THE ALLOCATION OF RESPONSIBILITY FOR THE
MAINTENANCE OF THE SINGLE PARENT FAMILY

By

IAN VIOLET
B.A., The University of Cambridge, 1984

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Department of Law

The University of British Columbia
Vancouver, Canada

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ABSTRACT

The social problem under investigation is that of widespread poverty amongst households comprising minor children and a lone parent, whether this household has arisen due to a birth outside a stable union, separation, divorce or widowhood. The scale and features of this poverty are identified with reference to demographic data from Canada and the United Kingdom.

Possible policies for reform are identified through a thorough review of literature from the Commonwealth and the United States. Special attention is paid to empirical investigations and the relationship between public and private support of single parent families.

Whilst none of the four hypothetical reforms proposed - a system of insurance, rigorous enforcement of court orders, constraining judicial discretion, expanded rights to public support - is unconditionally accepted, only insurance is rejected as offering nothing of value. The conclusion is that the non-custodial parent's responsibility for his or her children must continue to be emphasised but that public resources should be expended with a view to assisting the single parent to obtain, enforce and periodically vary orders in favour of the children. For the single parent himself or herself, the aim must be to reverse the current process of marginalisation within society and this independence can best be achieved by reforms of the labour market rather than by reforms of the legal process.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ABSTRACT</th>
<th>ii</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHAPTER 1: INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>1. Defining the Social Problem to be Addressed</td>
<td>2</td>
</tr>
<tr>
<td>2. Who are Single Parent Families</td>
<td>6</td>
</tr>
<tr>
<td>i The historical context</td>
<td>6</td>
</tr>
<tr>
<td>ii The significance of marital status with respect to single parenthood</td>
<td>10</td>
</tr>
<tr>
<td>iii Single parenthood as a predominantly female experience</td>
<td>14</td>
</tr>
<tr>
<td>iv Single parenthood as an economically debilitating experience</td>
<td>20</td>
</tr>
<tr>
<td>CHAPTER 2: SOURCES OF FINANCIAL SUPPORT FOR SINGLE PARENT FAMILIES</td>
<td>30</td>
</tr>
<tr>
<td>1. A General Overview</td>
<td>30</td>
</tr>
<tr>
<td>2. Earnings as a Source of Financial Support</td>
<td>31</td>
</tr>
<tr>
<td>3. Matrimonial Property as a Source of Financial Support</td>
<td>35</td>
</tr>
<tr>
<td>4. Maintenance Payments as a Source of Financial Support</td>
<td>40</td>
</tr>
<tr>
<td>5. Social Assistance as a Source of Financial Support</td>
<td>47</td>
</tr>
<tr>
<td>6. The Field of Choice</td>
<td>50</td>
</tr>
<tr>
<td>CHAPTER 3: SINGLE PARENTHOOD AS AN INSURABLE RISK</td>
<td>57</td>
</tr>
<tr>
<td>1. Private Voluntary Insurance</td>
<td>61</td>
</tr>
<tr>
<td>2. Private Compulsory Insurance</td>
<td>62</td>
</tr>
<tr>
<td>3. Social Insurance</td>
<td>64</td>
</tr>
<tr>
<td>4. Conclusion</td>
<td>67</td>
</tr>
</tbody>
</table>
CHAPTER 4: ENFORCEMENT

1. The Problem of 'Discouraged' Maintenance 72
2. Are Maintenance Arrears the same as other Debts? 76
3. Why is Default so Widespread? 80
4. Evaluation of Enforcement Processes 91
   i Prospective and retrospective enforcement 93
   ii Jail as a means of enforcement 97
5. Roles of Individual and State in the Enforcement Process 100
   i Institution of proceedings: tracing the defaulter 102
   ii Institution of proceedings: deciding to take enforcement measures 106
   iii Conduct of proceedings 111

CHAPTER 5: LIMITING THE IMPACT OF JUDICIAL DISCRETION 130

1. Present Methods of Assessment 132
   i The Oxford Study of Registrars 135
   ii The Denver District Court Study 143
   iii The Orange County, Florida Study 146
2. Problems of Adequacy of Orders 149
3. Reform of the Process of Calculating Support 154
   i Emphasising costs and expenditure 155
   ii Emphasising a sharing of resources 160
   iii The desirability of a quantitative standard 162
4. Who should use the Guidelines? 167
5. Concluding Remarks 174
CHAPTER 6: THE MAINTENANCE OF THE SINGLE PARENT FAMILY

AS A COMMUNITY RESPONSIBILITY

1. Single Parenthood as a Vicissitude of Life
2. The Effect of Changing Family Patterns
3. Social Responsibility: The Present Position
4. Concluding Remarks

CHAPTER 7: INDEPENDENCE FOR SINGLE PARENT FAMILIES

BIBLIOGRAPHY
CHAPTER 1
INTRODUCTION

In this thesis, my concern is to suggest solutions to the economic plight of many of the men and women who raise children alone. I will refer to them as 'single parents' and to the households in which they live with their minor children as 'single parent families'. As will become clear, some of these parents are more 'single', more alone, than others. Some may still experience co-operative, fruitful relationships with the other parent and have none of the exasperation caused by withheld child support payments or altered arrangements for visiting the children. They may experience a continuation of joint parenting, even though they are not living with the other parent.

Others, whilst deriving little or no economic and emotional support from the other parent, may be helped by kinship support systems rooted in their own families and perhaps the absent parents' families. For example, Hunter comments on the value to single parents of support from the extended family amongst the Black community in the United States.\(^1\) An absent father's family may contribute to his children's support, even if the father himself is no longer part of the children's household.

Many single parent families would not fit into either of the two preceding categories. They are isolated and marginal, deriving no support, whether in terms of time spent with the children or in purely financial terms, from the other parent. They are confined to the standards permitted by the single parent's own resources and supplements from the government.
What I am suggesting at the outset is that it would be wrong to suppose that there is a unity of experience amongst single parent families in the Western world. Speaking of support in a broad sense, encompassing both financial contribution and effort in the home, some single parents will discover the strength of the other parent's commitment to the children and the value of relationships within the extended family and the neighbourhood. Others will experience a fracturing of many relationships, not only of that with the other parent, and the resulting isolation and frustration.

1. **Defining the Social Problem to be Addressed**

The extent of the problems of the single parent family will clearly vary from family to family and may be influenced by many factors including the sex of the single parent, how single parenthood came about and how long it has lasted, the accessibility of the labour market and the availability of child care and other services.

To what extent can any of the difficulties faced by single parent families accurately be termed social problems in the sense of problems for society, problems which it is the responsibility of society to assist in resolving? Is it sufficient to establish that a broadly defined group within society lacks financial resources or has become isolated and marginalised? If the complaint of the single parent who is separated or divorced is that economic status has been reduced, why is this a problem for anybody but the participants in that particular matrimonial dispute? As Eekelaar demonstrates, if a particular dominant value in society is emphasised sufficiently, society's perception of a particular situation as problematic is altered. Denying a young person
educational opportunity or the chance to associate with others of the same age because of a belief held by the parents may raise difficult issues for some people. However, if parental authority is a dominant value, such issues barely enter the public domain.\(^3\)

Similarly, if there is to be freedom to leave relationships which have broken down and freedom to engage in sexual intercourse outside marriage, any problems arising from the exercise of these freedoms are not automatically matters for social concern. If the individualism which underlies these freedoms is stressed sufficiently, it would be respectable to argue that the economic difficulties of many separated, divorced or unmarried single parents are the 'inevitable price of an individualist economy and its family system'\(^4\) and that losses should be taken wherever they might fall.

What makes this aspect of family law so interesting and so problematical is that social values are not so clear-cut and easily identified. Particularly in the cases of the single parent family arising from divorce or from a birth outside wedlock, there are forces opposed to the dominance of individualist values. They do not seriously challenge the individual's freedom to leave a relationship which has broken down or to engage in sexual relations outside marriage. There are those conservatives who argue that 'the stigma of having a bastard baby needs to be reintroduced' and that '[l]ife as a single parent is not nearly unpleasant enough'.\(^5\) However, a code of individual responsibility with unpleasant consequences for wrongdoing would indicate that the problems of single parent families, however the family unit is created, are not difficulties so widespread and of such magnitude that society at large should concern itself.
The 'countervailing humanitarian values' which I identify as limiting the ascendency of abstentionist values are those concerned with the welfare of children. Society cannot stand by and leave events to take their course if large numbers of disadvantaged children will result from such abstinence. Children may be perceived as deserving because they form a large group amongst the needy whose plight is not due to their own actions. Society's altruism in this regard must not be over-stated. Some social concern for single parent families is motivated by apocryphal theories of the potential malignity of the members of the single parent's household. Social action equates to social protection. A propensity for delinquent behaviour is often alleged but studies disclose that 'the closeness of the association between delinquency and broken homes is sometimes overestimated'. This may be because the juvenile justice system more readily commits to an institution a young offender from a broken home. T.P. Monahan's study of first offenders under eighteen years of age who appeared before juvenile courts in Philadelphia between 1949 and 1954 supports this hypothesis. Even if being raised in a single parent family is no more than 'a contributory cause of delinquency' there is a mythology surrounding the single parent family which affects public opinion.

A second aspect of the supposedly humanitarian concern for the welfare of children in single parent families are the economic choices with which this concern presents society at large. Harris, McDonald and Weston argue that the reality of the situation dictates that the major question for the community is how to foot the bill rather than whether to pay it but this view is in advance of many people's opinions of the economic choices to be made. Faced with an escalating welfare budget,
Ronald Reagan sought to project an image of humanitarian concern for children whilst unambiguously making his economic choice:

'The American people willingly extend help to children in need, including those whose parents are failing to meet their responsibilities. However, it is our obligation to make every effort to place the financial responsibility where it rightly belongs — on the parent who has been legally ordered to support his child.' 13

Protection of the public revenues is not a new concern and it is a theme which will be mentioned on a number of occasions in this thesis. Its importance here is not so much its persistence from the English Poor Relief Act 1601 to the present day, as its moderating effect on the hypothesis that single parent families are objects of social concern because of the plight of the children who are brought up in such families. This concern itself arises out of a conviction that two parent families are best and may be explained, somewhat cynically, as generated by a fear of juvenile crime and rising public expenditure. Better far to manifest concern by ensuring those who used to live as one household continue to be an economic unit than to accept full responsibility.

What I am trying to describe is a clash between an individualist ethos, which reinforces self-centred desires for personal happiness and fulfilment, and countervailing humanitarian values which acknowledge the harshness of unbridled individualism and seek to protect disadvantaged groups. Within each of the different contexts presented by the study of single parent families, the social problem is to allocate responsibilities, most importantly for financial support and care of children, in a manner which offends neither the assertion of the right to enter new relationships nor a professed humanitarianism concerning
the welfare of the indigent. At the heart of this issue are the extent
to which responsibilities, once assumed, can be renounced and the limits
of the State's obligation to assume such responsibilities.

2. Who are Single Parent Families?

1 The historical context

When undertaking this task of allocating responsibilities between
the single parent, former family members and the State at the present
day, it is tempting to assume that new problems are being encountered.
Although demonstrably incorrect, it is possible to point to sources from
the 1950's onwards which discuss marital breakdown in particular as if
marriage had, until quite recently, been an unvarying familial
institution. The Royal Commission on Marriage and Divorce 1951-1955,\textsuperscript{14}
commonly known as the Morton Commission after its chairman, was quite
uninhibited in its use of unsupported reference to the past, by
implication an undifferentiated era of stability and security:

'Weighting all the evidence before us, we are
satisfied that marriages are now breaking up which
in the past would have held together.' \textsuperscript{15}

'In the first place, marriages today are at risk to
a greater extent than formerly. The complexity of
modern life multiplies the potential causes of
disagreement and the possibilities of friction
between husband and wife.' \textsuperscript{16}

'There is a tendency to take the duties and
responsibilities of marriage less seriously than
formerly.' \textsuperscript{17}

As McGregor was later to argue,\textsuperscript{18} the Commission was putting
forward opinion in the guise of fact and, indeed, it could do little
more because it had 'made no attempt to secure the social evidence by
which alone the merits of [proposals] can be judged'.\textsuperscript{19} The social
scientific failings of the Morton Commission were to some extent rectified by the Committee on One-Parent Families\(^{20}\) of which Professor McGregor was a member. This report rejected the Morton Commission's approach to the significance of increasing numbers of petitions for divorce.\(^{21}\) The Finer Report, as the Report of the Committee on One-Parent Families is usually referred to, suggests that drawing conclusions from figures for rates of divorce is problematical. Firstly, the rates of divorce in successive years group together the whole of the population at risk of divorce in that particular year, whereas division of the population at risk, e.g. into cohorts marrying in particular years, gives rise to subtler measurements.\(^{22}\) Secondly, to equate an increasing rate of divorce with the imminent collapse of family life, a principal theme of William Latey's book, The Tide of Divorce,\(^{23}\) is to suggest that marriages did not break down before divorce became widely available\(^{24}\) and that family life is an ascertainable constant.

Both the Morton Commission and William Latey have a model of an established tradition of family life within which children are likely to prosper.\(^{25}\) Their horror at rising divorce rates emanates from their conviction that the children in the single parent families thereby created will be parentally deprived. However, do children whose parents have divorced or separated experience any different psychological problems or adjustments to those who have lost a parent through death? Are the processes of bereavement and divorce fundamentally different for the children involved?

For example, Charlotte Banks looked into the backgrounds of boys in British detention centres and found that, although homes broken by death
were three times as frequent as in the population at large, homes broken by separation were five times as frequent. Ferguson followed up a cohort of male Glasgow school-leavers and made a similar observation: the bereaved boys were no more likely to be convicted than those from intact homes, but those who had experienced parental separation were disproportionately represented in the group of convicts. Perhaps discord is more relevant than loss, at least with respect to propensity for delinquent behaviour.

That the effect on children of parental deprivation could be different according to whether the parent has died or has left the household is a point not satisfactorily addressed by Peter Laslett in his discussion of parental deprivation in the past. He correctly identifies the tendency 'to look on our own generation as burdened by the problem [of parental deprivation] to an extent never paralleled in the past'. We conveniently neglect the effects of higher mortality in past centuries. The proportion of children having lost one or both parents in seventeenth and eighteenth century England may well be equivalent to the proportion of children living in single parent families nowadays. At Clayworth in Nottinghamshire in 1676, 32% of unmarried people had lost at least one parent; the figure was the same in 1688. Clearly, this measure is somewhat affected by age at marriage. Another example of parental deprivation in the seventeenth century is disclosed by the parish register of Saint Mary's, Manchester, which discloses that of women marrying in the years 1653 to 1660 between 52% and 59% were fatherless. What we cannot be sure of is the effect of parental deprivation on the children involved. This must be the caveat on subscribing unquestioningly to Laslett's conclusion:
'We are hardly justified, in historical terms, in sympathising with ourselves for the prevalence of broken marriages in our time and its deplorable effects on our children.'

Whilst it is sometimes forgotten that the single parent family is a longstanding social phenomenon, it could be that the effect of the deprivation manifests itself differently over time.

Though greater mortality was an important factor, it should not be thought that widowhood was necessarily the principal event which gave rise to a single parent family in past centuries. As Levine and Wrighton point out, there was no 'homogeneity of attitude and experience in the pre-industrial world.'

It appears that there were two periods of high numbers of births outside wedlock in early modern England: 1591-1610 and the late eighteenth century. Births outside marriage were generally unwelcome in the propertied classes, in particular because of the threat to succession which they posed. Perhaps because of this, a theory has developed that particular groups within society were particularly prone to births outside marriage.

Levine and Wrightson's study of Terling in Essex, England to some extent bears this out. Outside the periods of high incidence, births outside marriage became 'more exclusively the province of the poor and the obscure'.

'The parents of illegitimate children and their contacts were involved to a striking degree in the myriad petty 'disorders' of village life.'

