support payment as a percentage of the obligor's income. These benchmarks change dynamically as the user adjusts the support amount, providing the user with a way to gauge the limits that the EPP should place on the support payments.

The Arizona Interim Committee on Child Support Guidelines recommended a process in which the guidelines writers would first choose support amounts for thirty-six cases representing the interaction of six income levels each for the obligor and obligee, spanning a range of incomes that includes most support cases. Report of the Interim Committee on Child Support Guidelines (June 29, 2006) (unpublished draft, on file with authors). The consultant would then produce from this initial approximation a matrix with twelve income levels each for the obligor and obligee, interpolating from the committee's six-income grid, and highlighting for the committee any cases in which that interpolation required new policy determinations. See *id.* Once the twelve-by-twelve table was settled on, the consultant could produce, through interpolation, a complete table of support amounts for the full range of incomes addressed by the state's guidelines. See *id.*

B. Complicating Realities

1. Remarriage of the Custodial Parent, and Other Additions to the Custodial Household

Existing child support guidelines in most states exclude from consideration the income of a custodial parent's new spouse.¹³⁵ This rule long predates the trends of the late 1960s and the 1970s that elevated divorce rates and led to increased numbers of remarried custodial parents.¹³⁶ This increase in "blended families" makes reevaluation of the traditional rule extremely important.

The logic of the stepparent-income exclusion is straightforward. The new spouse, it is said, has no legal obligation to provide for stepchildren.¹³⁷ To assume the new spouse's income is available to his stepchildren, and on this basis reduce the child support obligation of the children's noncustodial legal parent would, in effect, improperly require a stepparent to support a legal parent's children. Yet this doctrinal logic is in tension with the realities of household finances. Most custodial parents are mothers. When they remarry, their new husbands usually earn at least as much as they do and most often more.¹³⁸ The new husband's income thus typically improves the living standard of the custodial household. Regardless of whether the law requires the new husband to support his new wife's children, the addition of his income to the custodial household has that effect. Cases reflect this tension between doctrine and reality. For example, in *Long v. Creighton*,¹³⁹ the custodial mother testified that she earned \$24,122 a year, that her new husband earned \$45,000 annually, and that he covered her and her children on his

The fundamental point is that a procedure of this kind allows the policymaker to judge how to balance the relevant factors in a sample of cases at a variety of points along the spectrum of incomes and household composition. At some point, the policymaker will have made a sufficient number of such judgments to allow a technical consultant to interpolate missing values and construct a complete set of support guidelines.

¹³⁵ See, e.g., ARIZ. REV. STAT. § 25 - 320(2)(D) (2004); sources cited *infra* notes 146–147.

¹³⁶ Divorce rates have generally been declining since 1980—a duration of declining rates that is unprecedented in American history. Nonetheless, divorce rates are still higher than they were in the early 1960s, before the steep increases between 1965 and 1979 took place. See Ira Mark Ellman & Sharon Lohr, *Dissolving the Relationship Between Divorce Law and Divorce Rates*, 18 INT'L REV. L. & ECON. 341 (1998).

¹³⁷ See, e.g., ARIZ. REV. STAT. ANN. § 25—320(2)(D) (2004) (providing that a "parent's legal duty is to support his or her natural or adopted children. The support of other persons such as stepchildren or parents is deemed voluntary and is not a reason for an adjustment in the amount of child support determined under the guidelines."). For a more general discussion of the support obligations of stepparents, see Robert Levy, *Rights and Responsibilities of Extended Family Members?*, 27 FAM. L.Q. 191, 204–11 (1993), and Margaret Mahoney, *Support and Custody Aspects of the Stepparent-Child Relationship*, 70 CORNELL L. REV. 38 (1984).

¹³⁸ In Arizona, in 2002, 90% of custodial parents were women. Their average monthly income was \$1,965, while Arizona noncustodial parents had an average monthly income of \$2,988. Venohr & Griffith, *supra* note 47, at 7–8 (Exhibit 2). More generally, mothers of minor children earn less than both fathers and men in general. See Ira Mark Ellman, *Marital Roles and Declining Marriage Rates*, 41 FAM. L.Q. (forthcoming Fall 2007).

