Questioning Child Support Enforcement for Poor Families

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LESLIE JOAN HARRIS*

I. Introduction

American law and culture has always assumed that providing for children economically is a private obligation, ordinarily belonging to the parents.¹ For many years, this principle was honored more in breach than in observance, especially by noncustodial fathers. This was true until 1975, when Congress enacted the federal-state child support enforcement program, thereby giving the principle real teeth.² The legislation’s two related goals were to reduce childhood poverty and to reduce the welfare rolls. The goals were linked by the assumption that childhood poverty is largely attributable to the failure of absent parents (overwhelmingly fathers) to pay their fair share of child support, even though they are able to do so.

Most of the poorest children in the child support program are born to unmarried mothers. Therefore, the federal legislation mandates that states undertake vigorous efforts to establish paternity where necessary, and

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1. In the eighteenth century Blackstone wrote that parents had a moral but not a legal duty to support their (legitimate) children. 1 WILLIAM BLACKSTONE, COMMENTARIES *457. Nineteenth century American courts and legislatures turned parents’ moral duty into a legal one, establishing that parents have a legal duty to support their children, enforceable indirectly through the necessary doctrine. Leslie J. Harris et al, Making and Breaking Connections Between Parents’ Duty to Support and Right to Control Their Children, 69 OR. L. REV. 689, 693-96 (1990) (tracing American developments). Unmarried fathers did not have a common law duty to support their children, but at least since Elizabethan times, at least in theory, they have had a duty of support if the alternative were that the child would need public assistance. Jacobus tenBroek, California’s Dual System of Family Law: Its Origin, Development, and Present Status (Part I), 16 STAN. L. REV. 257, 284 (1964); R.H. Helmholtz, Support Orders, Church Courts, and the Rule of Filius Nullius: A Reassessment of the Common Law, 63 VAL. L. REV. 431 (1977).

then to establish and collect child support. In return, the federal government handsomely subsidizes the states’ efforts. A state that did not comply with the federal requirements would lose federal funds for the Temporary Assistance to Needy Families (TANF) program. Federal welfare policy originally assumed that custodial mothers would stay home to care for their children with support from the state as needed. The welfare reform legislation, passed in 1996, further privatized child support. In addition, it furthered the norm that virtually all parents, including those with infants, will work and the expectation that single parents should be able to support their children through work and child support and without public assistance.

The welfare reforms were successful in reducing the number of people receiving TANF, at least until the Great Recession, but as Tom Oldham has written, “There is considerable evidence that reforms have failed to accomplish one of the most important objectives of child support, that of reducing child poverty.” In 1975, the year the legislation creating the child support enforcement program was enacted, 17% of children younger than 18 lived below the poverty line. The rate rose to 20% from the mid-1980s to the mid-1990s and declined to as low at 16% in the early years of the twenty-first century. However, in 2009, the rate once again climbed to 20%, compared to approximately 14% for the country as a whole.

5. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1997). Section 103(a)(1) sets out goals for employment according to household status, provides that adults may receive cash assistance continuously for at most two years, and prohibits states from providing cash assistance to families in which adults have received assistance for five years. These provisions are codified at 42 U.S.C. §§ 607, 602(a)(1)(A)(ii), 608(a)(7)(A) (Supp. II 1996).
6. See, e.g., Office of Child Support Enforcement, FY 2008 Preliminary Report, available at http://www.acf.hhs.gov/programs/cse/pubs/2009/reports/preliminary_report_fy2008/, reporting that in 2008 the number of cases in the child support program in which the children were currently receiving assistance (TANF or foster care payments) or had formerly received assistance was down 4.1 percent and 1.8 percent respectively, and the number of never assistance cases was up 2.1 percent. However, in 2009, the number of cases in which the children were currently receiving assistance (TANF or foster care payments) was up 6.4 percent over FY 2008, Office of Child Support Enforcement, FY 2009 Preliminary Report, available at http://www.acf.hhs.gov/programs/cse/pubs/2010/reports/preliminary_report_fy2009/.
Moreover, new information from a longitudinal study of about 5,000 children born in urban areas in the United States, called the Fragile Families and Child Well-Being Study, shows that child support enforcement practices are actually harmful to many poor nonmarital children and their custodial mothers, actually reducing economic support from the fathers and disrupting the fathers’ relationships with the children. Given these perverse and harmful effects, this paper argues that child support enforcement policy and practices as applied to families in which the parents are unmarried and poor should be rethought and reformed.