Laslett's study of the well-preserved parish registers at Hawkshead in the English Lake District disclosed that, over the years, some families had a disproportionate number of births outside marriage, others less than expected. Many women bearing children outside
marriage would not stay in Hawkshead long but would return to the parish of their settlement, that is, where they had worked for at least one year. Laslett posits:

'a footlooseness which was also, perhaps, marginality. They may have been relatively static in the later eighteenth century, but it is difficult ever to regard them as a settled and accepted part of the community.' 42

In terms of security and acceptance, the position within the community of the unmarried mother and her child may be little changed. It would certainly be interesting to learn whether women bearing children outside marriage in previous centuries later formed two parent households or whether their episodes of single parenthood lasted for a long time. Once pushed to the margins, was there a route back to the mainstream of the community?

It may be that, when there is a large proportion of births outside wedlock, it is hard to discern where the mainstream of the community lies. The rate of births outside marriage is arguably a measure of the efficacy of marriage as an institution for raising children as well as an indication of non-conformity. Any rise in the present rate of births outside marriage is unlikely to be unprecedented and does not raise questions of social survival, only equally difficult questions of social change. In the historical context, the demographic position of the single parent family is well-established, separation, widowhood and birth outside marriage being nothing new.

ii The significance of marital status with respect to single parenthood

At different periods, we find that the total body of single parent families is composed of varying proportions of widows and widowers,
separated and divorced parents, and unmarried mothers and, exceptionally, unmarried fathers. To take Canada as an example, in 1951 two thirds of single parents living with children who had never married were widows or widowers. In making this calculation, all children who had never married of whatever age were included. Just short of another third of the total of single parents were separated whilst just 3.1% and 1.5% were respectively divorced or had never been married. By 1981, the widows and widowers had been substantially displaced by the other categories. Divorced single parents had increased nearly eight-fold to 26.3% of the total; the never-married six-fold to 9.8%. The proportion of widows and widowers had dropped by more than half. The contrast over the thirty years may well have been more striking if only lone parents with minor children had been counted. Indeed, the 1986 Canadian census discloses that half of all female lone parents entered single parenthood due to separation or divorce, a third due to a birth outside marriage and the remaining 17%, by far the smallest category, due to widowhood.

What is the potential importance of this change in the composition of the total group of single parents since World War II? This question is best answered with reference to the average age of those entering single parenthood by each of the three main routes and to the average length of time spent as head of a single parent family. Statistics from the Family History Survey, a sample of 14,000 people asked by Statistics Canada to report dates of marriage and major events in their lives, suggest that as much as a decade separates the average age of each of the three groups of female single parents. The average age of the unmarried mothers is 20.6 years, of the separated or divorced women
31.6 years and of the widows 41.8 years. These ages are all referring to the time when single parenthood began.

Plainly, giving birth outside marriage, separation, divorce and widowhood are all events which tend to occur at different eras in a woman's life. As widows become a less significant portion of the total number of single parents, it is reasonable to conclude that the average age of single parents generally will decline and this may have implications with respect to social policy. Perhaps the youthful single parent will have more difficulty in adapting to independent living as the head of a family unit, simply due to inexperience and unfamiliarity with life's demands. The older single parents may at least have some experience in the labour market or a stronger network of supportive friends. This idea of the average age declining as widowhood becomes a less significant route to single parenthood should not be exaggerated.

When mortality was higher, there would be more younger bereaved single parents. Secondly, women having their first child within marriage at an older age\(^49\) will tend to push up the average age of entry to single parenthood slightly.

However, it appears that the age at which single parenthood is begun does have an influence on the length of time it is likely to last. Laslett noted that over half the children who had lost at least one parent in seventeenth century Clayworth in Nottinghamshire were living in reconstituted two parent families, not in single parent families.\(^50\) The pattern has persisted into the twentieth century. Single parenthood is not always a life sentence. Children may grow up and leave or a new partner may be found. Single parenthood is often episodic.
For the unmarried mothers, it is unlikely that their periods of single parenthood will end shortly due to the child leaving home. Adoption or the taking into care of the child are possibilities but otherwise the child will not leave the single parent's household for many years, single parenting having usually begun at the child's birth. Nevertheless, Maureen Moore found that in Canada their episodes of single parenthood were on average the shortest of the three groups, just 4.4 years. Of those whose episodes of single parenthood had ended by the time of the Family History Survey in February, 1984, 97% were either married or living with a man outside marriage. The new partner would not necessarily be the child's father, but it is worth reminding ourselves that by no means all unmarried mothers are single parents. In Britain, for example, in 1986, 21% of children were born to unmarried couples but, of these children, 66% were registered as the children of the mother and father, indicating that a majority may well be brought up in two parent families.

By way of contrast with the unmarried mothers, the women who were separated or divorced experienced single parenthood for periods on average lasting 5.6 years according to the Canadian Family History Survey and widows for the longest average period of all, 7.5 years. Predictably therefore, smaller proportions of these women's episodes of single parenthood had terminated by the time the survey was taken: 57% of those separated or divorced and 47% of the widows compared with 83% of the unmarried mothers. Also predictably, of those widows and separated or divorced women whose time as single parents was over, fewer had formed new relationships than the unmarried mothers.
Possibly because of their younger average age and greater propensity to form new unions, the Canadian Family History Survey found that the unmarried mothers were more likely to have a second episode of single parenthood than the separated or divorced women or the widows. Just over a quarter of the unmarried mothers experienced a second episode compared with merely 4% of those in the other two groups.

These figures give a useful indication of the rate of passage through single parenthood and of the tendency to form new unions which may well provide greater economic stability. Their importance is that they emphasise distinguishing features of the three main groups of single parents which we have identified and, secondly, that they remind us that single parenthood is for many a time of transition though for some it is a way of life.

iii Single parenthood as a predominantly female experience

However ephemeral single parenthood may be in some cases, it is likely to be a time of hardship relative to the period before the onset of single parenthood. To what extent there is a relationship between the economic plight of many of those who raise minor children alone and the fact that the majority of single parents are women will be a recurring theme. At this point, my aim is to establish to what extent single parenthood can be regarded as a predominantly female experience.

In Canada, the numbers of single parent families headed by men rose by 56,750 between 1976 and 1986, an increase of nearly 60% over the decade. By 1986, the raw figure for single parent families headed by men had reached 151,740. The male single parent is certainly not a solitary eccentric. In Canada, he belongs to a substantial social group but, despite the increases in numbers, male single parents still only
represent 17% of the total number of single parents, much the same percentage as in 1976. British Columbia is close to the national pattern with respect to the relative proportions of male and female single parents but, at least between 1976 and 1981, there was a greater rate of increase in the numbers of single parents in the province. At 30.8%, the rate of increase in British Columbia was over 3% greater than the national rate of increase; with respect to male lone parents, it was over 5% greater. The Ministry of Supply and Services suggests that migration from east to west may explain the higher figures for British Columbia.

Clearly, if numbers of male single parents in Canada are increasing at such a rate but no inroads are being made on the preponderance of female single parents as a proportion of all lone parents, it is likely that single parent families as a group are comprising a gradually larger proportion of all Canadian families. The census shows this to be correct; indeed lone parent families have been increasing in numbers at a faster rate than two parent families since 1966. By 1981, the total population in lone parent families had reached 9.4% of the total family population, that is 9.4% of those living in groups of two or more in the same dwelling related to each other by blood, marriage or adoption.

In Canada, therefore, we have a picture of the total of single parents increasing at a faster rate than that for two parent families but, within this steadily larger group, a persistent preponderance of female single parents. In Great Britain, the Office of Population Censuses and Surveys has recently suggested that the number of single parent families passed the million mark in 1986 and that only one in every fifteen of these families was headed by a man. This is broadly
consistent with the decline in the proportion of one parent families headed by the father disclosed by an analysis of the General Household Survey data for 1973-75 and 1981-83 respectively.\(^6^8\) This identified a decline from 14\% to 11\%; the OPCS figures suggest the proportion may now be nearer 7\%. Another recent government publication does not attempt a quantification, remarking laconically that 'the proportion [of children in single parent families] living with a lone father is still very small' despite an increase in the proportion of children in single parent families in Britain: 8\% of children in 1972 to 13\% in 1985.\(^6^9\)

Should we be surprised by the low proportion of male single parents? Separation and divorce are the most usual gateways to single parenthood, and it is unremarkable that parenting patterns observable within the two parent family should endure beyond the time of separation. There remain strong expectations within North American and West European society that women will assume the primary nurturing role with respect to their children. I would agree with Martin Richards' observation 'that the general assumptions that are held about the sexual division of labour within marriage are extended to the post-divorce situation'.\(^7^0\) Attempts by social policy makers and law reformers to foster a climate in which, at least after separation, men and women are not handicapped by stereotypical images which may fetter their freedom to contemplate and to choose the best arrangements for their children will run some way ahead of broad social consensus. This is not to sneer at such attempts, merely to acknowledge the tenacity of the challenged assumptions.

Consider, for example, data from the British Social Attitudes Survey in 1986 concerning perspectives on the desirability of certain
parental working arrangements. If there were children under five in the family, 76% of those questioned felt that the best arrangements were for the father to work full-time and the mother to stay at home. Respondents who were married without children were the most likely to favour this arrangement (80%) and respondents who had never married were the least likely (61%). The latter group favoured the mother working part-time to a much greater extent than the married respondents, whether with or without children. However, the married respondents accepted the mother working part-time when the children had reached their teens: 66% of those with children and 60% of those without children suggested this as the best arrangement with teenagers.

The British Social Attitudes Survey had two years earlier investigated the aspirations of married and never married respondents with respect to child-rearing. With respect to the teaching of discipline, 80% of both groups aspired to an equal sharing of the task and, according to the reports of the married respondents with children, this level of aspiration was realised. However, turning to consider a task such as caring for sick children, both groups were divided roughly equally in their ideal allocations of the task: about half would see it as mainly the woman's responsibility. In reality, 35% of the married respondents with children shared the task but in 63% of cases it was allocated mainly to the woman.

It is readily conceded that these statistics only give an indication of social attitudes in Britain in 1986 and 1984 respectively and that caution should be exercised in seeking to draw conclusions with respect to prevalent attitudes in other countries. For example, in North America, expectations concerning the place of mothers in the
labour market could be more favourable to working mothers. Nevertheless, the surveys give some backbone to the argument that, if joint parenting is not taking place when the children are part of a two parent family, it is highly unlikely to take place after separation. Attempts to promote joint custody stumble against this hurdle. A judicial preference for joint custody would emphasise the importance of the child's relationships with both parents and the possibility for co-operation in a period usually characterised by strife. It would also seek to promote gender neutrality and it is in this respect in particular that any such preference would be at odds with existing child-care patterns. This appears to be the case not only in Britain but also in California where, at one time, there was in operation a statutory presumption in favour of joint custody. If, by joint custody we mean a situation in which, after separation, parents share responsibility for the care of their children, the prevalence of joint custody is not to be judged by a cursory review of the judicial statistics. Joint custody may mean simply that the parent who does not have the child living with him or her retains the right to participate in the making of major decisions concerning the child's upbringing. Alternatively, the same label may be used to describe a situation in which the child alternates his or her residence periodically.

The lesson is to look beyond the labels to the substance of the arrangements. Lenore Weitzman, in her survey of a sample of cases in San Francisco and Los Angeles between 1968 and 1977 combined with searching interviews with recently divorced people, found that the person with the responsibility for the day to day care of the child was usually the mother, whatever the label applied to the arrangements by
the courts. A similar observation was made by Priest and Whybrow in their analysis of records from ten English divorce courts, selected to provide a range of courts varying in the regularity with which joint custody was awarded. The rates at which the courts gave sole custody to the wife varied within a range of thirty percentage points. However, if other orders giving day to day care to the wife are added to the sole custody orders, it was found that the child's residence was with the wife in 88.6% of cases on average and that the range of results from the ten courts was a mere 7.6 percentage points.

Is it the informed choice of separating and divorcing couples and the courts after weighing all the circumstances which lead to the wife obtaining custody of the couple's children? Or do social expectations cut down the range of possibilities? Perhaps men feel embarrassed about raising the possibility of their seeking custody with their lawyers, thinking it eccentric or effeminate. Richards observes that lawyers, in their turn, are unlikely to raise the issue with their male clients:

'If the client does bring it up the common advice seems to be that it is not worthwhile to proceed unless their partners will agree to the proposal.'

The other side of the same coin are the women who may be concerned at appearing callous if they release their children to their former husband's custody without a struggle. The extent of these patterns of unwilling behaviour is uncertain. What is more certain is that the pressures on separating parents, in so far as decisions on custody are concerned, are not derived solely from the relationships involved, but can be traced to expectations of society at large. I agree with the observation of Eekelaar et al., in connection with their study of 625 divorces involving children in 1974 from ten British courts:
'That the wife is seen as prima facie the proper person to have care of the children therefore appears as a factor of community opinion which is shared by the parties themselves.'

The strength of these opinions helps to explain the greater tenacity of wives in custody matters observed by Eekelaar et al. and their reluctance to allow their husband's custody of the children to stand unchallenged, at least initially. It is open to question to what extent the importance which a parent attaches to obtaining custody may lead him or her to accept a less favourable financial settlement in return for the other parent's assurance that custody will not be contested. If custody and financial matters are negotiated together in this way, potentially the economic difficulties of custodial mothers will be further exacerbated.

iv Single parenthood as an economically debilitating experience

Single parent families are not evenly distributed across the range of family incomes. On the contrary, they tend to be concentrated within the poorest groups of society. Taking Canada as an example, it is noticeable how female-headed single parent families are over-represented in the lowest decile of families arranged according to income. In 1970, they made up 23.9% of this decile whereas in 1980 their share had increased to 36.8%. Over the same period, representation in the second decile remained constant at about 14% of the decile. The poorest fifth of Canada's families shared just over a twentieth of the total income and just over half of these poor families were female-headed single parent families. During the 1970s, the number of female-headed single parent families has grown faster than the number of two parent families and the suggestion of the Ministry of Supply and Services is that this burgeoning, predominantly young group has displaced the elderly from the
lowest decile into the second decile. Older families no longer dominate the numbers of the poorest tenth of Canada's families.

In the United Kingdom over the period 1971-1985, it is remarkable that the number of pensioners in the lowest quintile by income has nearly halved, dropping from 52% to 27%. In the same period, the representation of single parent families in this poorest fifth of the population rose from 5% to 8%. There is no direct comparison with the Canadian figures set out above for the Canadian figures are concerned exclusively with the income of families, groups of two or more related by blood, marriage or adoption residing in the same household. Nevertheless, the British figures demonstrate the pattern of decrease in the representation of the elderly in the poorest groups with an increase in the representation of single parent families.