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

health insurance policy.¹⁴⁰ When asked about the percentage of household expenses she paid, she said, “It’s all joint, it’s all combined. Our monies are combined.”¹⁴¹ On that basis, the trial court assumed she was responsible for only her proportionate share of the household expenses and reduced the support order accordingly.¹⁴² This reduction was reversed on the mother’s appeal:¹⁴³

Long [claims that] the district court’s reduction [is] a violation of the statutory prohibition on considering the financial circumstances of her current spouse. We agree. Minn. Stat. § 518.551, subd. 5(b)(1) (2002), explicitly excludes from the definition of net income “the income of the obligor’s spouse.” Although the district court did not base its determination of Long’s net income on a direct consideration of her spouse’s income, when the court found that Long’s spouse is responsible for 69% of the family’s total expenses because he earns 69% of the family’s total income, the court indirectly made Long’s spouse responsible for the support of Long’s children. No case law or statute imposes a legal duty upon a new spouse to provide support for his or her step-children.¹⁴⁴

The court did not deny the economic reality that the members of Long’s household were one financial unit; it simply concluded that this reality provided no basis for departing from the legal rule excluding the stepparent’s income from the child support calculation.¹⁴⁵ Not only are versions of this rule common,¹⁴⁶ some courts that have held to the contrary have been overruled by their legislatures.¹⁴⁷ Yet in many, if not most states, the prevailing

¹⁴⁰ *Id.* at 625.

¹⁴¹ *Id.*

¹⁴² *See id.* at 628. Even this reduced support obligation was suspended because of medical evidence of the father’s disability.

¹⁴³ *Id.* at 624

¹⁴⁴ *Long v. Creighton*, 670 N.W.2d 621, 627–28 (Minn. Ct. App. 2003).

¹⁴⁵ *See id.* at 628.

¹⁴⁶ *See, e.g.*, N.J. R. PRAC. app. IX-B(1) (2005) (See (f) in the “Instructions for Determining Income: Types of Income Excluded from Gross Income” section) (excluding “income from other household members (e.g., step-parents, grandparents, current spouse) who are not legally responsible for the support of the child for whom support is being established.”); MINN. STAT. ANN. § 518.551(5) (West 2005) (current version at § 518A.28 (2006)) (excluding a stepparent’s income from the “net income” calculation on which support payments are partially based); N.M. STAT. ANN. § 40–4–11.1(C)(1) (West 2005) (providing that “[t]he gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage. . . .”); UTAH CODE ANN. § 78-45-7.4 (2002) (excluding stepparent income from the “adjusted gross income” calculation on which the state bases child support payments); WASH. REV. CODE ANN. § 26.19.071(1) (West 2005) (requiring disclosure of all household income but using “[o]nly the income of the parents of the children whose support is at issue . . . for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.”)

¹⁴⁷ Current Connecticut guidelines expressly exclude “the income and regularly recurring contributions or gifts of a spouse or domestic partner.” CONN. AGENCIES REGS. § 46b-215a-1(1)(B)(v) (2005). These guidelines were enacted after the Connecticut Supreme Court’s deci-

legal rule is more nuanced than suggested by the language of the *Long* opinion. Indeed, the common law requires stepparents to support and educate stepchildren *living with them*.¹⁴⁸ A recent compilation found this common law rule effectively codified in twenty states that imposed a general stepparent support obligation.¹⁴⁹ There are also “family expense statutes” that effectively continue this rule¹⁵⁰ because they allow creditors to reach stepparents for goods or services provided to stepchildren living with them.¹⁵¹ Of course, there are few reported cases involving such suits by creditors for payment for necessities.¹⁵² The stepparent support duty normally ends with the parties’

sion in *Unkelbach v. McNary*, 710 A.2d 717 (Conn. 1998), which held that the new spouse’s income could be considered “gifts” to the parent when calculating support orders. *See id.* at 725–26. The Connecticut regulations now allow consideration of “regularly recurring” gifts “only if it is found that the parent has reduced his or her income or has experienced an extraordinary reduction of his or her living expenses as a direct result of such contributions or gifts.” CONN. AGENCIES REGS. § 46b-215a-3(b)(1)(D). Current Idaho statutory law supersedes *Yost v. Yost*, 735 P.2d 988 (Idaho 1987), in which the court held that the income of a wife’s new marital community should be considered in child support determinations. *See id.* at 989–90. The new statutory provisions direct the court to consider “[t]he financial resources, needs, and obligations of both the custodial and noncustodial parents which ordinarily shall not include a parent’s community property interest in the financial resources or obligations of a spouse who is not a parent of the child, unless compelling reasons exist.” IDAHO CODE ANN. § 32-706(1)(b) (2006).