Some aspects of the child support program intended to increase paternity establishment have been very successful. The program helped establish legal paternity and more importantly allowed unmarried parents to identify themselves as families. Therefore, these provisions of the program should be retained and strengthened. By the same token, “responsible fatherhood” programs may help absent fathers, particularly young and unmarried ones, learn how to be good fathers and to cooperate with their former mates to raise their children. These programs should be encouraged. However, since trying to collect cash child support from poor fathers is largely unsuccessful on its own terms and undermines the relationships between the fathers and their children, these efforts should be curtailed. Instead, the program should support men’s efforts to provide for their children voluntarily, both by paying money and by giving noncash assistance.

Part I of this paper lays the foundation for this argument by describing in detail the economic position of the poorest of parents, who are mostly young and uneducated. People of color are overrepresented in this group. Part II examines the great success of the formal child support enforcement program at establishing paternity of children born outside of marriage and its lack of success at raising children out of poverty. Part III reviews the Fragile Families research about the close relationships that most poor, unmarried fathers have to their mates and children at birth. Also discussed is how this has manifested itself in very high rates of voluntary paternity establishment, and the very positive effects this has for the children. The conclusion sets out in more detail my proposals for revising how the law deals with child support obligations in poor families.

9. SARA MCLANAHAN ET AL., THE FRAGILE FAMILIES AND CHILD WELLBEING STUDY: BASELINE NATIONAL REPORT (2003) http://www.fragilefamilies.princeton.edu/research_associates.asp. Sara McLanahan and Irving Garfinkel are the principal investigators of the overall study, and other researchers with major roles include Marcia Carlson, Kathryn Edin, Paula England, and Frank Furstenberg. The study uses baseline data collected between 1998 and 2000. Mothers and fathers were interviewed at birth, and follow-up interviews were done when the children were one, three and five years old. About three-fourths of the children in the study were born to unmarried parents and together with their parents form what the researchers call
II. Single Parenthood and the Risk of Childhood Poverty

Single parenthood is an important risk factor for poverty. Almost a quarter of custodial parents live below the level of poverty and that rate has been virtually unchanged since 2001. Some parents are single because they have divorced. However, many of this group were not married when the children were born. The absolute number and proportion of births to unmarried women has grown dramatically in the last forty years. In 1970, about 10% of all children were born to unmarried women. By 2000, this rate rose to about one-third. In 2009, 41% of all births in the United States were nonmarital.

Among some demographic groups, the percentage of nonmarital births is much higher. In 2009, 72.8% of births among non-Hispanic Black women were to unmarried women, compared to 65.4% to American Indian or Alaska Natives, 53.2% to Hispanic women, 29% to non-Hispanic white women, and 17.2% to Asian or Pacific Islanders. Being a young, Black or never married parent greatly increases the risk of poverty. Custodial parents in these groups have poverty rates of about 35%, while their respective demographic complements’ poverty rates are about 20%.

Data from the Fragile Families and Child Wellbeing study discloses that unmarried parents are particularly at risk for poverty because they are younger and less educated than married parents. On average, the unmarried mothers were seven years younger than married mothers, and the unmarried fathers were six years younger than married fathers. Of the unmarried mothers in the study, 43% had not completed high school, and fathers were only slightly more likely to have graduated. Unmarried parents were twice as likely as married parents to have dropped out and half as likely to have attended college.

Improving the economic lot of poor parents and their children is a major goal of the federal-state child support enforcement program. The next section describes the program and its effectiveness at achieving this goal.

“fragile families.” The children were born in 75 hospitals in 20 cities in the U.S. with a population over 200,000, and the results of the study can be generalized to all urban areas with a population of more than 200,000.