The Canadian data allows some telling comparisons between the fortunes of two parent families, male-headed single parent families and female-headed single parent families to be made. During the 1970's, the proportion of two parent families with incomes in excess of $35,000 increased from 12% to 26%. For male-headed single parent families, the proportion rose from 7% to 17% but for female-headed single parent families the comparable increase was a mere 2% to just over 5%. At the other end of the spectrum, female-headed single parent families were breaking through the barrier of $10,000 annual income at a slower rate. In 1980, 47% of female-headed single parent families remained below that level, compared with 54% in 1970. The proportion of male-headed single parent families at that level of income had dropped during the same period from 30% to 20%; for two parent families the figures were 18% and 11%. Indeed, over the period 1970-80, the average income of female
single parents, expressed as a percentage of the average income of all Canada's families, actually dropped from 56% to 52%.88

What do these figures represent when they are translated into spending power? Inevitably we find that items such as food and shelter account for a large proportion of the budgets of female-headed single parent families. Brigitta Arnoti identified food, shelter and clothing as basic expenditures and defined a low income family as one which spends more than 58.5% of its income on these three items.89 She found that 68% of children living with their mother only were members of low income families so defined.90 Maureen Moore refers to a survey of seventeen Canadian cities in 1984 which disclosed that, on average, female-headed lone parent families were spending nearly 50% of their pre-tax income on basic necessities whilst comparable expenditures in two parent families accounted for, on average, just over a third of the pre-tax budget.91

To demonstrate the lower standard of living generally experienced by female-headed single parent families, Moore compares their accommodation and household facilities with those of two parent families with minor children.92 She found that 72% of the female single parents were renting compared with 27% of the two parent families and that only 30% lived in detached dwellings in contrast to 66% of the two parent families.93 With respect to facilities, nearly all Canadian families had refrigerators, telephones and televisions but female-headed single parent families lag significantly behind the two parent families in connection with the acquisition of microwaves, freezers, dishwashers, washing machines and clothes dryers.94 This is surely of some importance with respect to the formulation of policy for single parent
families. Many single parents find that their domestic commitments inhibit them in reaching their full potential in the labour market but these commitments are made all the greater by their lack of labour saving devices. In some respects, the very poverty of so many single parents demands that they spend more time about domestic tasks than other parents, thereby leaving them less time and energy for alleviating their situation in the market place.

The pattern is repeated in Great Britain. In so far as accommodation is concerned, the last census, in 1981, discloses that 63% of households headed by married couples are owner occupiers compared with 35% of one parent families. Of the married couples, 28% rent their accommodation from the municipality compared with 54% of the one parent families. Only 25% of the married couples did not own a car but 59% of the one parent families lack this mobility. It is not hard to appreciate that life in many one parent families must entail denial and deprivation. Children may not understand why they are worse off than their contemporaries living with both parents and, perhaps more pointedly, they may find their own deprivations confusing and a source of resentment if their non-custodial parent is noticeably better off than their custodial parent.

One demographic pattern which has contributed to the economically debilitating effect of single parenthood is the decreasing prevalence of the extended family. In Canada since World War II it has become increasingly usual for households to contain only two generations; secondary, additional family units are less and less normal. In the period between 1951 and 1976, lone parent families were more likely than two parent families to be an adjunct within a larger household, but even
the lone parent families are demonstrating their inclination to live separately. What effect does this have? It will probably increase housing costs for the single parent family. Secondly, what is gained in privacy may be lost in emotional and material support. It is interesting to speculate whether this tendency to live in a separate unit might be reversed in areas in which housing is particularly expensive, for example the South-East of England or the Lower Mainland of British Columbia, thereby providing the single parent with additional sources of support. It is on the most common sources of support for single parents that I will next focus attention.
Footnotes


3. Loc. cit.

4. Eekelaar, supra, footnote 2 at p 242. He is not putting the case against social intervention, however.

5. Dr. Adrian Rogers of the Conservative Family Campaign quoted on p 21 of The Times for May 26th, 1989.


7. This idea of children as deserving poor and the explanation for this classification is put forward by W. Trattner in 'From Poor Law to Welfare State' (1984).


10. West, supra, footnote 8 at p 73.


12. In 1984, it climbed to a figure in the region of $25 billion.


15. Supra, footnote 14 at para 42.

16. Supra, footnote 14 at para 44.

17. Supra, footnote 14 at para 47.


19. McGregor, supra, footnote 18 at p x of the preface.

21. Supra, footnote 20 at para 3.35.

22. Supra, footnote 20 at para 3.43.


28. See West, supra, footnote 8 at p 72.


30. Supra, footnote 29 at p 161.

31. Laslett, supra, footnote 29 at p 162.

32. Laslett, supra, footnote 29 at p 164.

33. Laslett, supra, footnote 29 at p 169.

34. Supra, footnote 29 at p 170.


36. Loc. cit.

37. See P. Laslett, 'The Bastardy Prone Sub-Society' in Laslett, Oosterveen and Smith, eds, supra, footnote 35.

38. Supra, footnote 35.

39. Levine and Wrightson, supra, footnote 35 at p 165.

40. Levine and Wrightson, supra, footnote 35 at p 168.

41. P. Laslett, supra, footnote 37 at p 238.
42. Loc. cit.

43. See the suggestion of Laslett, Oosterveen and Smith, supra, footnote 35 at p 3.

44. Canada's Lone-Parent Families (Ottawa: Minister of Supply and Services 1984), Statistics Canada reference 99-933. See 'Main Trends' discussion.

45. Loc. cit.

46. Loc. cit.


49. In England and Wales, the age in 1974 was 24.5 years whereas in 1984 it had risen to 25.8 years. Social Trends 16 (London: HMSO 1986) at p 42.

50. Supra, footnote 29 at p 164.

51. Supra, footnote 47 at p 41.

52. Loc. cit.


54. Moore, supra, footnote 47 at p 42.

55. Loc. cit.

56. 77% of those separated or divorced women who were no longer single parents had formed new unions. For widows, the figure is 59%. See Moore, supra, footnote 47 at p 42.

57. Loc.cit.

58. See generally The Finer Report, supra, footnote 20, Part 3 passim.

59. Moore, supra, footnote 47 at p 42.

60. Loc. cit.

61. Loc. cit.

62. Canada's Lone-Parent Families, supra, footnote 44.

63. Loc. cit.

64. Loc cit.
65. Canada's Lone-Parent Families, supra, footnote 44, Table 1.
66. Canada's Lone-Parent Families, supra, footnote 44, 'Introduction' and 'Main Trends'.
69. Social Trends 18, supra, footnote 53 at p 38.
71. See Social Trends 18, supra, footnote 53 at p 39.
72. See Social Trends 16, supra, footnote 68 at p 36.
74. Loc. cit.
75. Weitzman, supra, footnote 73, Chapter 8 passim but especially at pp 261-2.
76. Dipper v Dipper [1980] 2 All ER 722, a decision of the English Court of Appeal, suggests that a non-custodial parent retains such a right to participate in any event.
77. Supra, footnote 73, Chapter 8, especially at p 262.
79. Loc. cit.
80. Supra., footnote 70 at p 136.
82. Loc. cit..
83. Loc. cit..
85. **Supra**, footnote 84, see discussion of Table 4.

86. *Social Trends* 18, **supra**, footnote 53 at p 95.

87. **Supra**, footnote 84, Table 1.

88. **Supra**, footnote 84.


90. **Loc. cit.**


92. **Supra**, footnote 91 at p 34.

93. **Loc. cit.**

94. **Loc. cit.**


96. **Loc. cit.**

97. **Loc. cit.**

98. *Canada's Lone-Parent Families*, **supra**, footnote 44.

99. **Loc. cit.**
CHAPTER 2

 SOURCES OF FINANCIAL SUPPORT FOR SINGLE PARENT FAMILIES

Having gathered and presented sufficient data to place single parent families in a broad social and economic context, I propose to examine the niche occupied by so many single parent families in more detail. Why do they have access to so few financial resources? What are their sources of financial support at present? What are the implications of policies which seek to emphasise one or other financial resource? I shall examine features of the major sources of financial support and I shall seek to demonstrate that to focus on one source of support rather than another is to disclose ideological preferences. First, some major features of the contemporary data will be examined.

1. A General Overview

In 1985, the Labour and Household Surveys Analysis Division of Statistics Canada conducted a survey of consumer finances. It was found that, on average, female-headed single parent families obtained only 64% of total income from earnings compared with 87% for two parent families with children. Various forms of government assistance were over three times more important to the female-headed single parent family than they were to the average two parent family with children: transfers from the state comprised 24% of the total income of such families compared with only 7% of the total income of the average two parent family with children.
In Britain the picture is even more stark. There does not appear to have been an attempt to illustrate the proportions in which the various sources of finance contribute to an average family budget but there are other pertinent data. Considering single parents of both sexes, very few rely on maintenance payments as a principal source of income: the figure has recently been variously stated as 6%³ or one in fifteen.⁴ It is estimated that about a quarter are self-sufficient, relying on earnings or other private sources including maintenance, and that about three quarters receive state benefits 'amounting to an annual burden for the taxpayer of £3.4 billion'.⁵

It is this so-called burden which is leading policy-makers to consider whether single parents can be coaxed towards dependence on other sources of income than transfers from government.⁶ The motivation behind such policies is not simply humanitarian but, as Eekelaar has pointed out, economic grounds for state intervention in private relations have a lengthy pedigree.⁷ One direction in which the single parent might be guided is that of economic independence by participation in the labour market.

2. Earnings as a Source of Financial Support

What does the single parent find on looking to the market for economic support? Many will find it unwelcoming. This is especially true for those separated or divorced mothers who have devoted themselves to work within the home. Widows can find themselves in a similar situation. Their housework and caring for the children is beneficial for the household but the labour market attributes little value to such tasks. As a consequence, the spouse who has provided little to the
household by way of direct cash injection to the household economy is likely to suffer most when forced to enter the market-place on the termination of support from within the former household. By concentrating initially on those single parents who have been part of two parent families, I do not mean to imply that the single parent who has given birth to a child outside a supportive relationship is in an appreciably superior position in the labour market. It is simply that her position is likely to be different to that of the former group, whose possibilities of success in the labour market may well have been severely limited by the way in which responsibilities were shared during their married years.

Ellman identifies a pressure to adopt specialist roles within marriage. It is often economically rational to specialise. If the spouses attempt a wholehearted sharing of the role of homemaker, this may prejudice the amount of time and effort that they can put into their jobs. This lower level of success in the labour market is quite consistent with a greater satisfaction with the relationship, but may result in a lower joint income than could be attained if the spouse with the potentially higher earning capacity was given a free rein to cultivate that capacity. If economic rationality carries the day, the homemaker spouse, usually the wife, risks severe prejudice to her own individual position within the labour market and has to trust that she will recover her investment in her husband's career in future years. One can argue that it should be the goal of the rules governing financial provision after divorce to ensure that there is no economic incentive to adopt anything other than the most economically rational behaviour within marriage. However, for the present, marital
decision-making is overshadowed by the higher economic value attached to career enhancement than to labour in the home.

The economic prejudice arising out of domestic organisation of labour is usually sustained by the wife but Duclos is right to remind us that the woman who looks to the labour market for her household's support, especially later in life, is at a disadvantage for reasons other than her participation in domestic life. There remain barriers to women achieving their potential within the labour market, many of which arise from a perception of female workers as short-term employees who will soon return to domestic duties on a full-time basis. Employment structures which demand continuous full-time work for forty years are not sympathetic to the needs of women generally and single parents in particular. Unless the labour market becomes more receptive to the possibility of a range of commitments to employment, through schemes such as job-sharing and retraining after temporary absences, it is difficult to see how single parents can be expected to support themselves and their households adequately by their own endeavours. A system which reserves its greatest economic rewards for those whose working lives have been uninterrupted is not going to accommodate parenthood easily. As a consequence, many single parents find themselves working below their true potential in insecure, undesirable positions and their self-confidence may diminish as a result.

Despite this image of the hostility of the labour market to single parents, it must be appreciated that patterns of female employment vary throughout the Western world and that some countries have adopted social policies which more actively encourage the female single parent to provide for her household through earnings. In Canada, labour force
participation rates amongst women, even those with young children, are increasing. Over 40% of the female work-force has not experienced an interruption of work; of those who had, the women who had never married were less numerous than the women who either were or had been married. Whilst conceding that family considerations are an important factor in explaining discontinuity of female employment, the conclusion of the analysis was that there is no ground for an employer to assume that women will interrupt their employment.

In Great Britain, a different pattern of economic activity is encountered. The General Household Survey provides data concerning the employment status of married mothers and lone mothers during the period 1982-84. The single parents were less likely to be employed than the married mothers: 61% of the lone mothers were not employed compared with 51% of the married mothers. When the youngest child is under five, the figures rise to 83% of the lone mothers and 74% of the married mothers not in employment. Whilst similar proportions of both groups work full-time, it is noticeable how significantly fewer of the lone mothers manage part-time employment. Only 22% of the lone mothers work part-time compared with 35% of the married mothers.

By the time of the Labour Force Survey in 1986, only 19% of the lone mothers were working part-time. The proportion working full-time had also dropped since the General Household Survey, from 17% to 15.4%. Lone fathers, whilst not having the same rate of economic activity as the husbands in married couples with dependent children, were much more economically active than their female counterparts. Of the lone fathers, 53.4% were full-time employees or self-employed and 3.4% were part-time employees. This compares with a mere 17.5% of lone
mothers who were full-time employees or self-employed and 19% who were part-time employees.  

Why should 63% of British lone mothers in 1986 have no job or be otherwise economically inactive? We have already noted how traditional employment structures are unaccommodating and how female single parents will be subject to the same difficulties as women generally in the labour market. One such difficulty is the paucity of day-care provision compared with countries such as Denmark where social policies have been geared to coaxing the female single parent into employment. Disincentives to employment are not only logistical or due to discrimination, however. The Department of Health and Social Security has produced figures which show how increases in gross earnings can lead to a decrease in net weekly spending power due to loss of state benefits. Before low-income single parent families will find it worthwhile to improve their earnings, such absurdities must be ironed out.

After a review of other sources of financial support, consideration will be given to the place of employment policy within possible solutions to the problems of single parent families.

3. Matrimonial Property as a Source of Financial Support

When single parenthood arises due to separation or divorce, it is likely that the single parent will benefit to some extent from the division of the couple's assets. Where the marriage is dissolved and the formerly married couple cannot agree how to divide the assets, the division will be made by the court on application by one of the parties in accordance with a statutory scheme. If the parents are unmarried,
the English courts have power to order either parent to transfer specified property to the child or to the other parent for the benefit of the child, or to settle specified property on the child, but apart from this statutory power for the child's benefit, the courts have no power to adjust the parents' proprietary interests. In British Columbia, unmarried couples are expressly excluded from the statutory scheme governing division of matrimonial property but it may be that the greater recognition of the constructive trust as a remedial device has the potential to mitigate the rigorous approach adopted in England to the proprietary rights of unmarried cohabitees, whereby they are treated as if they were strangers to each other.

To those who become single parents due to the other parent's death, property will devolve in accordance with the provisions of the will or the intestacy rules. In some jurisdictions, the widow or widower and children may apply for improved provision out of the estate. In England, the statutory scheme permits the surviving spouse to apply to court for reasonable financial provision, 'whether or not that provision is required for his or her maintenance'. The deceased's child, on the other hand, may only apply to court for reasonable financial provision for the purpose of 'his maintenance'. The courts have followed the Law Commission's lead by taking note, in quantifying the claims of a surviving spouse, of what the claimant could reasonably have expected to receive if the marriage had ended in divorce. The surviving unmarried partner of the deceased is limited to applying for provision reasonable for his or her maintenance and then only if he or she can demonstrate economic dependence on the deceased.
It is questionable how valuable a source of support are the assets of the former relationship. Eekelaar and Maclean, who investigated a structured sample of 229 people in Britain who had been divorced since 1971, found that for many families the division of matrimonial assets was irrelevant. Mossman and Maclean's consideration of the situation of single parent families in Ontario leads them to a similar conclusion: the principles governing the division of matrimonial property are relevant only to the wealthier families. They suggest that couples divorcing in their thirties after five to fifteen years of marriage will be unlikely to have much property and savings if they have had children to support.

If it is correct that only a small percentage of single parents have a claim to significant assets at the dissolution of marriage, advancing the theoretical entitlement of women to matrimonial assets will achieve little, especially if it is at the expense of entitlement to maintenance. Eekelaar suggests that, for the wealthier classes, the origin of the husband's duty to maintain the wife lies in the fact that she or her family will have provided the husband with considerable property on marriage. For these people, the duty to maintain is a recognition of the wife's right to share in this property. Mossman and Maclean follow up this notion:

'the principle of a wife's entitlement to life-long financial support seems to have developed as a corollary to her lack of entitlement to property, and to her inability to earn a living.'