¹⁴⁸ *See, e.g.*, *Van Dyke v. Thompson*, 630 P.2d 420 (Wash. 1981). The common law duty applies to any stepparent who acts in loco parentis toward the child, a requirement that is almost always fulfilled by the stepparent voluntarily accepting the child into his home. Decisions grounded on this common law doctrine include *Harris v. Lyon*, 140 P. 825 (Ariz. 1914); *State v. Smith*, 485 S.W.2d 461 (Mo. Ct. App. 1972) (holding that the position stepparent assumes for himself determines if he stands in loco parentis, and if he voluntarily receives a child into his family and treats him or her as a member thereof, he may be said to be standing in place of natural parent); *Schneider v. Schneider*, 52 A.2d 564 (N.J. Ch. 1947) (holding that if the stepfather voluntarily accepts into his family a child of his wife by a former husband and assumes the obligations of a parent, such obligation continues as long as he permits the child to be in his home); and *Palmer v. Harrold*, 656 N.E.2d 708 (Ohio Ct. App. 1995) (holding that the stepparent is liable for support of stepchild during marriage to natural parent under doctrine of in loco parentis).

¹⁴⁹ *See* MORGAN, *supra* note 23 (comprehensively surveying statutory and case law for all states and the District of Columbia regarding the duty of a stepparent to support a stepchild). Provisions concerning the duty of a stepparent to support a stepchild are typically found in different portions of the statutes than are the child support guidelines. Child support guideline provisions that exclude stepparent support obligations prevail over these statutes when the question is whether a court may require the stepparent to provide support in a case governed by the guidelines. *See, e.g.*, *Harmon v. Dep’t of Soc. & Health Servs.*, 951 P.2d 770 (Wash. 1998).

¹⁵⁰ *See, e.g.*, WASH. REV. CODE ANN. § 26.16.205 (West 1997) (“The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them, and they may be sued jointly or separately. When a petition for dissolution of marriage or a petition for legal separation is filed, the court may, upon motion of the stepparent, terminate the obligation to support the stepchildren. The obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death.”); *see also* DEL. CODE ANN. tit. 13, § 501(b) (1999) (expanding duty to include cohabiters if natural parent is not supporting); MONT. CODE ANN. § 40-6-217 (2003); N.D. CENT. CODE § 14-09-09 (2004).

¹⁵¹ *See, e.g.*, WASH. REV. CODE ANN. § 26.16.205 (West 1997).

¹⁵² A Westlaw search revealed only a handful of reported cases. *See, e.g.*, *St. Ferdinand Loretto Acad. v. Bobb*, 52 Mo. 357 (Mo. 1873); *Chicago Manual Training Ass’n v. Scott*, 159

divorce, when children typically remain with their legal parent and thus no longer live with the stepparent.¹⁵³ So the stepparent support obligation exists only within the new intact family, but we have already seen that the law does not intrude on intact families absent conduct constituting abuse or neglect.¹⁵⁴ But even if rarely enforced, the legal expectation that stepparents will contribute to the support of children living with them does suggest something about what we believe to be right, as well as about what is economically inevitable. We would disapprove of a stepfather who allowed stepchildren living with him to suffer from limited resources while he had sufficient income to provide for them. That is at least part of the reason why states look to stepparent income in determining eligibility for public benefits¹⁵⁵ and why some colleges consider stepparent income in awarding need-based scholarships.¹⁵⁶ On the other hand, we do not believe the existence of a stepfather excuses the legal father from his support obligations. This tells us that the reason for the usual child support rule that excludes the income of a stepparent probably has less to do with our view of the stepparent obligations than it does with ensuring that the legal father is not let off the hook.

Might we reasonably compromise by allowing consideration of stepfather income to reduce but not replace the legal father's support obligation? States sometimes do this, although they do not always characterize their ac-

Ill. App. 350 (Ill. App. Ct. 1911). Both cases involved private schools suing stepfathers for the unpaid tuition bills of minor stepchildren in their households.

¹⁵³ See, e.g., WASH. REV. CODE ANN. § 26.16.205 (West 1997).

¹⁵⁴ See *supra* note 111 and accompanying text.