10. Id. at 3.


12. Id.


14. Id. at 4.
III. Child Support Enforcement, Paternity Establishment, and the Financial Well-being of Poor, Nonmarital Children

Historically, nonmarital children have received less child support from their fathers than children of divorce. Often the reason was that legal paternity had not been established. This section briefly describes the success of the Child Support Enforcement Program in establishing paternity for children born out of marriage and its overall success in increasing the amount of child support actually paid. The benefits of the program, however, are not evenly distributed among all children eligible for child support. The poorest children, those born to young, unmarried mothers of color, receive much less than the children of divorced white parents. Moreover, the Fragile Families Study shows that formal child support enforcement efforts actually make things worse for some single mothers and their children.

A. Paternity Establishment under the Child Support Enforcement Program

The federal program creates incentives targeted at increasing paternity establishment; a state that does not meet paternity establishment goals will lose TANF funds. States with paternity establishment rates above 50% receive incentive payments that increase as the rate increases. Since the initiation of the federal-state child support program, the number of children for whom paternity is established has grown dramatically.

In the first 10 years following establishment of the child support program, legal paternity was established for more than 1.5 million children. The Family Support Act of 1988 increased the pressure on states to ramp up their support enforcement efforts. By 1989, paternity was established

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15. Id. at 3.
16. In 1979, about half of the more than seven million children receiving Aid to Families with Dependent Children (AFDC), the precursor to today’s Temporary Assistance to Need Families (TANF), were born out of marriage and so needed to have paternity legally established before they could be awarded child support. General Accounting Office, Child Support: Need to Improve Efforts to Identify Fathers and Obtain Support Orders, Executive Summary & 10 (1987).
17. See 42 U.S.C. § 652 (2006). States must seek to attain a ninety percent paternity establishment rate. States with rates below that level must show steady improvement. See Id. § 652(g)(1).
18. Id. § 658a (b)(6).
for 31% of the 1.1 million children born to unmarried parents.\textsuperscript{21}

The 1993 Omnibus Budget Reconciliation Act required states to create in-hospital paternity voluntary acknowledgment (VAP) programs.\textsuperscript{22} The voluntary acknowledgment requirements were expanded further by the 1996 federal welfare reform legislation.\textsuperscript{23} These initiatives were very successful. Between 1992 and 2009, yearly paternity establishment more than trebled. The number grew from 516,000\textsuperscript{24} in 1992 to more than 1.8 million in 2009, the most recent year for which data are available.\textsuperscript{25} The program’s undoubted success in raising the rate of legal paternity establishment has not, however led to a similar success in improving the financial position of nonmarital children, as the next section discusses.

\textbf{B. Distribution of the Child Support Collected by the Program}

Altogether, about 63% of all child support owed in 2007 was paid,\textsuperscript{26} but it was not distributed evenly among the children and parents entitled to it. Never-married, Black, and poorly educated custodial parents were much less likely to receive support and, even when they received some payments, to receive the full amount owed.

A major reason that custodial parents do not receive formal child support is that no court order or agreement obligates the other parent to pay. This problem is disproportionately common among young, never-married, poorly educated, mothers of color. In 2008, only 54% of custodial parents had some type of agreement or court order to receive financial child support from the other parent.\textsuperscript{27} Parents who were non-Hispanic white, currently married or divorced, or who had at least a bachelor’s degree were much more likely to have agreements orders. In contrast, only 45% of custodial parents who were never-married, separated, Black, Hispanic, or who had less than a high school education had a child support order or agreement.\textsuperscript{28}

\begin{footnotesize}
\begin{enumerate}
\item[(22)] Pub. L. 103-66,
\item[(25)] FY 2009 Preliminary Report, supra note 6.
\item[(27)] Id. at 6. The great majority of this group, 6.8 million parents, had formal agreements established by a court or other legal entity, and 600,000 had informal agreements or understandings.
\item[(28)] Id.\end{enumerate}\end{footnotesize}
Questioning Child Support Enforcement Policy for Poor Families  163

Even when they have formal child support orders, never-married, Black and poorly educated custodial parents are less likely to receive the money they are owed. About three-fourths of all custodial parents with child support orders or agreements received some payments, including about 47% who received the full amount,29 a percentage which has been unchanged since 1997.30 However, among parents who were never married, Black, or in poverty, only about 40% receive the full amount of child support they are due. Parents who were younger than 30 did worse. Only 32% of that group received the full amount of the support that had been ordered.31