If the wife is given proprietary rights, does she any longer need or deserve provision by way of income? Are the two elements, property and income, synchronised in this way?
It is argued here that no such equilibrium exists. In those cases where resources permit, a moderate property award for a single parent can be disadvantageous in the long term. In the first place, assets which have been awarded to the single parent with a view to giving her some security against the problems associated with marital breakdown may be regarded by the welfare system as available to provide an income. For the single parent on welfare, assets provided on marital breakdown can be steadily depleted due to the collision of the principles of family law and social assistance. The security given by the former system can be undermined by the latter.  

Secondly, the award of income is potentially more valuable. To regard the division of matrimonial property as equally important is to plot the route to impoverishment. Lenore Weitzman, in her study of divorced couples in San Francisco and Los Angeles, found that 'in just one year the average divorcing couple can earn more money than the total value of their assets.' The point is that earning capacity is often much more valuable than the tangible assets. Weitzman comes to the nub of the matter when she writes that '[t]oday we invest in ourselves and in our ability to earn future income'. An award of property does nothing to divide the future income of the major earner, usually the husband, in whose career both spouses will have invested if he has been freed from domestic obligations to advance his career. If awards of matrimonial property are small in comparison to earning capacity, it is plain that the partner who has sustained an economic disadvantage by adopting a course of conduct which furthers the other's career has not received the expected return on that investment.
A theory of maintenance for separated and divorced spouses based upon an analogy with investments is open to immediate objection in that some investments come to fruition and others do not. The investor is in a risky business. However, to expect the spouse to approach marital decisions as a self-interested investor is actively to discourage the sort of marital sharing behaviour which, as Ellman argues, can be for the long-term benefit of the household, economically and perhaps in other ways. However, even if the notion of one partner reaping the benefit of a long-term investment is regarded as far-fetched and abandoned in favour of the standard of the need of the single parent and her household, awards of property still make an insubstantial contribution in the long term.

This is because the obtaining of, let us say, sole title to the former matrimonial home does not put food in the children's stomachs. A house may give residential security but, unless there are no charges on the property, that security is not a simple matter of a transfer of title. The residential security is obtained by having enough income to pay the rent or mortgage and all the other outgoings. The same analysis could be applied to the obtaining of the family car: the order transferring the property is only a part of the assurance of personal mobility; without income with which to run the car, it remains an immobile metallic shell.

My argument is that awards of property should be regarded as the gilt on the gingerbread of an assured, comfortable level of income, not as an appropriate substitute for that income. The image of a single parent family with little income but substantial assets is largely fictional. Even if this were the initial position, the assets would be
depleted due to the operation of social assistance regulations or their simple unaffordability. The Australian Institute of Family Studies surveyed a sample of people divorced in the state of Victoria in 1981 and 1983 and found that 'income poverty tended to correspond with relative deprivation in assets.'

There are other reasons why, as a source of support for single parent families, property distributions are of limited value. It is possible to argue persuasively that the definition of property has traditionally been far too restrictive. So many entitlements and benefits associated with work are excluded. This goes for degrees and other qualifications which enhance earning capacity and in which the other partner may have invested, or to which she may have contributed by taking on more domestic work, depending on the choice of metaphor. In this way, by failing fully to recognise the value of the major wage-earner's career, the other partner loses in the division of assets even if, on the face of it, the division is equal. Such formal equality counts for nought if the principal asset, earning capacity, is put to one side.

Property distributions are therefore over-rated as a source of support for single parent families. Property is available to only certain groups of single parent families and, in the case of those to whom it is available, it will rarely displace the necessity to establish an assured source of income.

4. Maintenance Payments as a Source of Financial Support

We have already observed in the general overview of sources of financial support that very few single parent families have maintenance
payments as their principal source of income. Periodical payments can be claimed by the single parent from the other parent for the support of the children whether single parenthood has arisen due to a birth outside wedlock, separation of the parents or divorce. This is the position in both Britain and Canada. The divorced single parent may also seek periodical payments for herself. This is also the case for the separated, but married, single parent.

However, there are differences between the jurisdictions in the case of the single parent who is not and has never been married to the other parent. In Britain, such a single parent cannot seek an order for periodical payments for her own benefit. In British Columbia, on the other hand, there is jurisdiction to make such an order if the couple have 'lived together as husband and wife for a period of not less than 2 years' and the application is made 'not more than one year after the date they ceased living together as husband and wife'.

Viewing the question of entitlement to periodical payments uninhibited by legal tradition, it is not immediately obvious why or how contributions by the absent parent of the household of the single parent are notionally attributed to particular members of that household. In order properly to look after the children, the caregiving parent also needs sustenance. More to the point, there cannot be different standards of living within the same household. What is a household if not a group of people sharing the same standard of living? In so far as payments for a child improve that child's standard of living, they also improve that of the single parent. It is not difficult to discern the origin of the oft heard refrain of so many paying parents that money for the children benefits the other parent as much as the child. What they
say is probably true and inevitably so. As Eekelaar and Maclean so rightly point out:

'[T]o suppose that the increments [to maintenance payments or benefit entitlements, notionally for dependent children] can in any way sensibly correspond to the needs of the individual children, in isolation, is to ignore elementary principles of financing and marginal costing.' 55

Against the argument that no distinction can sensibly be drawn between periodical payments for the single parent and periodical payments for the children in the single parent's household, it can be canvassed whether it is psychologically more satisfactory for both parents if as great a proportion of the transfer of income as possible is notionally attributed to the children. Perhaps the non-custodial parent will be more likely to pay if the formal position is that the payments are for the children, rather than for the former spouse. Also, it could be that describing payments as for the children provides a welcome emphasis to the continuing responsibility of the parent for the children, whilst at the same time somewhat disguising any continued dependence of the single parent on the paying parent. How paying and receiving parents perceive the transfer of income between them is probably a very important factor in determining whether payment will be made at all. Therefore, some caution should be exercised before discarding the present nomenclature in favour of a label such as 'household maintenance' or 'care allowance'. A more amorphous description may capture the economic reality more accurately but may have unwelcome connotations for the parties involved.

A second argument for preserving the distinction between spousal and child maintenance is that they spring from different sources. Holding a parent responsible for a child's maintenance revolves around
the notion that the child is his or her child.\textsuperscript{56} A child may be a particular person's responsibility because he or she begot that child. There are situations which do not fit easily into this disarmingly simple approach. Is the woman who is raped to be held responsible for a child conceived in such circumstances or the sperm bank donor to be faced with the prospect of maintaining a child to majority? If abortion is available, an argument in the former case is unlikely to arise because the woman will have accepted the child by carrying to term; if she does not want it, surely it will have been aborted or freed for adoption. In the second case, policy must dictate that donors are not liable. They may be voluntary begetters but they surely only donate on the basis that they will not be liable for child support. If it is in the public interest to have sperm banks, they should operate on the basis of anonymity and immunity for the donors.

A child may also be a particular person's responsibility because that person has treated the child as his or hers.\textsuperscript{57} The family should provide for itself, whether or not the children in that family are the children of both parents. This does not, except in the case of adoption,\textsuperscript{58} supersede the begetter's responsibility but does supplement it. The rationale of child support draws heavily upon ideas of personal responsibility and the payment of child support is widely accepted as necessary and just.

That spousal support does not have such a secure theoretical foundation\textsuperscript{59} may have rendered it vulnerable to reforming initiatives. Eekelaar is surely correct to observe that one historical basis for ordering the transfer of income between former spouses, namely that they had undertaken a life-long commitment to each other, 'is not widely held
The appreciation that this principle is outmoded has resulted in a wide-ranging search for other means of explaining why former spouses should transfer income between each other. This investigation is well-exemplified by the English Law Commission's discussion paper, 'The Financial Consequences of Divorce'. What model should be adopted: one of short-term payments for so-called rehabilitative purposes; one based upon the relief of need; a simple mathematical formula; a model based upon an analogy with the business partnership?

The question has nowhere been satisfactorily answered. What is clear is that spousal maintenance, as distinct from child support, is presently on the wane. Now that the breakdown theory of dissolution of marriage is established and proof of a matrimonial offence has taken a back seat, spousal maintenance can rarely be charged as the price of freedom. In Britain, where, in the absence of a matrimonial offence or the respondent's consent to the divorce, there must be a separation of five years in order to prove breakdown of marriage, the bargaining structure may not have changed as markedly as it is alleged to have done in California.

Lenore Weitzman has advanced the theory that the key to understanding the economic problems of women after divorce is the abandonment of the proof of fault as the condition precedent to matrimonial relief. Her argument is that women have had to give up their one lever in the divorce process which may have enabled them to avoid impoverishment. This theory is open to severe criticism. Jacob finds:
'no strong evidence that no-fault by itself pushed women into economic independence more rapidly or more often than fault divorce had.'

In other words, where is the evidence that divorce based upon fault ensured women a secure economic future? A second angle of attack is to adopt a geographical approach and consider whether women in jurisdictions where fault can still be raised are better off than women in jurisdictions where it cannot. Wishik's study of 227 divorce cases finishing in 1982 and 1983 in two rural counties and two urban counties of Vermont, a so-called mixed jurisdiction state where divorce based upon fault remained possible, found that women were just as badly off. It is probable that Weitzman's view of the drastic consequences of the introduction of no-fault provisions is in need of moderation.

A more generally applicable explanation for the waning of spousal maintenance is the waxing of approaches to matrimonial finances as if the spouses were on an equal economic footing. Consider the conclusion to Lamer J.'s dissenting judgement in the Supreme Court of Canada in *Messier v Delage*. He talks of the ability to work, regardless of circumstances in the labour market at large, as determinative of the end of the spouses' financial responsibilities to each other. This is, he claims, a step 'in favour of [their] final emancipation'. Since then, the Supreme Court of Canada has taken further measures to pare down the scope of spousal maintenance by developing a test of need generated by the marital relationship. This necessity for an applicant for maintenance to demonstrate what has caused the need for which relief is sought may reintroduce the question of fault into corollary relief applications. Furthermore, if the test is interpreted as strictly as Wilson J. has applied it in *Richardson v Richardson*, the clean break
doctrine has been advanced in Canada with surprising rigour. Certainly, the Canadian approach contrasts markedly with the circumspection with which the English courts have treated s 25A of the Matrimonial Causes Act 1973 which requires the court to consider whether the former spouses' financial relationship can be severed, whether on decree nisi or as soon thereafter as is just and reasonable. Particularly interesting is Bromley and Lowe's reference to Soni v Soni where a clean break was not imposed after a short, childless marriage because the applicant spouse, though qualified and able to work, could not obtain work.

Given that greater emphasis is being placed on the need for parents to become economically independent of each other, are there any other reasons why so few single parent families have maintenance as a major source of income? A number of the relevant factors will be reviewed in greater depth in the chapter on enforcement but they can be briefly summarised here. One of the most important factors pushing single parents away from dependence on maintenance payments, whether for themselves or the children, is the unreliability of so many paying parents. If maintenance is a major source of income for the single parent family, there is a great deal of scope for the paying parent to hold the receiving parent to ransom by withholding some or all of the payment. Most single parents would wish to be free from this financial dependence.

Other single parents would welcome a supplement to their meagre income but are unwilling to seek support from the other parent. Some are afraid of violent reprisals from the other parent should they do so. Others do not fear violence, but increased interference in their
lives. Sue Slipman, Director of the British National Council of One Parent Families, points out:

'Every single mother's fear is that she will lose her child to the father. If the father is forced to pay maintenance, will that encourage him to insist on his parental rights?' 78

Still others would be content to receive money from the other parent but do not seek a support order, or do not try to enforce their order, because it makes no difference to their financial position, payments received from the other parent being deducted from welfare payments with no disregard. Eekelaar and Maclean found that for 57% of recipients in their sample in England in 1981, receipt of maintenance made no difference at all to net income. 79 This contrasts with the United States where the first $50 (US) of child support can be retained by the single parent before the recoupment provisions of the Aid to Families with Dependent Children programme take effect. 80

In many cases, the disincentives to obtaining and enforcing an order far outweigh the benefits. However, in so far as they divide earning capacity, often the parents' most valuable asset, such orders are valuable if paid regularly and promptly and not simply clawed back by the welfare authorities. Their potential place within the budget of the single parent family will be considered further after a brief review of the fourth source of financial support.

5. Social Assistance as a Source of Financial Support

Government assistance is an important source of income for single parent families. The Canadian Survey of Consumer Finances found that, in 1985, transfers of income from government were more than three times as important as a source of income for female-headed lone parent
families than for two parent families. At the onset of single parenthood, a high degree of dependence on social assistance is to be expected. However the single parenthood has arisen, there will in many cases be a period of adjustment to the new domestic circumstances before the single parent finds her feet. More disturbing are figures which suggest a long-term dependence on social assistance. Parrack, for example, in her investigation of the Ontario social welfare system, found that a single mother receiving no support from the other parent 'will remain on social assistance for approximately 3.75 years'.

It can be argued that such long-term dependence should not be surprising. It is not always easy for a single parent to find suitable work which accommodates domestic responsibilities. Payments ordered to be made by the other parent may not be received or may be inadequate to remove the single parent's household from reliance on social assistance. It is often the case that the re-allocation of one working wage is insufficient to raise significantly the standard of living of the single parent household. Consequently, long term dependence may become unavoidable.

Despite the undesirable features of receipt of social assistance over a lengthy period, the reliability and security of the payments are an advantage which will appeal to single parents who would otherwise have the worry of waiting for payments from the other parent. If the single parent's household is bound to be a low income household, many single parents would choose to receive their small income from the state and thereby free themselves from dependence on the other parent. In doing so, they submit to the routine of the bureaucracy. They may also find their private lives subject to scrutiny as the authorities examine
whether there is another person from whom they are deriving support.

Whilst principles of private law may stress the need for the individual to become independent, the social assistance scheme is geared to establishing relationships of dependence in order to palm off its liability to support. The single parent finds herself in the middle of this clash of principles.

Long term dependence on social assistance may also arise due to the difficulty of supplementing social assistance payments. The constitution of, for example, the British income support scheme simply does not encourage or reward the single parent who takes small steps towards independence. The recovery of a small amount of maintenance or child support results in a deduction from social assistance payments and no benefit is obtained by the single parent. Earnings are treated similarly, except for the first £15, which is disregarded. Capital resources can be depleted as they are regarded as sources of income rather than sources of long term security. Unless the single parent can make a rapid transition to reasonably paid full-time work, there is little incentive to try to secure other sources of financial support. Other countries have recognised how counter-productive this approach can be. It asks for total independence or total dependence. The possibility of a transition to independence is not accommodated. Thus, the safety net of the state, no doubt welcome and appropriate in the initial crisis of birth, divorce or death of the spouse, encloses and traps the single parent. In the long term, crisis benefits are incompatible with the gradual process of economic recovery which many single parents are embarked upon.
6. The Field of Choice

In formulating policy for the financial support of single parent families, a crucial issue is the relative emphasis to be given to each financial resource. In emphasising the importance of a particular source of financial support, a judgement is made about responsibility for the support of single parent families. If enhanced support from the state is advocated, this carries a clear message of collective responsibility for the welfare of single parent families. It also recognises the difficulty for single parent families in attaining self-sufficiency and downplays the responsibility of former members of the household. On the other hand, if great emphasis is placed on the recovery of resources from the other parent, this carries with it the importance of family responsibility and of preserving economic links within the family so that public funds are not called upon.

Besides the choice of whether or to what extent to use public funds, there is the choice of the extent to which existing dependencies are to be preserved. With respect to children, are they to remain dependent by virtue of child support orders on absent parents who they rarely or never see until they reach majority? Or will policy dictate that, as in the case of former spouses, there will come a time when responsibility and dependence terminate?