¹⁵⁵ See, e.g., CAL. WELF. & INST. CODE § 11008.14 (West 2005) ("The income of the natural or adoptive parent, and the spouse of the natural or adoptive parent, and the sibling of an eligible child, living in the same home with an eligible child shall be considered available, in addition to the income of an applicant for or recipient of aid . . . for purposes of eligibility determination and grant computation."); N.J. STAT. ANN. § 44:10 - 36 (West 2005) ("A parent who is eligible for benefits who is married to a person who is not the parent of one or more of the eligible parent's children shall not be eligible for benefits if the household income exceeds the income eligibility standard."). In the federal system, the same is true of social security disability benefits: remarriage and resulting income may reduce or eliminate a recipient's benefits. 42 U.S.C.A. § 402(b)(1)(H), (K) (West Supp. 2007). Some states' welfare systems incorporate these concepts into their definitions of income or eligibility. See, e.g., N.H. REV. STAT. ANN. § 167:4(I)(a) (2002) ("In the determination of sufficiency of income and resources, [the fact finder] may disregard such income and resources as may be permitted by the Social Security Act of the United States . . .").

¹⁵⁶ Virtually all U.S. college and university students seeking need-based financial aid are required to complete either the U.S. Department of Education's Free Application for Federal Student Aid (FAFSA) or the College Board's CSS/Financial Aid PROFILE (PROFILE), or both. U.S. Dep't of Educ., FAFSA, <http://www.fafsa.ed.gov/> (last visited October 19, 2007); College Board, Pay for College Tools, <https://profileonline.collegeboard.com/index.jsp> (last visited October 20, 2007). Both FAFSA and PROFILE consider stepparents' income and assets in their calculations. For example, the PROFILE instructions explain: "If your parent has remarried you must also include information about your stepparent. Note that in this case, whenever the word 'parent' is used, it refers to both the parent and the stepparent." College Board, CSS/Financial Aid PROFILE, Registration and Application Guide 2007-08, at 5. For the analogous FAFSA provisions, see U.S. Dep't. of Educ., FAFSA, Application Questions, Questions 56-83, available at http://www.studentaid.ed.gov/students/publications/completing_fafsa/2007_2008/ques5.html.

tions in this way. One example arises in the application of income-imputation rules. When calculating support, virtually all states will impute income to a parent regarded as shirking employment, but not to a parent whose decision to reduce working hours is considered reasonable in light of all the circumstances (as where reduced employment is thought necessary to care for a young or disabled child).¹⁵⁷ What then of the case in which a remarried custodial mother, for example, reduces her working hours, perhaps to zero, because she can now rely on her new husband's income? In calculating the father's support obligation, should the court impute a full-time equivalent income to the mother (thus reducing the father's support obligation) or should it accept her actual reduced income as her income (thus increasing the father's support obligation)? Some states, such as New Hampshire and California, impute a full-time income to this mother.¹⁵⁸ They do not deny that it is reasonable for her to take her new husband's income into account in deciding on her working hours; they simply believe that her reasonable decision to reduce her income does not, in this case, justify an increase in the father's support payments. This conclusion necessarily accepts the stepfather's contribution to the children's support as an appropriate factor to consider in fixing the father's support obligation. Such rules acknowledge the reality that the new family is one economic unit.

Some states allow courts to take stepparent income into account in a broader array of cases. They allow judges to consider stepparent income in deciding whether to deviate from the guideline amounts. New Hampshire, for example, in addition to the previously-noted rule imputing a full-time income to the remarried mother, also permits the court, in deciding whether to deviate from the guidelines, to consider "the economic consequences of the presence of stepparents."¹⁵⁹ The New Hampshire Supreme Court has held that such deviations are not limited to the cases addressed by the statute involving remarried custodial parents who are underemployed.¹⁶⁰ Connecticut also endorses such treatment of the presence of stepparents.¹⁶¹ Louisiana goes further, allowing the court to consider as income "the benefits a party

¹⁵⁷ See Laura M. Morgan, Determining "Earning Capacity" in Imputed Income Cases, <http://www.supportguidelines.com/articles/art200304.html> (last visited October 24, 2007); Laura W. Morgan, Imputing Income to the Spiritually Minded, <http://www.childsupportguidelines.com/articles/art200006.html> (last visited October 24, 2007); Laura W. Morgan, Imputing Income to the Incarcerated Parent, <http://www.childsupportguidelines.com/articles200005.html> (last visited October 24, 2007).