Data from the federal Office of Child Support Enforcement (OCSE) showing who actually receives support collected through the system confirms this picture. Consistently, children who are currently receiving Temporary Assistance to Needy Families (TANF) benefits, who are likely to be the poorest recipients, receive about a tenth as much money as children who have never received public assistance.32 There are about three families who have never received public assistance for every family who does receive assistance, for which the program establishes a support order.33

A very significant reason that very poor mothers and their children receive so much less formal child support is of course, that often the children’s fathers themselves are also very poor. A 2008 report from the OCSE about unpaid child support highlights this point. According to the report, most of the child support arrearages in this country are owed by only 11% of the obligors, each of whom owes, on average, more than

29. Id. at 1.
30. Id. at 8.
31. Id. at 8.
32. In 2009, 4 percent of the child support collected was for current assistance families, 35 percent was for former assistance families, and 45 percent was for families that had never received assistance; 16 percent was for families receiving Medicaid. Office of Child Support Enforcement, 2009 PRELIMINARY REPORT, supra note 6. In 2008, 45 percent of the child support collected went to never assistance families, 37 percent to former assistance families, and only 4 percent to current assistance families. 2008 PRELIMINARY REPORT, supra note 6. In 2007, $2.1 billion was collected for child receiving public assistance, $22.8 billion for children who were not. The figures in 2006 were $2.1 billion for public assistance families and $21.8 billion for families not receiving assistance; in 2005 $2.2 billion was collected for families on assistance and $20.7 for families not on assistance, and in 2004, $2.2 billion was collected for public assistance cases and $19.6 billion for non-public assistance cases. Id.
33. In 2009, 18 percent of new child support orders were for children receiving assistance, 32 percent were for children who formerly received assistance, and 51 percent were for children who had never received assistance. In 2008, 16.6 percent of the new child support orders were for children currently on assistance, 32.5 percent were for children who formerly received assistance, and almost 51 percent were for children who had never received assistance. 2008 PRELIMINARY REPORT, supra note 6.
$30,000.\textsuperscript{34} Obligors with no or low income owe most of the arrears. Those with income of less than $10,000 accounted for half the obligors; they owed 70% of the arrears.\textsuperscript{35} This does not mean, however, that very poor fathers generally are not contributing to the household economies of their children’s mothers, as the next section explains.

\section*{C. Noncash Child Support and the Child Support Enforcement System}

According to the Census Bureau, more than 57\% of custodial parents received noncash support from noncustodial parents, compared to 40\% who received cash payments.\textsuperscript{36} Data from the Fragile Families Study shows that poor, unmarried mothers are especially likely to benefit from informal and in-kind support. The study also found that efforts to establish and collect formal child support tends to result in these voluntary informal forms of support being shut off.

Based on data for 1,326 children who were three years old at the time of the study, the Fragile Families researchers found that 24\% of nonresident fathers paid formal cash support, while 35\% paid cash informally, and 44\% provided in-kind support.\textsuperscript{37} The in-kind support was worth more than the cash support, and the average amount of informal cash support was slightly larger than the average amount of formal cash support paid.\textsuperscript{38}

The researchers also found that almost all custodial mothers received only formal support or only informal support. Only 6\% received both.\textsuperscript{39} Mothers without child support orders were much more likely than those with them to receive in-kind and informal support, and they received a much higher amount of informal support. A recent report from the Office of Child Support Enforcement confirms this finding. It says that custodial parents who had no formal agreement or order typically explained that the other parent provided what he or she could or that the other parent could not afford to pay child support.\textsuperscript{40}

The Fragile Families study concluded that when formal child support enforcement efforts were undertaken on behalf of mothers receiving informal and in-kind support, the voluntary contributions tended to stop and


\textsuperscript{35} Id.

\textsuperscript{36} GRALL, Custodial Mothers and Fathers, supra note 26, at 1.

\textsuperscript{37} Lenna Nepomnyaschy & Irwin Garfinkel, Child Support Enforcement and Fathers’ Contributions to Their Nonmarital Children, 84(3) Soc. Serv. Rev. 341 (2010).

\textsuperscript{38} Id. at ___.

\textsuperscript{39} Id. at ___.