The choice of policy towards single parent families also hinges on our view of women's role in society. This will come to the fore in determining the extent to which single parents should be expected to support their households by earnings. To choose to put in place policies and programmes which accommodate the return of single parents to the labour market is to state quite clearly that they are not
expected to remain isolated in the home all week, dependent on the absent parent and the state for financial support. Parrack goes so far as to argue that, if single parents are entitled to social assistance even if they are not looking for work, the state must be trying to encourage women to see caring for children as their first responsibility. It is certainly in the interests of the state that they should do so, bearing in mind the potential value of unpaid home-making activities. Equally, in establishing policies which oblige single parents to seek work, the state would be passing judgement on the needs of particular children and, whilst reducing the single parent's dependence on the absent parent and the state, the single parent's freedom of choice is also reduced.

Any combination of sources of financial support will have implications for a broader social policy. Should available private sources always be tapped before the public purse is opened? Are existing dependencies always to be preserved? Are women to be granted something more than formal and procedural equality?

These are questions to be borne in mind in considering four possible approaches to the problem of poverty in single parent families.
Footnotes

1. The data are unpublished but have been extracted by M. Moore in 'Women Parenting Alone' in Canadian Social Trends (Winter 1987) p 31 at p 34.

2. Loc. cit.


4. See comments attributed to John Moore, former Social Security Secretary, reported by David Brindle 'Im one-parent families' in The Guardian.

5. Kirby, supra, footnote 3 in column 1.

6. An example is British Columbia's child support collection agency established in 1988.


10. Loc. cit.

11. Ellman, supra, footnote 9 at p 43.

12. This is the gist of Ellman's theory of the proper basis for the law of alimony. See supra, footnote 9 at pp 50-52.

13. Supra, footnote 8 at p 12.

14. See, for example, West Germany and the Scandinavian countries, described by C. Cockburn and H. Heclo, 'Income Maintenance for One-Parent Families in Other Countries', Appendix 3 to the Report of the Committee on One-Parent Families Cmnd 5629 (London: HMSO 1974).


17. Loc. cit.
21. Supra, footnote 18 at p 36.
22. Supra, footnote 20 at p 39.
23. Loc. cit.
26. See Social Trends 18, supra, footnote 20 at p 95.
27. See, for example, for England, the Matrimonial Causes Act 1973 and, for British Columbia, Part 3 of the Family Relations Act RSBC 1979 c 121.
30. See paragraph (c) of the definition of spouse in s 1 of the Family Relations Act RSBC 1979 c 121.
31. Pettkus v Becker 19 RFL (2d) 165, Supreme Court of Canada.
32. See Burns v Burns [1984] Ch 317.
34. Inheritance Act 1975, s 1(2)(a).
35. Inheritance Act 1975, s 1(2)(b).


42. **Supra**, footnote 40 at p 84.


44. **Supra**, footnote 41 at p 92.

45. This subject is well explained by J. Parrack, *The Interrelationship between Social Assistance and Family Law* (Ontario: The Social Assistance Review Committee 1987), especially at p 60.


48. **Supra**, footnote 9 at pp 41-51.


50. See Weitzman, **supra**, footnote 47, chapter 5 passim.

51. In Britain, see Matrimonial Causes Act 1973 s 23, Domestic Proceedings and Magistrates' Courts Act 1978 s 2 and Guardianship of Minors Act 1971 s 11B. In Canada, see Divorce Act 1985 s 15. In British Columbia, see s 56 of the Family Relations Act RSBC 1979 c 121.

52. In Britain, see Matrimonial Causes Act 1973 s 23. In Canada, see Divorce Act 1985 s 15.

53. In Britain, see Matrimonial Causes Act 1973 s 27 and Domestic Proceedings and Magistrates' Courts Act 1978 s 2. In British Columbia, for this is a provincial matter, see s 57 of the Family Relations Act RSBC 1979 c 121.

54. See para (c) of the definition of 'spouse' in s 1 of the Family Relations Act RSBC 1979 c 121.


57. Chambers, *supra*, footnote 56 at p 1621. See also the definition of 'child of the family' in s 52(1) of the Matrimonial Causes Act 1973.


60. *Supra*, footnote 7 at p 241.


63. See Divorce Act 1985 s 8 and, for England, the Matrimonial Causes Act 1973 s 1.

64. Matrimonial Causes Act 1973 s 1(2).


66. *Supra*, footnote 47, Chapter 6 *passim*.


70. (1984) 35 RFL (2d) 337.

71. *Loc. cit.*


73. Prof. I. Grant has raised this point in classes at the University of British Columbia.

74. 7 RFL (3d) 304, SCC.


76. *Supra*, footnote 75 at p 687.

77. [1984] FLR 294.

79. *Supra*, footnote 40 at p 86.


81. *Supra*, footnote 1, at the place there cited.

82. *Supra*, footnote 45 at p 18.


84. See Report of the Committee on One-Parent Families, *supra*, footnote 14, para 5.51 for comments on this aspect of supplementary benefit. The same features remain in the present scheme entitled 'income support'.


86. *Supra*, footnote 44 at p 11.
CHAPTER 3
SINGLE PARENTHOOD AS AN INSURABLE RISK

The purpose of this chapter is to consider whether insurance against the possibility of single parenthood holds out the prospect of adequate relief from the financial disadvantages which single parenthood so often entails. The advantages, drawbacks and practicability of voluntary and compulsory schemes and of private insurance and 'social insurance'\(^1\) will be outlined. Before embarking on this exercise, it is appropriate to make explicit certain features which are considered elementary to any scheme of insurance and, where necessary, to remark upon how easily the events which lead to single parenthood can be located within this framework. It may be that there are features of single parenthood which render it an uninsurable risk.

At the outset, it may be objected that the possibility of entering into an agreement for financial provision on the birth of a child to a single woman or on the separation or divorce of a married couple with children is undesirable because it encourages the occurrence of such events. The empirical basis for such an opinion is cloudy: would insurance provision cause any of these events? Do people take less care to protect their health because they know that they are insured, either privately or socially, against sickness? Has the absence of insurance provision in any way discouraged couples from separating or reduced the numbers of children born outside marriage? It is doubtful whether rendering such contracts of insurance unlawful would lead to greater social cohesion and change contemporary attitudes, but it is unnecessary
to consider such large questions in this context. It is argued that the kernel of the approach of those who would disapprove of insurance against single parenthood is a disquiet about single parenthood as an insured event.

One element of the contract of insurance is that the insurer will give some form of benefit to the insured person when a certain event occurs. Usually, the insured person has no control over these events and, indeed, the insured person is often required to take all reasonable and practicable steps to prevent the occurrence of any such events. An example would be the householder who must be prudent to prevent his house burning down or the transporter of goods who must carry them in conditions such that they are unlikely to be ruined. An insured whose carelessness causes the insured event or who deliberately brings it about will have the benefit which would otherwise be receivable reduced, in the latter instance probably to nil.

It would be a feature of insurance against single parenthood that the insured would, in most cases, have a degree of control over the insured event which renders the whole scheme of insurance impracticable. This would be so whether the insurance is a private arrangement or part of a national social insurance policy. To argue that the policy would not be to insure against single parenthood but against the financial disadvantages which may result therefrom will be to no avail because the insured's own actions remain a proximate cause. Is there any way of avoiding the problem of giving the insured a licence to commit suicide so that his family obtains the benefit of a term life policy or to blow up his own factory to obtain the benefits of a buildings insurance policy, to draw two analogies?
Beveridge was clearly aware of this problem when he considered social insurance for women on the termination of marriage otherwise than by widowhood. The death of the spouse will only extremely rarely be caused by the survivor and therefore the same difficulties do not arise. Single parenthood due to the other spouse's death can be and is insured against, both privately and socially. Separation and divorce presented peculiarly difficult problems, especially in the era when financial relief in matrimonial proceedings was predicated upon proof of the other's fault. Why should social insurance approach the problem any differently?

Beveridge recognised that 'considerable practical difficulties may arise in determining whether a claim to benefit ... has arisen'. The system of social insurance would become ridden with the same problems faced by the judiciary in allocating responsibility for matrimonial breakdown. Beveridge explicitly accepted, however, that:

'a man cannot insure against events which occur only through his fault or with his consent, and if they occur through the fault or with the consent of the wife she should not have a claim to benefit.'

His problem was compounded by the fact that, if the so-called guilty wife were to be given a claim to an insurance benefit, it would be obtained by virtue of the contributions of the supposedly innocent husband. Nevertheless, Beveridge espoused the principle of comprehensiveness of social insurance, stating that the plan:

'should not leave either to national assistance [i.e. non-contributory welfare provision] or to voluntary insurance any risk so general or so uniform that social insurance can be justified.'

Matrimonial breakdown fulfils the criteria of generality and uniformity but the nature of the event makes its accommodation within a scheme of
insurance extremely problematical. Perhaps this is what led Beveridge to call for 'further examination' of the problem in the hope that a compromise position could be found.

Even if it is no longer necessary to make an explicit finding of fault against one spouse or both, the problem is not wholly solved for it would remain the case that the couple could facilitate the payment of the insurance benefit by consenting to the separation. Further, responsibility for breakdown of marriage can nowadays be seen as joint rather than the sole responsibility of one partner. This notion of breakdown as a collective indivisible responsibility, rather than an event for which nobody at all is responsible, does not solve the problems of the insured person's control over the occurrence of the insured event.

The question of the role of the insured in bringing about the insured event overshadows the discussion of the various possible forms of insurance which follows. The single parent's role in the establishment of the single parent family is even clearer in the case of the child born outside marriage. Conception, separation by mutual consent, divorce due to irreconcilable differences: the insured person's choice in and partial responsibility for the bringing about of these events removes them from the ambit of risks against which insurance can be made generally available at an affordable price.

The second feature of the model insurance agreement does not present so many problems. In order to obtain the insurance benefits when the insured event occurs, contributions must have been made to the insurer. Although practical questions with respect to the ability of young potential single parents who are not in the labour market to make
such contributions may be raised, there is no theoretical reason for ruling out insurance against single parenthood on this ground.

A corollary of the practical issue of how those most at risk will pay their contributions is to enquire whether the single parent should be able to take advantage of anybody else's contributions, specifically those of the non-custodial parent. If the insurance benefits are designed to ensure that the children in the single parent family are not unduly economically disadvantaged, there seems every reason why both parents' contributions should be utilised, regardless of which parent has custody of the children. Indeed, such an approach would tend to emphasise the parents' joint responsibility for the children. Once the concept of sole responsibility for matrimonial breakdown is abandoned, the problem of the contributions of an innocent spouse being utilised by a supposedly guilty spouse is resolved.

The third and final feature of the model insurance agreement is the receipt of a benefit by the insured person. There is nothing in the nature of single parenthood adverse to such an arrangement, though there may be some difficulty involved in dividing the benefits when joint custody is ordered. However, there is the practical problem that premiums would have to be high to ensure the single parent family an existence outside the poverty trap during the minority of the children.

Attention will now be focussed on three possible schemes for insuring against single parenthood, bearing in mind the general observations already made.

1. **Private Voluntary Insurance**

What is proposed under this heading is a scheme whereby individuals
or couples could protect themselves against the financial risks of single parenthood, if they wished to do so, by taking out a policy of insurance with an insurance company. Chambers is quite right to dismiss such a proposal as entirely unworkable. It is not only that there is the problem of the degree of control which the insured has over the occurrence of the insured event; there are other difficulties in addition.

First, as there is no obligation to take out insurance, there is the problem of adverse selection. Those who perceive themselves to be most at risk will insure themselves whereas single people and those who believe their marriages to be secure will be reluctant to do so. It is probable that the group of insured people will be heavily biased towards those with present or impending marital difficulties.

Secondly, the inevitably high premiums would be beyond the resources of many, thereby introducing a further bias. For the already poor, such insurance is unlikely to have a high priority on the monthly budget, yet if the premiums are not sizeable, the corresponding benefits will not raise the single parent family's living standards appreciably.

2. Private Compulsory Insurance

This proposal concerns the establishment of a scheme whereby all members of a class identified as at risk are obliged to take out a policy of insurance with an insurance company. An analogy can be drawn with the obligation on all owners of motor vehicles to insure themselves against the risk of causing physical injury to third parties. That insurance is obligatory obviously means that the problem of adverse selection is avoided.
However, new problems arise which, in sum, render the proposal unworkable. First, there is the question of how to define the class of people who shall be obliged to insure themselves against the risk of financial disadvantage on single parenthood. The narrower the class is defined, the less the risk is dispersed and the higher the premiums are likely to be. Chambers is correct to point out that, if the class is limited to young married couples, arguably the class most at risk, premiums would be very high. The premiums will be high, however the class is defined, because the rate of divorce amongst couples with children and the costs of child-rearing will have to be taken into account.

Plainly, if the scheme is to be comprehensive, it will have to include more than young married couples. Should all married couples be obliged to contribute, whether or not they have children and, if they have, whether or not the children have attained majority? To limit the obligation to take effect on the conception or birth of the first child would severely limit the base from which and the period for which contributions could be drawn. Why should the obligation to insure be restricted to married couples and those living together as if they were married? How does the single parent family arising from a birth to a single woman find a niche within this scheme? Should the class of those obliged to insure be extended to include all single women of child-bearing age or, indeed, all single men who may possibly look after the children they have fathered or whose premiums could be applied for the benefit of the single mother? As the diversity of routes to single parenthood is appreciated, so the net of a compulsory insurance scheme must grow wider.
This is, in itself, a failing for it will surely lead to problems connected with the collection of contributions. Chambers asks what the sanction for failure to insure can be?\textsuperscript{12} It is to be remembered that ostensibly happily married couples are to be required to make a substantial disbursement on a policy which they may never use. The objection is supposedly linked to a resistance to providing for other people's marital failures. This may be perceived in a different light to provision for other people's old age, illness or misfortune on the road out of a fund to which the individual has contributed but on which he or she may never draw.

3. Social Insurance

That contributors may not see themselves as at risk from the consequences of single parenthood in the same way as they are at risk from old age is also a problem with a system of compulsory insurance organised by the State.\textsuperscript{13} The political acceptability of increasing the cost of existing national insurance to bring single parents within the fold is open to question.

However, the greater dignity attaching to receipt of insurance benefits than to receipt of welfare payments should be further investigated. Mossman and Maclean put forward a model of the divergent classification of payments by the State to those in need.\textsuperscript{14} They may have an entitlement to a benefit which has been purchased by means of regular contributions, usually from wages, to an insurance fund. Alternatively, the claimant may have to rely on welfare payments contingent upon the claimant's resources and not usually related to employment. To Mossman and Maclean, these categories are judgemental,
reflecting notions of desert, and arising from the different treatments meted out to the laid-off workman and the pauper.\textsuperscript{15}

The proposal to provide for the single parent family by means of contributory benefits can be seen, in the context of this model of provision by the State, as part of an effort to accord the single parent family a higher and more respectable status in the light of their increasing numbers and changing attitudes to single parenthood. Hitherto, it is suggested, schemes for financial provision by the State have not been designed with the single parent's particular difficulties in mind.\textsuperscript{16}

However, it can be argued forcefully that a scheme of financial provision based upon contributions made prior to the need arising is equally unsympathetic to the situation of many single parents. Large numbers of single parents, especially amongst the group of women who have had children outside marriage, are young and have little or no experience in the labour force. In this scenario, when the insured event occurs, no contributions to the insurance fund will have been made.\textsuperscript{17} Even if the other parent's contributions could be utilised, the 'contributory principle',\textsuperscript{18} whereby benefits relate to the parents' contributions to the insurance fund is jeopardised. That the premiums may be paid in the future has not been considered relevant to eligibility for a contributory benefit:\textsuperscript{19} it is past contributions which determine eligibility. Even if benefits were paid in anticipation of future contributions, how realistic is this approach in the light of the inaccessibility of the labour market for single parents?