¹⁵⁸ See N.H. REV. STAT. ANN. § 458-C:2(IV)(b) (Supp. 2006) (providing that a stepparent's income "shall not be considered as gross income to the parent unless the parent resigns from or refuses employment or is voluntarily unemployed or underemployed"); CAL. FAM. CODE § 4057.5(b) (Deering 2006) (providing for the same result, but as a particular application of a more general provision that permits courts to consider the income of the spouse or nonmarital partner of either parent in "extraordinary" cases in which excluding it would lead to extreme hardship on the child subject to the order).

¹⁵⁹ N.H. REV. STAT. ANN. § 458-C:5(I)(c) (2004).

¹⁶⁰ *In re Barrett*, 841 A.2d 74 (N.H. 2004).

¹⁶¹ CONN. GEN. STAT. ANN. § 46b-86(b) (West 2004).

derives from expense-sharing . . . to the extent such income is used directly to reduce the cost of a party's actual expenses."¹⁶² Idaho also allows consideration of such expense sharing benefits, but only if "compelling reasons exist."¹⁶³

It is fair, then, to conclude that despite the general understanding that stepparent income is excluded from support calculations, many states make exceptions and qualifications, reflecting ambivalence about the basic rule. This ambivalence mirrors popular views. Most people, it appears, believe that there are at least some cases in which the custodial mother's remarriage to an income earner warrants some reduction in the father's support payments.¹⁶⁴ There are several possible explanations for these views. The fact that most support guidelines aim to allocate the support obligation between parents in proportion to their incomes may reflect an intuition that this achieves effective equality by equalizing the parental sacrifice. But if the custodial parent benefits financially from her remarriage, then her relative "sacrifice" is less than before. That point becomes especially salient where the custodial parent's new spouse earns more money than the support obligor, because people are not entirely comfortable with a rule that transfers money from a lower income household to a higher income household, especially when the lower income household also has children, as it often does.¹⁶⁵ This example also illustrates another possible explanation of people's reactions: the perception that when the custodial parent's new spouse has a good income, the child's well-being may no longer depend as much upon the support payments.

The support principles offered in Part II lead to similar conclusions. Consider a custodial mother earning \$2,500 a month and a noncustodial father earning \$5,000 a month. The required support amount will be based largely on concerns for the child's well-being (Principle 1) while the dual-obligation component (Principle 2) will add little. But now assume the mother remarries and her new husband earns \$7,500. Principle 1 ceases to be applicable, as even without any support payment the child's living standard is likely to exceed the living standard in the original intact marriage and may approach the well-being maximum. We are still reluctant to eliminate the support award entirely, but that reluctance arises from Principle 2, which has now become much more relevant to the case. That is, the remarriage has

¹⁶² LA. REV. STAT. ANN. § 9:315(C)(5)(c) (2005).

¹⁶³ IDAHO CODE ANN. § 32-706(1)(b) (2005).

¹⁶⁴ See, e.g., Nora Cate Schaeffer, *Principles of Justice in Judgments About Child Support*, 69 SOC. FORCES 157, 167 (1990); see Tom Corbett et al., *Public Opinion About a Child Support Assurance System*, 62 SOC. SERV. REV. 4, 632 (1988), reprinted in CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN 339 (Irwin Garfinkel et al. eds., 1992) (replicating the previous findings based on the same data set).

¹⁶⁵ See Lawrence H. Ganong et al., *Normative Beliefs about Parents' and Stepparents' Financial Obligations to Children Following Divorce and Marriage*, 44 FAM. RELATIONS 306 (1995); Schaeffer, *supra* note 164.

shifted the basis of the support award from concern for the child's well-being to concern for maintaining the principle that a parent, including a noncustodial parent, should contribute to his child's support. Along with that shift is an appropriate recalculation of the award's amount, which can be reduced because Principle 2, the dual-obligation component, yields more easily to the EPP than does Principle 1, the child's well-being component. In this case, the obligor need only pay his proportionate share of the marginal expenditures on the child that would have been made by the two parents if they were in an intact family with the child.