\textsuperscript{40} GRALL, Custodial Mothers and Fathers, supra note 26.
were not replaced by equal amounts of formal support. Other researchers
have also found that strong efforts to establish and enforce formal child
support obligations result in informal support drying up, leaving the mothers
and children who had been receiving informal support worse off. A
Department of Health and Human Services Report about paternity estab-
lishment, published in 2000, reported that many mothers receiving public
assistance are unable or unwilling to assist with paternity establishment.
This is because they want to protect fathers from collection or believe that
they will lose informal support by helping, leaving them worse off if the
state cannot collect anything. Researchers Esther Wattenberg and
Kathryn Edin reached similar conclusions.

The Fragile Families study also found that mothers were more likely to
receive voluntary informal cash payments and in-kind support from their
children’s fathers the more recently they had quit living with the men. As
the time since the couple broke up grew longer, mothers were less likely
to receive this voluntary support, but they did receive larger amounts of
formal support than mothers who had recently broken up. Overall, the
study concluded that support enforcement had no effect on the total
amount of support received by unmarried mothers and that its effects were
negative for parents who had stopped cohabiting recently and positive for
parents who never cohabited or who had stopped cohabiting three or more
years earlier.

As a whole, this research shows that poor, nonmarital children are likely
to be better off economically if their parents maintain a close relation-
ship. This is because fathers in such relationships are more likely to con-
tribute to their children economically and to provide more, than if they are
forced by the formal child support system to pay. Further, bringing fathers
into the formal system when they do contribute voluntarily is likely to be
counterproductive in economic terms.

Research also shows that fathers who contribute voluntarily to their
children’s support are also more likely to remain in their children’s lives
in other ways that benefit the children. The next section describes this
research, which also shows that the way a man’s legal paternity is estab-

41. Nepomnyaschy & Garfinkel, Child Support Enforcement, supra note at 37.
42. DHHS, PATERNITY ESTABLISHMENT: ADMINISTRATIVE AND JUDICIAL METHODS 5 (Apr.
2000). The report also said that some mothers are reluctant to cooperate because they do not want the fathers in their children’s lives or fear domestic violence.
43. Esther Wattenberg, Paternity Actions and Youth Fathers in Young Unwed Fathers,
CHANGING ROLES AND EMERGING POLICIES 213 (Robert I. Lerman & Theodora J. Ooms) eds.
(1993); KATHRYN EDIN, SINGLE MOTHERS AND ABSENT FATHERS: THE POSSIBILITIES AND LIMITS
OF CHILD SUPPORT POLICY (1994).
44. Id. at ___.
45. Id. at ___.
lished is a strong marker of his inclination to maintain an ongoing relationship with his child.

IV. Methods of Paternity Establishment and the Commitment of Nonmarital Fathers to their Children

The Fragile Families research found that the great majority of unmarried parents are strongly connected to each other and to their children at birth. At the time of birth, 51% of the unmarried couples in the study were living together, and another 31% were dating. The great majority of these parents established paternity soon after birth. In urban areas, the paternity establishment rate is 69%, and 81% of the paternity establishments are in the hospital or birthing center. While the paternity establishment rate for couples not living together is lower, it is still 58%, although only 42% of these establishments occur in the hospital. These parents establish paternity by voluntary acknowledgment, rather than by litigation. This section describes both these methods of paternity establishment in detail and then discusses the sociological differences between fathers who voluntary acknowledge and those whose paternity is established by adjudication.

A. Methods of Establishing Paternity—Adjudication and Voluntary Acknowledgment

The federal child support enforcement legislation strongly encourages unmarried mothers and men believed to be fathers to establish legal paternity voluntarily. It requires that all states allow mothers and alleged fathers to do this by signing a voluntary acknowledgment of paternity (VAP) identifying the man as the legal father.

Federal law also requires that a voluntary acknowledgment must have the status of a legal finding of paternity once it is filed with the state office.