In the search for a way in which the principle of contribution can be maintained, there is a risk that 'the insurance principle [will be]
... stretched so thin as to become somewhat artificial'. If single parents will only qualify for a contributory benefit ostensibly designed for them 'by offering very liberal contribution conditions', this should cause a re-examination of the applicability of the contributory principle. The best approach is to bow to the inevitable and, if the state is to make financial provision for single parents, to create a non-contributory benefit and to work to rid such benefits and their recipients of stigma.

Though social insurance is rejected as impractical, it is important to be aware that its failings are not precisely those of private voluntary insurance. Beveridge draws an important distinction between the two forms of insurance:

'while adjustment of premiums to risks is of the essence of voluntary insurance, since without this individuals would not of their own will insure, this adjustment is not essential in insurance which is made compulsory by the power of the State.'

The focus of the discussion in the ensuing passage is on the claim to pay a lower premium if, for example, the individual is employed in an industry with a low incidence of industrial injury or seasonal lay-off. It is not essential for the State to vary the premiums although, as a matter of policy, it may do so. In the context of the single parent family the State could justify charging higher premiums to young people than to those whose children had attained majority, except that the exercise would probably be futile due to inability to pay.

That contributions to an insurance fund cannot be afforded is so intractable a problem that, if social insurance is to be established, there would have to be subsidy of contributions. This forces the issue of how far the contributory principle can be stretched before it ceases
to be identifiable. If a model of state financial provision as an insurance benefit is insisted upon, subsidy of contribution is essential in many cases and the non-contributory social assistance gains the ascendancy by the back door. Even if premiums are related to risk, as they could be within a national insurance scheme, the moment the total of the contributions made by the population as a whole requires further subsidy in order to meet the amount of the benefits payable, the door is ajar for the establishment of benefits outside the insurance principle.

4. Conclusion

The discussion in this chapter demonstrates that insuring against the financial disadvantages of single parenthood arising otherwise than by death of the other spouse is impractical as a social policy. Quite apart from questions of capacity to pay premiums before the insured event and of defining the class of people at risk, there is the overriding problem of the degree of control which the insured person possesses over the occurrence of the insured event. This problem applies to all three possible insurance schemes and leads to the conclusion that single parenthood is not an insurable risk, as that term is currently understood, and that social policy-makers must look elsewhere for a solution to the financial difficulties of single parent families.
Footnotes


2. Supra, footnote 1, para 347.

3. Supra, footnote 1, note to para 347.

4. Supra, footnote 1, para 347.

5. Supra, footnote 1, para 308.

6. Supra, footnote 1, note to para 347.


8. Loc. cit.

9. Chambers, supra, footnote 7 at p 263.

10. Supra, footnote 7 at p 264.


12. Loc. cit.

13. Chambers, supra, footnote 7 at p 266.


15. Loc. cit.

16. Loc. cit.

17. Chambers, supra, footnote 7 at p 266.


19. Chambers, supra, footnote 7 at p 266.


22. Supra, footnote 1, para 24.


24. Supra, footnote 1, para 24.
CHAPTER 4
ENFORCEMENT

The purpose of this chapter is to examine the argument that, if court orders were promptly and fully enforced at a cost which the single parent family could afford, the financial problems of the single parent family would be resolved. This argument is applicable to all orders for the transfer of income from the absent parent to the household of the single parent, whether the order is expressed to be for the single parent or for the children. In the discussion which follows, child support is emphasised, partly because spousal maintenance orders are becoming less usual and also because so many enforcement initiatives in North America focus exclusively on the recovery of child support. Measures taken for the recovery of child support should generally apply equally to enforcement of orders for the single parent, were these to become more widespread.

Professor Hahlo has called enforcement 'the central problem in child support'.¹ Within the scope of this short essay, he touches upon the difficulties facing a single parent seeking to enforce an order for child support and sets out his requirements for a rigorous and efficient system of enforcement,² but he does not seek to justify his diagnosis of the root of the problem. For those who emphasise the personal responsibility of the biological parent, the process of enforcement is an obvious focus for proposals for reform. If Professor Hahlo is right that 'everything possible should be done to make [the defaulting father] face up to his obligations',³ it follows that the deficiencies in the process of enforcement must be removed.
Adopting this approach results in proposals for reform, the basic content of which is tolerably clear. The enforcement process must provide the support creditor with some means of tracing the debtor. Once the debtor is found, the creditor should be given a wide choice of possible means of obtaining the money, some of which will be appropriate for particular classes of case but not of general application. For example, seizure and sale of the debtor's yacht, limousine or other personal property by the court bailiffs will obviously be of no use if the debtor has no assets. Finally, there must be a preparedness to make repeated efforts at enforcement. The content of any particular element of the process is open to debate but the diagnosis of enforcement as the principal concern in the area of support obligations and the certainty with which the need to maintain standards of personal responsibility is asserted clearly lead to a response which emphasises the community's commitment to the position of the support creditor.

An examination of the motivation of those who focus on reform of the enforcement process injects some ambiguity into the clarity of their analysis. Some will advocate better means of enforcement because it is thought that the funds recovered will significantly improve the financial standing of single parent families. On the other hand, it may be appreciated that full payment of court orders will not always enable the single parent family to attain an appropriate standard of living. If this argument is accepted, justification for rigorous enforcement might be simply that the standard of living of the single parent family is improved somewhat or, quite apart from any benefit to the single parent family, that rigorous enforcement fosters a desirable respect for orders of the court and reduces public expenditure.
The suggestion is that it is possible to argue in favour of improving procedures for enforcing support orders from a range of perspectives, some of which may have no connection with the financial welfare of single parent families. The possible conflicts between the concerns of the single parent and those of the State will be examined in greater detail below, but the following is an illustration of the different expectations of the enforcement process which can arise. It is taken from a book written by a lawyer in Boston, Massachusetts and aimed at single parents who want to recover child support. It is a handbook to using the legal system to the advantage of the single parent family, not an academic treatise; hence she cites no empirical support for her example, though it may be within her own experience. She claims that the Office of Child Support Enforcement in the U.S.A. may sometimes give a higher priority to recovering expenditure on welfare payments than to seeking appropriate increases in the order for child support. If a single parent has an order for child support but, due to the order being ignored, she receives welfare payments under the Aid to Families with Dependent Children programme, it may be that the prospects for recovery under the order will improve as time passes. An increase based upon the cost of living may be due. The suggestion is that the Office of Child Support Enforcement would be reluctant to assist the mother in securing the increase because this might prejudice the recoupment of the welfare payments made whilst the order was not being paid.

This illustrates the importance of considering the principal motivation for particular reforms of the enforcement process. It could be that the question of whether or not the reform has improved the
economic standing of the single parent family is regarded by the reformer as incidental to issues concerning public expenditure and maintaining the credibility of the courts.

1. The Problem of 'Discouraged' Maintenance

Harris, McDonald and Weston review some of the data concerning maintenance payments collected by the Australian Institute of Family Studies during its Survey of the Economic Consequences of Marriage Breakdown in 1984. This involved interviewing a sample of people divorced in Victoria in 1981 and 1983 after separations of between 12 and 23 months. One factor which Harris, McDonald and Weston emphasise is that 'in 60 per cent of cases where a custodial parent is not receiving maintenance, there is no breach of a current court order involved'. If any of these cases involve single parent families who live below what is considered the appropriate minimum standard, it is clear that prompt and full enforcement of support orders will not achieve the aim of ensuring a certain minimum standard of living for all such families. Enforcement can assist in achieving this aim in so far as the group of single parent families with court orders will benefit from it. An exclusive emphasis upon enforcement would, at least in Victoria, allow large numbers of those for whose benefit the reform is designed to slip through the net. Therefore, before too much emphasis is placed upon reforming the enforcement process in Victoria, the question of how best to put a maintenance arrangement in place must be addressed. This presumes that the primacy of the obligations of the biological parents will continue to be stressed.
This theme is pursued by Sorenson and MacDonald in their analysis of women in the U.S.A. who received Aid to Families with Dependent Children in March 1977 and who had at least one child whose father was absent. The authors recognise that they are basing their conclusions upon patterns observed within a special sample of the total group of single parents eligible for child support and that some caution must be exercised in generalising further. Figures from the 1979 Current Population Survey do enable some comparisons to be drawn.

Of all women heading single parent families, 59% have what the authors describe as 'a legally binding child-support agreement'. This term comprehends court orders and enforceable agreements between the parents. By way of contrast, only 37% of those receiving welfare had an order or agreement. Both within the total group eligible for a child support award and within the group of mothers on welfare, it was clear that black women are less likely than white women to have secured an award. Similarly, divorced women in both groups are more likely to have an award than those who are separated: in the total sample, 80% of divorcees had an award compared with 45% of the separated women. This effect of marital status on the likelihood of securing a child support award was less clear within the group of mothers receiving welfare payments. This may indicate that the State's interest in ensuring there is some mechanism for recovery from the absent parent is the same, whether or not the marriage is dissolved. In both groups, it was clear that women who had never been married to the child's father were less likely to have a child support order or agreement than those who were separated or divorced.
Besides race and marital status, Sorenson and MacDonald consider the relationship between the income of female-headed single parent families and securing and collecting a child support award.\textsuperscript{12} Figures from the 1979 Current Population Survey disclose that 38\% of those mothers who received no support payments in 1978 had an income below the poverty level compared with 14\% of those who received some support payments. Of those receiving no payments, 42\% of those with no child support award were below the poverty line whilst only 25\% of those with an uncollected award were below the poverty line.

This pattern is repeated with figures from 1975. Of mothers receiving support payments, 12\% were below the poverty line. How many more of these women would have been below the poverty line if, contrary to the actual position, no support payments were made? The answer is that numbers below the poverty line would only have risen to 19\%.

Admittedly, the authors have calculated their own minimum standard but their investigation does suggest that 'the better off economically the custodial parent is, the more likely she is to have an award and collect it'.\textsuperscript{13} If the methods and data of this study are accepted, it casts doubt on the idea that prompt and full enforcement of support awards can remove large numbers of single parent families from poverty.

It is worrying that not all eligible women are awarded child support and that there are such marked differences in the likelihood of obtaining an award between various groups of mothers. Sorenson and MacDonald found that likelihood of receiving the child support awarded did not vary amongst the groups of mothers to as large an extent.\textsuperscript{14} Their conclusion is that inequities are greatest at the stage of making
the award and that 'the success of child-support reform will, to a large extent, depend on its capacity to solve the problem of securing child-support awards to all eligible children.'¹⁵

What are the implications of these observations from Victoria and the U.S.A. for those who would focus their attention on the enforcement of support orders? If reform of the enforcement process is undertaken primarily with a view to assuring single parent families a minimum standard of living, it could be argued that intervention should be directed instead, or in addition, to the beginning of the process whereby a single parent seeks to obtain support from an absent parent. This argument could also be made if the aim of reforming the support process is to minimise public expenditure. If the State has no means of recovering from a spouse or former spouse by independent action without reference to the custodial parent, it is clearly in the State's interests to ensure that as many single parents as possible have orders which will serve in due course as a vehicle by which the State can reimburse itself.

It is not my position that the proportion of single parents who have obtained awards of maintenance or child support is so insignificant that it is a mistake to intervene in the process at all at the enforcement stage. The purpose of elaborating upon the question of the variables affecting the securing of an award in the first place has been to cast doubt upon the view that the only appropriate stage for intervention is the enforcement of the order. This over-simplifies the process of collecting child support and fails fully to appreciate the decisions which the single parent and the State, or one of them, have
already made before the problem of enforcement arises. As Maclean and Eekelaar have commented, '[t]he American literature and policy formulation has tended to view child support as mainly a debt collection problem'. It is necessary to be aware that there is a choice to be made with respect to the stages at which intervention in the process can be made and that too great an emphasis on the enforcement of orders may lead to inequities between similarly placed single parent families. If the primary obligation to support is that of the biological parent, in order universally to assert this doctrine, it will be necessary to create yet more creditor and debtor relationships.

2. Are Maintenance Arrears the same as other Debts?

The extent to which the relationship between the custodial and the non-custodial parents can be characterised as a relationship between creditor and debtor has important implications with reference to the enforcement of the financial obligation which, for the purposes of this discussion, it is assumed is established between them. Is enforcement of the absent parent's obligation to transfer income to the single parent's household simply a matter of securing compliance with an obligation to pay money? Is this obligation of the non-custodial parent any different from his duty to pay the supermarket for groceries? If it is different, it is an indication that, in seeking ways of enforcing support orders which are most beneficial to single parent families, the enquiry can range further than remedies typically open to the commercial creditor. It could be that too great an adherence to such remedies in the past was one obstacle to the smooth transfer of income which support orders sought to secure.
Is there any evidence to support the idea that 'financial responsibility for one's children represents a pre-eminent debt'? Do the reasonable needs of children, spouse and even former spouse take precedence over the requirements of others with a claim on the wage-earner's income? Clearly, domestic responsibilities do not excuse the dishonouring of contractual obligations. Otherwise, third parties might be reluctant to enter contracts for substantial consideration without disclosure of personal information. However, that the duties of support are more important could be argued with reference to the consequences for the creditor if payment is not forthcoming. Default can result in severe hardship for the single parent family and, of course, at this level of generality, for the commercial trader, but the notion that the defaulter is denying his own children a certain standard of living may conduce to greater public censure than the equally obvious consequence that the tradesman and his family's standards may decline. It might be easier to justify jailing defaulters if the only argument against so doing were that it is a form of jailing for debt. The default has had consequences for a child who, unlike the tradesman, cannot tighten his credit practices or, where the single parent is ineligible for welfare payments, decline to rely any longer on the defaulter for his income. The child cannot seek new markets. In the absence of intervention by the State, he or she is subject to the whims of his parents. This line of argument has led to the widespread opinion that any prohibitions on jailing for debt in the U.S.A. are not intended to comprehend cases involving arrears of support. Because support debt is a special form of default, it is said to be justifiable to retain severe penalties to deal with it.
Although arrears of support have certain features which distinguish it from money owed for goods received, it would be naive to suggest that, apart from rhetorical usage, support arrears are given a higher priority than commercial debts. Wachtel and Burtch's study in Vancouver in 1980\textsuperscript{20} found that the judiciary's attitude towards indebtedness was guided by the view that support payments take priority over other debts. They obtained data by watching court proceedings and by reviewing court files. The authors conclude that the courts' approach to support payments as a pre-eminent obligation was out of step with the attitude of some of the defaulters who saw it as more important to honour their business and consumer obligations. The personal implications for the payer if he defaulted on his domestic obligations were, with good reason, perceived to be less severe than the implications if he defaulted on commercial obligations. The authors hypothesise that business obligations are given greater importance by society in general than support obligations and that, until this ranking is upset, the courts will not be able to stem the flow of default.

In this connection, it is interesting to note that the Child Support Enforcement Amendments in the U.S.A. bring the consequences of support default closer to the consequences of commercial indebtedness by obliging the Office of Child Support Enforcement to report payers in arrears amounting to $1,000 to credit agencies.\textsuperscript{21} Presumably, this will lead to areas of support becoming a greater obstacle to the obtaining of consumer credit than hitherto. It is interesting to note that Takas, in her self-help guide, recommends reporting defaulters to credit agencies as a way of applying pressure, quite apart from this relatively new provision.\textsuperscript{22}
The essential legal difference between the litigant seeking to enforce a judgement for damages and the single parent recovering support arrears is that the latter has no final judgement, only an order for a series of payments. The model of the retrospective enforcement mechanism to collect a lump sum award of damages may be quite inappropriate to the case of the single parent who is faced with erratic payments. It may be quite impractical to utilise traditional creditors' remedies such as distraint to recover two or three payments many weeks after the money was needed. As payments to be made in the future have not become debts, systems of enforcement which only recover debts and do nothing prospectively to ensure compliance are not ideal for the single parent family. Admittedly, prospective action to assist the maintenance creditor raises questions of the impartiality of the State towards both debtor and creditor and of the balance to be struck between assisting maintenance creditors to recover and leaving other creditors to their traditional retrospective remedies.