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

2. *Remarriage of the Obligor*

A sense of symmetry might lead one to assume that the same rules should govern the remarriage of the support obligor as govern the remarriage of the custodial parent. But in the usual situation in which the child lives primarily in one of the parental households, symmetrical treatment is inappropriate. The support obligor's remarriage has no direct impact on the financial well-being of the child who is the intended beneficiary of the support order, and the obligor's new spouse has no obligation to the child.¹⁶⁶ In most cases this provides sufficient basis to conclude that the remarriage has no effect on the support order. A possible exception arises when the obligor was excused from more than nominal support because of his very low income, but now marries someone with an ample income.¹⁶⁷ Especially where the custodial household income is well below the well-being maximum, an upward revision of the support award may be appropriate. We reach this result not because our assessment of the parental obligations has changed, but because the impact of the EPP on those obligations may have changed. The force of the EPP, which justified the initial choice of a nominal award, weakens when the remarriage means the obligor is no longer impoverished and will not become impoverished if the support obligation is increased.

¹⁶⁶ A parent's new spouse may have limited support obligations to stepchildren living with him or her, but this rule imposes no financial obligation for stepchildren living elsewhere. See *supra* text accompanying notes 152–56; see also ELLMAN ET AL., *supra* note 10, at 455–56.

¹⁶⁷ See Ganong et al., *supra* note 165; Schaeffer, *supra* note 164.

IV. CONCLUSION

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

The central problem with the existing method for constructing support guidelines is its backward focus. The guidelines are based on estimates of what parents in intact families spend on their children, despite the fact that the guidelines are applied to children who do not live with both of their parents, and often never have. This central shortcoming is exacerbated by conceptual problems in defining child expenditures, as well as practical problems in implementing the faulty conception. Finally, this backward focus is unrelated to the principal policy purposes for requiring support payments: protecting the child's well-being, ensuring that both parents contribute to the child's support, and protecting the child from a living standard that is grossly disparate from a higher standard enjoyed by the support obligor.

Child support guidelines must be constructed by looking at the results they will yield. The guideline amounts should reflect the policymaker's assessment of the proper balance between the money required to serve the three principal purposes of child support and the support obligor's claim to priority in the use of his or her own funds. Social science data can assist policymakers in understanding the impact of household income levels on child well-being, but no method for constructing guidelines can avoid the central policy choices: the relative weights to give to the three principal purposes of support, and the claims of the obligor, their main counterweight. Nonetheless, this task can be approached systematically and transparently and in contrast to current practice, in which support guidelines largely reflect the invisible methodological choices of consultants. The methodology proposed in this Article will empower the state officials charged with approving child support guidelines to make informed, affirmative decisions about the important policy choices implicated by those guidelines.

APPENDIX A: A COMPARATIVE SAMPLING OF SUPPORT AMOUNTS
REQUIRED BY STATE GUIDELINES

The analysis in the text focuses on the example of the state of Arizona's support guidelines. Arizona is an "income shares" state, as are the great majority of U.S. jurisdictions. "Income shares" means that the incomes of both parents are necessary to perform the support calculation, in contrast with states that set support amounts as a percentage of the obligor's income (POOI),¹⁶⁸ without regard to the income of the custodial parent. Income shares states vary considerably in the amount of support they require in any particular case, both because their guidelines set different basic support amounts at any given parental income level and because they deviate in the adjustments they allow or require in transforming this basic support amount into an actual support order. The differences among states are not easy to detect or describe, for several reasons.

First, the differences are not consistent across different income levels or family compositions. It is not necessarily the case that State A imposes support awards that are always \$100 higher or 15% higher than State B. Instead, State A might impose higher support awards than State B at lower parental income levels, but not at higher income levels (or vice versa), or the differences between the two states' awards might become smaller or larger when looking at families with one child versus families with several children.

Second, the methods states use to compute support amounts vary in ways that make comparisons impossible without making assumptions about which reasonable persons may disagree. States diverge, for example, as to whether their guidelines require an input of gross or net parental incomes. Arizona uses gross incomes,¹⁶⁹ and therefore Table 1 does as well. But to determine how those same families would fare in California, we must first choose net income equivalents to gross incomes, because the California guidelines require an input of net incomes.¹⁷⁰ To do that, one must make some assumptions about the income tax liability of the two parents in each of the three Table 1 cases. States also vary in their treatment of child care costs, health insurance costs, and adjustments to reflect the amount of time the child spends with the support obligor.¹⁷¹

Maureen A. Pirog and her colleagues have conducted perhaps the most useful general study of how child support guidelines vary across states and

¹⁶⁸ Arkansas, Minnesota, North Dakota, and Texas use the "varying" percentage of income model; Alaska, Georgia, Illinois, Mississippi, Nevada, Tennessee, and Wisconsin use the flat percentage of income model. Laura W. Morgan, *The Constitutionality of Child Support Guidelines, Part II: An Analysis of Georgia's Sweat v. Sweat* (2002), <http://www.supportguidelines.com/articles/art200205.html> (last visited November 16, 2007).