46. Id.; see also Larry Bumpass, L. & Hsi-Hei Lu, Trends in Cohabitation and Implications for Children’s Family Contexts in the United States (2000).
48. Id. A smaller Wisconsin study found that almost half of all unmarried parents in that state in 2005 filed VAPs near the time of their children’s birth. Older parents were more likely to use VAPs than younger parents, and college-educated mothers used VAPs at twice the rate of mothers who had not finished high school. Patricia R. Brown & Steven T. Cook, A Decade of Voluntary Paternity Acknowledgment in Wisconsin: 1997-2007 (May 2008), available from the website of the Institute for Research on Poverty at the University of Wisconsin, http://www. irp.wisc.edu/research/childsuf/pubtopics/paternity_estab.htm. For few children do parents marry and then file a VAP; in 2005 the number was less than one percent of all nonmarital births.
of vital statistics and that states give full faith and credit to voluntary
acknowledgments from other states.\(^50\) Either party must be able to rescind
the acknowledgment within 60 days of the child’s birth or the date of any
judicial or administrative proceeding relating to the child, whichever
occurs first.\(^51\) After that, an acknowledgment can be challenged only on
the ground of fraud, duress, or material mistake of fact.\(^52\)

If paternity is not established by a VAP, the mother or alleged father
can bring a paternity suit to obtain a paternity judgment,\(^53\) or he or she
can seek the assistance of the state child support enforcement agency in
bringing suit. If the child is receiving TANF, the mother must cooperate
with the child support office in paternity establishment if the child has no
legal father, unless she has good cause not to do so.\(^54\) In addition, today
a number of states have created administrative processes for establishing
paternity.\(^55\)

Federal law requires that states allow proceedings to establish paterni-
ty to be brought at any time until a child’s eighteenth birthday.\(^56\) The state
child support agency must be able to order genetic tests in certain situa-
tions without a court or administrative order.\(^57\) If the agency orders the
test, the state must pay for the initial test, though it may recover the cost
from the father if paternity is established.\(^58\) Whenever a party requests
genetic tests, the child and all the parties must submit to them.\(^59\) State law
must require that courts consider the results of genetic tests to establish
paternity if the test is “of a type generally acknowledged as reliable by
accreditation bodies designated by the Secretary [of HHS]” and per-
formed by an accredited laboratory.\(^60\) Most state laws allow courts to con-
sider both blood test and other genetic test results. Further, state law must
create a rebuttable presumption, or at the option of the state, a conclusive
presumption of paternity when the genetic test results indicate a threshold
probability that the alleged father is the father of the child.\(^61\) If a party fails

\(^{50}\) 42 U.S.C. § 666(a)(5)(D).
\(^{52}\) 42 U.S.C. § 666(a)(5)(D)(iii).
\(^{53}\) 42 U.S.C. § 666(a)(5)(L). Both mothers and alleged fathers must have standing to ini-
tiate proceedings to establish paternity.
\(^{54}\) 42 U.S.C. § 65429(A).
\(^{55}\) The 1984 Section IV-D amendments to Title IV-D of the Social Security Act require
states to allow nonjudicial paternity establishment but does not specify by what means. P.L. 98-378.
\(^{56}\) 42 U.S.C. § 666(a)(5)(A); 45 CFR 302.70(a)(5)(i).
\(^{57}\) 42 U.S.C. §§ 666(c)(1)(A).
\(^{60}\) 42 U.S.C. § 666(a)(5)(F).
to appear at a hearing on a paternity action, the judge or hearing officer must have the authority to enter a default judgment.\textsuperscript{62}

As discussed above, the federal-state child support enforcement program has been very successful at promoting paternity establishment for nonmarital children.\textsuperscript{63} VAPs have accounted for much of this growth. In 1997, 486,786 VAPs were reported to the federal office of Child Support Enforcement, and in 1998, more than 614,000 were reported.\textsuperscript{64} In 2009, 1,167 million VAPs were filed, compared to 643,000 cases in which paternity established by adjudicative processes.\textsuperscript{65} In comparison, in 2008, paternity was established by adjudication in about 600,000 cases in the United States; in 2007 the number was 640,000; in 2006, more than 1 million paternity adjudications were completed; in 2005 the number was 690,000, and in 2004, 692,000.\textsuperscript{66}

Both the Fragile Families study and a Wisconsin study found that the more closely involved prior to birth the parents were, the more likely it was that paternity would be established early in the child’s life by means of a VAP.\textsuperscript{67} In Wisconsin, most VAPs were filed in the first month of life, but adjudications of paternity did not become common until six months of life at the earliest, although most had been done by the time a child was two years old.\textsuperscript{68} Researchers have found significant differences in the relationships between mothers and their children’s fathers, depending on whether paternity is established voluntarily through a VAP or through an adversarial adjudicative process. These differences, in turn, have important effects on the well-being of children.