If the aim is to improve the standard of living and financial security of single parent families, it will become clear that limiting the enforcement process to the same parameters as the enforcement of judgement debts does not serve the single parent family well. The conclusion from this review of the maintenance obligation is that the usual order for periodical payments, personal, inalienable and subject to supervision by the court, is different from a final judgement for damages. It is worth considering at what stage the process of enforcing the order should begin and whether other means of enforcement would be more suitable.
3. **Why is Default so Widespread?**

There are very few dissenting voices from the proposition that default amongst men ordered to make support payments is a widespread phenomenon which makes the lives of single parents no easier. Maclean and Eekelaar, in their study of the financial consequences of divorce in England in 1980, do not emphasise the problem of enforcing orders as a difficulty for their sample of single parents. However, they do suggest that marital problems and problems at work can coincide and that the former husband who loses his job as a result presents obvious difficulties with respect to enforcement.

This takes up a theme of the Finer Committee's Report to the U.K. Parliament. This Committee reached the conclusion that 'the real problem of maintenance is not the unwillingness but the inability of men to pay'. In reaching this conclusion, which is an integral part of its argument that the private law system of maintenance obligations is inadequate to assure single parent families an appropriate standard of living, the Committee reviews a number of earlier studies. The Supplementary Benefits Commission which at that time administered welfare payments conducted a review of claimants who should have been maintained privately. Of court orders existing in June 1970, 45% were complied with at least three quarters of the time but 40% were complied with less than one tenth of the time. Of this latter group of orders, 91% were not complied with at all. The Commission was unable to trace 24% of those paying less than a tenth of the time and recognised that a further 29% could not be expected to pay in full.

Two earlier studies had also emphasised the limited means of men against whom the courts had made maintenance orders. The Department of
Sociology at Bedford College, London conducted a survey of all maintenance orders existing on January 1st, 1966. The average earnings of men in manufacturing industry in 1965 were £18 per week. It was found that 70% of men ordered to provide maintenance earned less than £16 per week. It is acknowledged that the court's ability to verify earnings was limited and that there is a strong incentive to misrepresent earnings. Research conducted for the Graham Hall Committee on Statutory Maintenance Limits in 1966 also emphasises that 'those who become defendants to proceedings for maintenance in magistrates' courts have earnings or salaries well below the national average'.

It is important to appreciate that, when the studies upon which the Finer Committee relied were conducted, dissolution of marriage in the divorce court was not a process readily available to most of the British population. The magistrates' courts' powers to regulate the affairs of separated spouses were more widely used than they are today. There is the possibility that the criminal ambience of the magistrates' courts led to their avoidance by the middle classes, who even so may not have taken their matrimonial disputes to the divorce courts. That the magistrates' domestic jurisdiction is heavily used by poorer people is beyond dispute. What is suggested is that studies of a jurisdiction which purports to serve the needs of poorer people may produce results concerning the characteristics of men ordered to pay maintenance which are no longer relevant to an age when the divorce court is accessible to those slightly wealthier people who wished to avoid the stigma of the magistrates' courts and could not at that time afford the upper tier of matrimonial jurisdiction.
This is, admittedly, a hypothesis and it is immediately acknowledged that, of the three research projects mentioned above, only the Graham Hall Committee's was exclusively concerned with the orders of magistrates' courts. However, it is tempting to seek in this way to reconcile the Finer Committee's conclusion that default occurs because the payer has insufficient resources with the starkly contrasting conclusions of the North American literature. Perhaps there is no explanation beyond differences in time and place. There is no suggestion in the Finer Committee's report that an exceptionally charitable view of the payer's resources was adopted. However, the studies in North America may be considered more sophisticated because of their investigation of some of the psychological reasons for failure to pay.

One such study is that conducted by the Canadian Institute for Research. One of the objectives was to illuminate possible reasons why a maintenance order may be disobeyed. A door to door survey was conducted in Calgary and Edmonton to obtain a sample of men who were subject to maintenance orders. It is interesting that the sampling method had to be modified due to the large numbers of men who refused to participate in the survey but the researchers were confident that their eventual sample of 262 men was representative of good and bad payers. These men were asked whether they agreed or disagreed with certain reasons for payment. Next they were asked to specify and explain their principal reason for payment or non-payment. It should be borne in mind that a problem with this sort of survey is the subject's desire to be seen in a good light.
The major reason for paying for 60% of the respondents was their continued sense of responsibility for their own children. A majority of payers said they were at least partially motivated to pay by a desire to preserve some goodwill. By way of contrast, only about a fifth of the men reported being motivated to pay due to threats of court proceedings, wage garnishments or imprisonment.

In so far as reasons for default are concerned, the most common reason volunteered was that the former wife did not need the money. This was followed by the claim that the payments could not be afforded: 46% of the respondents gave this as at least a partial explanation for failure to pay. This was further investigated by comparing disposable incomes with social assistance rates. The social assistance which the respondent and any members of his new household would qualify for if they had no other source of income was ascertained. This figure was deducted from net monthly income. Maintenance obligations were expressed as a percentage of this figure. It was found that, for 39.8% of respondents, the maintenance obligations represented less than 10% of disposable income and that for 82.1% the obligation amounted to less than 30% of disposable income. It should be appreciated that the researchers were unable accurately to record the indebtedness of the respondents to people other than their former wives and children and that this would have given a more accurate picture of how much of the net income was disposable. Nevertheless, the figures demonstrate that the affordability of the maintenance obligations depends on the priority which they are given with respect to other financial obligations.

To continue with this theme, the researchers made a simple comparison between the respondents' net monthly incomes and four payment
statuses which they constructed: excellent, fair, poor and non-paying. Although the likelihood that a man is a good payer increases with his income, it is fascinating to see that the non-payers' average net monthly income is $1,593 whilst that of the excellent payers is only $1,676. The conclusion is that low income is associated with a fair or poor record of payment but that it is not so clearly associated with complete non-payment.

These findings in Alberta cast grave doubts upon the general applicability of the Finer Committee's diagnosis of the usual reason for failure to pay. The Canadian Institute for Research also questioned a random sample of two hundred women eligible to receive maintenance payments for themselves or their children in Calgary and Edmonton. This survey disclosed that about a third of the women received the full amount each month. A further 15% might be without in any particular month but the arrears would be paid later. Even more irregular payments were received by 27% of the Calgary respondents and 19% of the Edmonton respondents. Complete non-payment was indicated by a quarter of the Calgary respondents and a third of those from Edmonton. Default is therefore one of the problems facing single parent families in Edmonton and Calgary but the explanation for it is apparently more complex than the availability of resources.

Weitzman's research in California confirms that non-compliance with maintenance orders can be as prevalent amongst men with high wages as it is amongst men with low wages. The research of the Australian Institute for Family Studies found that, amongst the divorced men who they questioned, 17% claimed to be unable to afford the maintenance payments due to other commitments, unemployment or illness. The women
who were questioned mentioned affordability but with some scepticism. It should be made clear that they were not necessarily the former wives of the men who had claimed to be unable to afford the payments.

What other variables might explain the patterns of compliance with maintenance obligations? It may be profitable to explore whether the degree of responsibility felt by the payer towards the former family unit assists in the explanation. In the Alberta study, a majority of both men and women gave a continuing sense of responsibility as the principal reason for payment and receipt respectively. The researchers found that the bitterness which still existed between the former spouses, the feeling of some men that the legal system had done them a disservice and dissatisfaction with the new arrangements with respect to their children made it improbable that some men would continue to feel responsible for the former family unit and accord their maintenance obligations a high priority in setting their new budget. The Canadian Institute suggests that failure to pay maintenance may indicate that the former husband is unable to adjust to his new role. The legal system has, in his eyes, transformed family relationships into a relationship between debtor and creditor.

It is interesting that, in the surveys of both men and women in Calgary and Edmonton, there is a suggestion that former husbands who remarry or form another relationship tend to be better payers than those who do not. It would be imprudent to be categorical because the variation in both surveys is not statistically significant, but it may be that those who form a new relationship adjust more easily to the marital breakdown. A similar pattern is observable in the Australian Institute of Family Studies' research. Men who had repartnered paid
better, even if they had step-children in their new household. Might there be less bitterness towards the former spouse and the legal system if a new relationship is formed?

Forming a new relationship is not necessarily consistent with continued involvement in the former family unit. One hypothesis is that better payers continue to be involved in their former families or, to emphasise the distinction, the more regular payers regard themselves as still having a role to play in their families whilst the non-payers view the former spouse's household as containing their 'former family'. Access to the children is an obvious measure of involvement for the exercise of access discloses, in most cases, a concern to attempt to preserve the relationship between parent and child. It is admitted that less worthy motives for visiting the children exist but access is a useful variable for the researcher seeking to gauge an absent parent's involvement in the family unit.

The survey of men in Calgary and Edmonton disclosed no relationship of statistical significance between satisfaction with access arrangements and regularity of payment. Chambers explains his similar results in Genesee County, Michigan, where he investigated a random sample of 410 men who were subject to maintenance obligations, by arguing that satisfaction with access arrangements is not necessarily a measure of involvement in the family. It is being concerned about access, whether the non-custodial parent is satisfied or not, that indicates involvement in the family. It is unlikely that concern about access would be a useful indicator of patterns of payments. Apart from difficulties in measurement, it is suggested that concern can lead to many different responses with respect to payments of maintenance. It
may result in regular payment but equally the powerlessness which
non-custodial parents can experience as a result of their separation
from their children may lead to resentment of the custodial parent and
default in payment of support.

Despite the inconclusiveness of his efforts to demonstrate a
significant relationship between access and payment of support,
Chambers' model of the course of the relationship between the child and
the non-custodial parent as a means of explaining patterns of payment of
child support remains credible. The Australian Institute of Family
Studies discovered that payments are likely to become irregular as the
years pass, especially if the parents separated when the child was
young.\textsuperscript{59} It might be that the length of time spent in the same
household as the child is more significant than the duration of the
marriage itself. The Canadian Institute's random sample of cases in
Edmonton Family Court found no simple relationship between likelihood of
payment and length of marriage. After a marriage of less than five
years, it was equally likely that support obligations would be fully
complied with or that they would not be complied with at all. The same
result obtained after marriages of more than fifteen years.\textsuperscript{60} Chambers
himself found that men whose marriages lasted more than ten years paid
better than men from shorter marriages, but no pattern was observable
with respect to these shorter marriages.\textsuperscript{61}

Chambers' observation is that in many cases there is a
disengagement of the non-custodial parent and the members of his former
household as time passes, resulting in a change in status for the
non-custodial parent:
'The forces that pull a divorced father into a different orbit from that of his first family are comparable in a way to those that have come to exclude grandparents from an inner core of most families. The father and the grandparents are special people, but they are in the end just visitors.'

It is possible to identify groups within Chambers' sample for whom the loss of status occurs relatively quickly. The unemployed, the part-time workers and the young blue-collar workers are all more mobile than the middle-aged clerical workers. It is mobility after divorce which conduces to the disengagement of non-custodial parent and former household. There are, no doubt, other factors involved but the physical distance between them helps to diminish the immediacy of past connections, that sense of responsibility which appears so important to continued payment.

Perhaps it is at this juncture, when the status of father or husband has been lost and that of visitor or debtor assumed that the effectiveness of the enforcement process is most severely tested. Chambers investigates a number of factors which, it is hypothesised, will lead to a lessening of the feeling of responsibility in the payer and a consequent reduction in payments. Eckhardt's study in Wisconsin, for example, had found that the recipient's remarriage was followed by a decline in payment in a significant number of cases. Amongst Chambers' sample, no such decline was observed. Another possible reason for reducing payments is that the single parent begins to receive Aid to Families with Dependent Children. In these circumstances, the payer knows his payments go to reimburse the State. Nevertheless, no decline in payments was observed. The suggestion is that knowledge of the severity of the enforcement process was a sufficient motivation for
most men to pay. Indeed, a comparison between Genesee County and Washtenaw, where the enforcement process was far less punitive, discloses that 'both the poorer- and better-paying subgroups within Genesee typically paid around 16 to 24 percentage points more than their counterparts in Washtenaw'. The threat inherent in an enforcement process that makes liberal use of jail is capable of obtaining more money from those who are relatively self-motivated and more from those who might otherwise be considered impecunious.

Reasons for payment and default may clearly be very individualistic. Although lack of money may justify default in some cases, it is clear that inability to pay may arise because maintenance obligations are prioritised lower than other obligations. Even if there still remains sufficient money to pay the maintenance, the payments may not be made for psychological reasons arising perhaps from the reduced role in the life of the former household which the non-custodial parent is called upon to play. If the relationship is reduced to that of creditor and debtor, if parental involvement and sense of responsibility is diminished to that level, default may be predicted with some confidence.

Chambers' research implicitly poses a question. The default perpetrated by such parents is widespread and can be approached in a variety of ways. One method is to devise a process of enforcement which is essentially punitive and unremittingly persistent, making liberal use of imprisonment and issuing credible threats of sanctions to be employed. This holds out some prospect of success in terms of securing transfers of income to the single parent family but its effects on the relationship between the absent parent and his former household, particularly the children, is less easily quantified.
An alternative would be to seek to promote payment by taking steps to ensure that the non-custodial parent does not become detached from the former household, that a sense of responsibility is retained despite the separation. The danger with proposals which posit a continuing, albeit different, relationship between the parents is that such proposals hark back to the time when the family was intact without attaching due significance to the parents' momentous decision no longer to maintain an intact household. Reproducing the degree of involvement which the parent experiences in an intact household is a foolish exercise to attempt because it puts off the day when the loss must be faced.

What may be possible whilst respecting the parents' divorce is for the non-custodial parent to be better prepared for his new role and to be assisted in adjusting to it. This is not to argue for a diminution in joint parenting where this is desired and achievable. What is suggested is that, in those cases where co-operation between the parents seems unlikely, assistance might still be appropriate to devise a schedule for visits and generally to reassure the non-custodial parent that all need not be lost. A new, inevitably different phase in his relationship to his children must be faced and it is easy to underestimate the strength required to do so. It should not be surprising if absent parents see their position as that of debtor rather than more positively as provider. They may be given little encouragement to see themselves differently.

Where is this incentive to adjust to what may be an unwelcome role to come from? Apart from personal contacts, a possible source is a court welfare officer who could see divorcing couples for purposes of
conciliation, both towards each other's needs and towards their respective future roles. Such meetings may assist in resolutions of other disputes but, for present purposes, may help the couple to respect each other's future needs, both financial and emotional. The suspicion is that the weight of matrimonial work before the courts may render this suggestion of a pre-divorce conference impractical or idealistic. This is ironic because, if thoughtfully implemented, such a programme might serve to diminish the workload by resolving issues which would otherwise be litigated later, for example the enforcement of maintenance arrears. By opening up channels of communication which might otherwise remain plugged, the temptation for the non-custodial parent to withhold maintenance may be diminished. 70

4. Evaluation of Enforcement Processes

Whether default occurs due to impecuniosity, irresponsibility or bitterness towards the former spouse, there must be a procedure available to the single parent and the State whereby the obligation to maintain can be enforced. This is to acknowledge explicitly the ambivalence of purpose of the enforcement process. The State has an interest in limiting its expenditure on single parent families by recovering money from those whom the private law designates as responsible. The single parent's interest may be somewhat wider. If the order is greater than the potential social assistance payment from the State, there is a financial interest in recovering the amount of the order from the absent parent. Even where the order is below the level of social assistance payment, if public funds are despised by the single parent or if she has especially strong feelings that the absent parent
should support the household, she may view the enforcement process as a way of vindicating her convictions.