¹⁶⁹ ARIZ. REV. STAT. ANN. app. § 25-320 ¶¶ 5-7 (2007).

¹⁷⁰ CAL. FAM. CODE § 4055 (West 2004).

¹⁷¹ See the overview in MORGAN, *supra* note 11, § 1.03(a).

over time.¹⁷² Their analysis focuses on four fact patterns that differ both in total parental income and in the separate income of each parent. The purpose of Table A.1, however, is to evaluate the living standard of a low-income custodial parent as the income of the noncustodial parent changes from low to high. The Pirog study does not examine this kind of fact pattern. We undertake this analysis in Table A.1 for Arizona, California, Massachusetts, New York, Oklahoma, South Dakota, and Wisconsin. This small sample includes states that vary in methodology (Wisconsin and New York are POOI states; the rest are income shares states), size, and geographic region, and also appear from the Pirog data to require a spectrum of support amounts from the low end to the high end of state award levels (bearing in mind the limitations noted above about such generalizations).

¹⁷² The most recent version of this effort known to the authors is Pirog et al., *supra* note 74, at 42.

TABLE A.1: CHILD SUPPORT AMOUNTS IN THREE CASES, COMPARED FOR SIX STATES (IN EACH CASE, CP LIVES WITH ONE CHILD AND EARNS \$1000 MONTHLY BEFORE CHILD SUPPORT)

	Case 1 NCP's Monthly Gross Income: \$500			Case 2 NCP's Monthly Gross Income: \$2500			Case 3 NCP's Monthly Gross Income: \$6000		
	Child Support Amount, Monthly	Child Support Amt. As % of NCP's Income	CP's Income after Child Support Payment, As % of Poverty Threshold	Child Support Amount, Monthly	Child Support Amt. As % of NCP's Income	CP's Income after Child Support Payment, As % of Poverty Threshold	Child Support Amount, Monthly	Child Support Amt. As % of NCP's Income	CP's Income after Child Support Payment, As % of Poverty Threshold
Arizona	\$ 75	15%	96%	\$402	16%	125%	\$ 690	11.5%	151%
California	\$ 47	9%	93%	\$428	17%	127%	\$ 977	16%	176%
Massachusetts	\$112	22%	99%	\$552	22%	138%	\$1420	24%	216%
New York	\$ 78	16%	96%	\$392	16%	124%	\$ 942	16%	173%
Oklahoma	\$ 96	19%	98%	\$390	16%	124%	\$ 710	12%	152%
South Dakota	\$100	20%	98%	\$419	17%	126%	\$ 769	13%	158%
Wisconsin	\$ 56	11%	94%	\$425	17%	127%	\$1020	17%	180%

Legend: CP = custodial parent, NCP = noncustodial parent

Notes for Table A.1:

The following assumptions or methodological choices were made in producing the calculations shown in Table A.1.

1. There is one child, and that child is ten years old. (Some states allow adjustments for older children.)
2. Both parents are under age 65.
3. The custodial parent has a gross income of \$1,000 per month.
4. The child spends 73 days, or 20% of the year, with the non-custodial parent. This assumption is relevant in those states that adjust for this factor.
5. Neither parent pays or receives support for other children.
6. The calculations consider only the parents' incomes, visitation time with the non-custodial parent (when relevant under the guidelines), and the child's age (when relevant under the guidelines). No extra expenses or contributions (such as for child care or health insurance) are considered. Such expenses affect calculations under some guidelines.
7. Numbers were rounded to the nearest whole number.
8. Discretionary self-support reserves or low-income allowances were not applied.
9. The poverty threshold used is that established for 2005 by the U.S. Census Bureau.¹⁷³ For a family of two (here, the custodial parent and the child), in which the parent is under 65 and the child is under 18, the 2005 federal poverty threshold was \$13,461 (\$1,121.75 monthly). For one person under 65 (the non-custodial parent), the 2005 federal poverty threshold was \$10,160 (\$846.67 monthly).

¹⁷³ U.S. Census Bureau, 2005 Poverty Thresholds, <http://www.census.gov/hhes/www/poverty/threshld/thresh05.html> (last visited October 20, 2007).