\textbf{B. VAP Fathers are more likely to provide Voluntary Financial Support}

In the Fragile Families Study, men who signed a VAP were much more likely to provide support to the mother and child during and after the pregnancy. Among couples who executed a VAP in the hospital, the men were 16 percentage points more likely to make in-kind contributions during the pregnancy than alleged fathers who did not sign an acknowledgment.\textsuperscript{69}

\begin{itemize}
  \item \textsuperscript{62} 42 U.S.C. § 666(a)(5)(H).
  \item \textsuperscript{63} See text accompanying notes supra.
  \item \textsuperscript{65} 2009 PRELIMINARY REPORT, supra note 6.
  \item \textsuperscript{66} 2008 PRELIMINARY REPORT, supra note 6.
  \item \textsuperscript{67} Ronald Minchy, et al. \textit{In-Hospital Paternity Establishment}, supra note 47. BROWN & COOK, A DECADE OF VOLUNTARY PATERNITY ACKNOWLEDGMENT, supra note 48.
  \item \textsuperscript{68} BROWN & COOK, VOLUNTARY PATERNITY ACKNOWLEDGMENT, supra note 48.
  \item \textsuperscript{69} Ronald Minchy, et al, \textit{In-Hospital Paternity Establishment}, supra note 47, at 617.
\end{itemize}
A Wisconsin study of nonmarital children born in 1997, 2000, and 2005 found that the means by which paternity was established was strongly related to whether formal child support enforcement measures were taken against a father. In that a study, 99% of men whose paternity was established by adjudication were subject to formal child support enforcement efforts by the state; in comparison, only 73 to 79% of the men who had signed VAP were in the child support enforcement database. Even after seven years, 20% of the children born in 2000 whose paternity was established by a VAP had not appeared in the database.

Fathers whose paternity had been adjudicated were two to three times more likely to have a child support order than VAP fathers, and the VAP fathers with child support orders were 10 to 15% more likely to pay something, and the amount they paid was 50 to 75% more than adjudicated fathers paid. These differences persisted over time as the children aged. Multivariate analysis showed that the differences were not just the result of demographic and economic differences between the groups. The authors of the study concluded, “voluntary paternity establishment appears, then, to have a robust and long-lasting association, which may or may not be causal, with the financial resources that a father provides to his nonmarital child.”

**C. VAP Fathers are more likely to Remain Involved in their Children’s Lives**

When parents in the Fragile Families Study split up after the birth of a child, most of the men who were not living with the mothers still stayed in contact with their children, at least in the first few years. Men who had

Compared with men who were high school dropouts, men with some college were 12 percentage points more likely to establish paternity in the hospital, and voluntary acknowledgment was also more likely if the man was employed and did not have children by another woman. *Id.* Fathers with health or substance abuse problems were also more likely to sign a VAP. There was no correlation between race and the likelihood of establishing paternity after controlling for other characteristics. *Id.* at 620. A couple was less likely to sign a VAP if the mother had children by another man or if she was receiving public benefits. *Id.* at 617, 620.

70. BROWN & COOK, VOLUNTARY PATERNITY ACKNOWLEDGMENT, supra note 48.
71. *Id.*
72. *Id.* at 39.
73. Marcia J. Carlson, Sara S. McLanahan & Jeanne Brooks-Gunn, Coparenting and Nonresident Fathers’ Involvement with Young Children After a Nonmarital Birth, 45 DEMOGRAPHY 461 (2008). Among nonresident fathers in the Fragile Families Study who were interviewed one year after the birth of their children, 87 percent had seen their child since birth and 63 percent had seen their child more than once in the past month. By the interview three years after birth, 71 percent had seen the child since the first-year interview, and 47 percent had seen child more than once in the past month. At the interview five years after birth, 63 percent had seen their child since the third year interview, and 43 percent had seen the child more than once in the past month. By the fifth year 5, 40 percent of children had had no contact with their
signed a VAP in the hospital were fifteen percentage points more likely to have seen their children in past 30 days than men whose paternity was not established. Those whose paternity was established by some other means were seven percentage points more likely to have seen their children than those who paternity was not established.74

While the Fragile Families research confirms that children whose custodial parents are in stable relationships do much in terms of cognitive functioning, behavior and overall health than those whose parents’ relationships are unstable,75 the study also found that even if parents break up, children benefit if the father and mother can work together to raise the children. When men saw their children at least once after breaking up with the mother, the couples reported a high degree of positive co-parenting, which increased still more if the men saw the children more often.76

V. Re-Envisioning the Role of Child Support Enforcement in Poor Families

The empirical evidence discussed in this paper shows that formal child support enforcement efforts on behalf of poor children with poor absent parents are much less productive than efforts on behalf of children with wealthier parents, which is not surprising. If that were all that the data
showed, it would still seem to be worthwhile to try to collect what could be collected. However, as this paper has also shown, in many of these poor families, when formal child support enforcement efforts begin, informal and in-kind child support, which are more economically valuable, dry up. Further, as these fathers become alienated from their children and the children’s mothers, they are not as likely to remain involved in their children’s lives. In short, routine application of the standard approach to child support enforcement to poor families is at best ineffective at reducing childhood poverty and at worst harmful to the children, in both economic and social terms.⁷⁷

Perhaps the most important finding from the Fragile Families Study is how many poor, unmarried couples are committed to each other and to trying to raise their child together at birth. They are families, but the term fragile is apt, for many do not manage to stay together. A year after birth, 48% of the fathers in the study were living away from their child, 56% were at three years and 63% were at five years.⁷⁸ More than any other goal, laws and policy should seek to help these young parents develop good relationships with each other that will help them stay together when that is the best course of action and, if they split up, help them continue to work together for the sake of their children.

The voluntary acknowledgment of paternity is an example of a legal reform that promotes this goal, even though that was probably not the original purpose of this reform. Originally promoted as an easy way of establishing paternity as a precursor to obtaining child support by playing on the good feelings surrounding birth,⁷⁹ voluntary acknowledgments have become a way that unmarried parents mark their feelings of commitment and family membership. Their use and legal security should be preserved and strengthened.⁸⁰

Another initiative with promise is “responsible fatherhood” programs, which emphasize fathers’ involvement in their children’s lives, along with and improving their ability to earn money to support their children. Federal child support money for these programs can be used for “promot-

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⁷⁸ Carlson, *et al., Coparenting and Nonresident Fathers’ Involvement*, supra note 73.

⁷⁹ *See, e.g., DHHS, Office of Inspector General, Executive Summary, In-Hospital Voluntary Paternity Acknowledgment Program* (1997) (“Paternity researchers agree that the most opportune time for paternity establishment is the “happy hour” in the hospital immediately following the birth and before the release of the mother and child.”).

⁸⁰ In a forthcoming article, I will discuss and critique efforts to weaken the legal durability of VAPs when the man who signs the VAP is not the child’s biological father.
ing fatherhood, such as counseling, mentoring, marriage education, enhancing relationship skills, parenting, and activities to foster economic stability.  

On the other hand, some current policies drive wedges between fathers and mothers and the children, particularly mandatory enforcement of cash support orders in all cases, including those in which fathers are doing as much as they can and will be forced away from their children if they are pursued for more money. For these children, it would be far better to revive an idea that gained attention before the 1996 welfare reforms, a publicly-funded child support assurance program, along European lines, which is the only universal solution to childhood poverty. In other western countries, as in the U.S., single parents have difficulty supporting their children on their salaries alone, but their rates of child poverty are much lower because they use government subsidies to support children. Proposals for an American version of such a program would guarantee all children a minimally adequate level of support, higher welfare provides, regardless of their parents’ financial status or willingness to comply with child support orders. Political support for this idea faded away when welfare reform emphasizing limited-duration public assistance and employment for custodial parents was enacted. We have now lived with that model for more than 15 years; it has not and will not achieve the goal of significantly reducing poverty among the poorest children, and so the model must be modified to provide greater collective responsibility for them.

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