In evaluating the suggested methods of enforcement, these needs of the participants in the process should be considered. There are the financial needs of the State and the single parent, which do not always coincide, but there are also psychological needs which are essentially functions of the degree to which the custodial parent is prepared to foster continued involvement by the absent parent in the household and the degree to which the absent parent desires such continued involvement and consequent responsibility. It has already been suggested that it may be possible to promote payment by emphasising the continued responsibility of parenthood rather than the status of debtor which the non-custodial parent may acquire. An enforcement process too closely linked with the enforcement of judgement debts derived from commercial creditor and debtor relationships risks entirely ignoring the need to foster a continuing relationship between payer and recipient. This continuing relationship of respect for each other's roles after divorce may be crucial to the long-term welfare of the single parent family and it would be wrong to think that default indicates in all cases the impossibility of salvaging such respect. Enforcement procedures must promote future payment, as well as recover arrears.

In order to further the welfare of single parent families, it is clear that enforcement procedures must disprove the oft-quoted statement that 'for all practical purposes, a court order [for maintenance] is often worth no more than the paper it is written on'. Some possible features of enforcement procedures will now be considered.
Prospective and retrospective enforcement

One possible feature would be to introduce an element of prospective enforcement, of coercion before any debt becomes due. The aim of such a reform would be to provide a greater measure of security for the single parent family by seeking to ensure a more regular pattern of payments and thereby obviating the need for periodic applications for welfare payments when the weekly support payment is withheld. By requiring no action from the payer, the choice of whether or not to pay could be eliminated from the process. Automatic deduction of support from the payer's wages by his employer would be one method of implementing this proposal to remove the temptation to use the wages for other purposes.

Chambers points out that this shift in the method used to collect support can be compared to the decision in the U.S.A. during World War II to collect taxes by means of deduction from wages rather than waiting for people to pay what they owed at the end of the taxation period. He puts forward the model of the mandatory deduction from wages which begins as soon as the order is made and travels with the payer from job to job. The latter suggestion is not unprecedented for orders under the Attachment of Earnings Act 1971 in the U.K. are not discharged when the debtor leaves his job but are suspended and can be revived when he takes further employment. Such measures are an attempt to deal with the problem of the man who changes employment in order to avoid a wage assignment. Plainly, whether the man considers that leaving his job is worthwhile will depend on the ease with which he can find comparable work and the strength of his resolve to avoid payment. Chambers found that most of the 23% of wage assignments which failed
to produce regular payments in Genesee County, Michigan were explained with reference to the man resigning or his employer dismissing him. If this happens, the procedure may have precipitated a period when no payments can reasonably be expected of the absent parent.

The Final Report of the Committee on Enforcement of Maintenance Orders in Canada recognised that, if attachment of earnings was to be effective in securing regular payments, the defaulter required protection from employers who were concerned about additional administration and might be tempted to dismiss the employee rather than make the deductions. The recommendation was that the provinces should legislate to protect the defaulter from dismissal and provide remedies of reinstatement or damages if dismissal occurs due to service of an attachment order on the employer. New Brunswick has gone furthest along this road by virtue of s 125 of the Child and Family Services and Family Relations Act which provides for the suggested remedies and places the onus on the employer to show that he was not motivated by the existence of the attachment order if he dismisses or otherwise penalises the employee while the order is in effect or within six months of its expiry.

Chambers' model scheme which implements deductions from wages as soon as the order is made would not obviate the necessity for such safeguards. However, the number of orders against employees would inevitably make attachment of earnings a far commoner occurrence and one which employers would regard as no more inconvenient than tax deductions.

There are, however, other factors which should cause concern besides the responses of employers. Chambers' research in Michigan
shows that wage assignments produce steady payments across all groups of non-custodial parents. Success seems assured because avoidance requires a change of job and payment is relatively painless for the absent parent because the money never becomes spendable. In so far as securing money for the State and the single parent family is concerned, deduction from wages throughout the life of the order, whether or not arrears had accrued, may be the best solution. It can be argued, however, that such a system does little to preserve a sense of responsibility in the absent parent. Admittedly, Chambers is correct that the payments are provided by the parent and not from an amorphous fund, thereby preserving the direct link between parent and child. However, as he points out in an earlier passage, the involuntary nature of the deduction may justifiably lead to resentment among men who would pay voluntarily. Equally, there is the intervention of third parties between payer and recipient. These may be one or both of the non-custodial parent's employer, who will have acquired details of his employee's personal life, and the State, which may also incidentally acquire more personal data. The implementation of a scheme of mandatory wage deductions would result in the storage of much personal information by employers and, possibly, the State, which might act as an intermediary between employer and recipient.

There is another widely held civil liberty to consider. The integrity of the pay packet was the subject of campaigns in the early days of heavy industrialisation. In 1870 the British Parliament passed the Wages Attachment Abolition Act. Section 1 of this succinct measure provided that 'no order for the attachment of the wages of any servant, labourer, or workman shall be made by the judge of any Court of Record
or inferior Court'. In the introduction to the Act it is noted that 'much inconvenience has arisen by the attachment of wages to satisfy judgements recovered in some ... Courts'. As the Finer Committee remarks, the introduction of procedures to recover arrears of maintenance by deduction from wages was resisted as the beginning of a broader assault on the integrity of wages.

When the Home Secretary, Mr. R.A. Butler, introduced the measure to implement the recovery of arrears from wages, he based himself upon the benefits to be gained by ceasing to jail employed defaulters. The sensitivity of the issue to the trade unions was clearly appreciated. It remains impossible in the U.K. to attach earnings if the payer is not in arrears. Even if he is, the attachment is solely for the purpose of clearing the arrears.

The dilemma can be put simply. The unwieldy nature of retrospective enforcement processes typically developed to deal with commercial debt renders them unsuitable for recovering small amounts of maintenance from an erratic payer. A procedure which obtains the money before it reaches the payer would benefit the single parent family. However, the implementation of such a procedure infringes the payer's privacy.

The correct approach is to ask when the wage-earner loses his right to keep his private affairs to himself and to be free to spend his wages. If substantial arrears have accrued and the single parent family has suffered hardship or been relieved by the State, there is a strong argument that any claim which the wage-earner might otherwise have with respect to the integrity of the wage-packet should be forfeited. At this stage, his wages should be open to attachment, not just for arrears
but for payments as they become due. This procedure should be available if the payer is two months in arrears, provided that he has been warned within that time of the consequences of default and has done nothing to indicate a willingness to change. The attachment should continue indefinitely, provided that the payer can apply to have it discharged at any time. This possibility should be available because deduction from wages is such an easy way to pay. If the payer can convince the recipient or, if necessary, the court, that payments will be forthcoming without the attachment of wages, the automatic deductions should cease. Voluntary payment is preferable.

ii Jail as a means of enforcement

In the evaluation of attachment of earnings as a method of securing support payments, Chambers' model was rejected in so far as it proposed that mandatory attachment should take place from the date of the order, before any default had occurred. It should be borne in mind that, in advocating attachment of earnings as the best method of ensuring that biological parents remain primarily responsible for their own children, he is especially anxious to propose acceptable alternatives to jail.

There is a consensus between Chambers and the Finer Committee that jail does not engender positive feelings of involvement in and responsibility towards the former household. This punitive means of enforcement does not promote respect within a changed relationship. This sort of argument appears lily-livered to those for whom the failure to discharge family responsibilities is an especially heinous omission. However, it is necessary to examine the jailing process to discover whether it is the failure to pay which determines that a man is jailed.
Chambers' research in Genesee County, Michigan suggests that the sanction of imprisonment is applied rather like the punishment of decimation was applied to a Roman Legion. He found that 60% of his sample were 26 weeks in arrears at some point in their payment histories but less than a third of these men were jailed. On what criteria can such a selection be based? Those who favour imprisonment may argue that it serves as a deterrent and an encouragement to other payers, not just to the individual who is jailed. If this purpose is to be fulfilled, there is no need for 'an overrepresentation in the jailed population of blue-collar males' such as Chambers found in Michigan or the numbers of 'social inadequates' who the Finer Committee concluded were confined. The steps along the road to jail for the maintenance defaulter are taken easily by those who are unskilled at communicating with authority. Others are removed from the process at various stages, perhaps due to their greater aptitude for co-operating with the Friend of the Court who enforces the order. It is perhaps not surprising in the light of this differential use of jail that Chambers found examples of recidivism amongst jailed defaulters, in much the same way as petty criminals can develop an apparent dependence on institutional life.

Jail may also have a deleterious effect upon the relationship between absent parent and child, the very relationship which the whole rationale for full and prompt enforcement proclaims to be worth preserving, albeit in truth only for financial purposes. Jail is unlikely to lead to a closer relationship. Rather, it may precipitate a departure by the absent parent upon release or feelings of guilt in a child who is aware of what is happening. All payers, good, bad and indifferent, may unconsciously begin to see their children as the agents who may cause them to be jailed.
In the light of the negative aspects of the use of jail for maintenance defaulters, it was to be expected that the Finer Committee would recommend that jail no longer be available. If default is considered explicable with reference to the payer's resources, the conclusion that 'sending maintenance defaulters to prison is an essay in economic and social futility' commends itself.

The problem is that default may not be so easily explicable and that Chambers' research in Michigan leads him to the conclusion that money gained by the jailing policy 'almost certainly' exceeds the cost of jailing, including the loss to the State of the jailed person's income tax. For extracting child support from the payer's wages received, the punitive system works well.

Despite the negative impact of jail, this basic conclusion from Chambers' research is inconvenient to the abolitionist. If the motivation for the enforcement system is to collect money for the State, or if it is to increase the material well-being of those single parent families who have orders and whose net income would be increased by payment of the order, it seems perverse to demand that jail cease to be an option. The question then becomes whether the notion of the welfare of the single parent family should be expanded to comprehend more than financial well-being. In deciding questions concerning custody and access, the courts purport to apply a broader notion of welfare and may seek to assess the psychological consequences for the children of various decisions. If this expansion of the idea of welfare of the family is permissible, the abolitionist is on firmer ground.

The correct approach is that to acknowledge the acceptability of jail as a remedy is to be too zealous in the pursuit of financial
improvement for the single parent family, given that other methods of enforcement remain unchanged. It is to shut the door on any ambition to foster a mutual respect in the parents, for the sanction in the hand of the custodial parent or the State is simply too great. The psychological effects of the policy on the children for whom the jailed parent has failed to provide may be severe. Jailings should be curtailed for their potentially brutalising effects upon the jailed people and the punitive, negative aspect of matrimonial breakdown which they emphasise. It is not that there is nothing better to be tried. For the unemployed, lack of resources may render enforcement a futile exercise in the first place. For the employee, deduction from wages after a period of default holds out the prospect of high returns. The self-employed person is harder to deal with and recourse may have to be made to the traditional enforcement processes such as distraint. Even with these greater difficulties, it would be wrong to preserve imprisonment if the assessment of its negative impact is correct.

If it is decided that jail should not be used, it is inappropriate to threaten to use it. Clearly, no credible threat can be made if there is no means of carrying it out. Though the threat of jail may have extracted some money from recalcitrant payers in the past, the conclusion of this discussion is that there are better ways of inducing payment.

5. Roles of Individual and State in the Enforcement Process

What is the basis upon which the State can intervene in order to assist the single parent in enforcing a support order? The availability of a variety of procedures, any of which may be chosen by a litigant in
order to compel the other party to obey a court order, is not a sign of partiality on the part of the State but is a recognition that the dignity and efficacy of the courts depends upon the orders of the court being obeyed. The need to assert the rule of law may be sufficient justification for widespread state intervention in the enforcement process. On the other hand, when the ways in which the State intervenes are considered, it may be felt that too much bureaucratic power has been harnessed on the side of the single parent. Access to personal information for the purposes of tracing defaulters, aggressive enforcement procedures which start automatically, a willingness persistently to pursue defaulters: the struggle may appear unequal. The answer to this is that there has been an impartial determination of the question and that any right to privacy gives way before the need to compel obedience to court orders.

Before whole-heartedly accepting that the State can adopt any form of intrusive mechanism in order to further the welfare of single parent families, it is worth recalling that the improvement of collection agencies has been motivated primarily by increasing public expenditure on welfare to support single parent families. In 1984, U.S. taxpayers spent about $25 billion for this purpose. It was burgeoning public expenditure which led Ronald Reagan to say in his 1983 Presidential Proclamation:

'The American people willingly extend help to children in need, including those whose parents are failing to meet their responsibilities. However, it is our obligation to make every effort to place the financial responsibility where it rightly belongs - on the parent who has been legally ordered to support his child.'

The result of this concern was the 1984 Child Support Enforcement
Amendments to Title IV-D of the Social Security Act. The Office of Child Support Enforcement, a federal agency, has expanded its remit from low income families to all families needing assistance in collection. The Office also has expanded powers to obtain security for payment and to secure the withholding from wages and tax refunds of support payments. For Jacob, this sort of legislation is symptomatic of the development of public policy in the U.S.A. in the field of family law. Congress is only at the margins of policy making. With particular reference to child support, Jacob comments:

'each piece of congressional action has been a response to a particular crisis or complaint and has been passed with little or no thought about how it fits into the pattern of family law in the United States.'

To this point, a certain amount of scepticism has been preserved with respect to the virtue of an enhanced role for the State in collecting instalments of support payments. Perhaps such a scheme is an ephemeral manifestation of crisis management, or a guise under which the State can accumulate more data about the subject, or a means of favouring one party in a matrimonial dispute at the expense of the non-custodial parent. Whilst it is correct to point out the possibility that a greater role for the State could be prone to a number of negative influences, it is necessary to balance the risk of these coming to dominate the system against the difficulties which a single parent faces in enforcing an order with no administrative assistance. It is at this point that the objections to an enhanced role for the State begin to appear too scrupulous to be sustained.

1 Institution of proceedings: tracing the defaulter

At the outset, there is the problem of the parent whose whereabouts
are unknown. The question of the extent to which information held by public departments can be used to trace a missing parent is one that has been resolved in favour of disclosure in the United States. The Federal Parent Locator Service, which can be used by any recipient of child support whether or not they receive welfare, uses the Internal Revenue Service's income tax records, the Social Security Administration's annual earnings and benefit records and the National Personal Record Centre for federal employees, amongst other sources. The State Parent Locator Service can use voter registrations, records of receipt of workers' compensation and public assistance, prison records and data on vehicle registration and drivers' licences. Plainly, the more sources that can be tapped, the more likelihood there is of locating the missing parent. There is, therefore, much to be said for the view that half-hearted location services give the worst of both worlds. Personal data acquired for one purpose is utilised for another purpose without the consent of the subject of the data and there may be no significant increase in the location of missing parents or the collection of payments.

The Canadian Family Orders and Agreements Enforcement Assistance Act 1986 supplements previous provincial measures for the release of information by providing access to information banks controlled by the Department of National Health and Welfare and by the Canada Employment and Immigration Commission. Before access will be allowed, there must be agreement between the federal Minister of Justice and the provinces concerning provincial safeguards to protect information and designating the provincial sources of information which must be exhausted before the federal information can be used. The address of
the defaulter and the name and address of his employer may be released confidentially to a court, a provincial enforcement service or a peace officer investigating a child abduction. In this manner and by prescribing a procedure for applications to court with a view to the court requesting release of information, the federal Parliament has sought to limit the possibility of the information being misused and, presumably, to preserve confidence in the secrecy of federal information banks. Steel certainly gives the impression that the legislation is too coy:

'Since access to federal information banks was considered desirable because of the ease of tracing individuals by using their social insurance numbers, one wonders at the number of hoops set up by this legislation through which one must jump before obtaining the information.'

However, Steel does not convincingly dispose of the argument that obliging the government, at whatever level, to disclose information about a particular person for the purpose of enforcing a maintenance order is to prejudice the efficiency of the department supplying the information. This is a quite separate argument from the suggestion that the defaulter's privacy is infringed. This seems too scrupulous when the possible consequences of non-payments for the single parent family are considered. The Finer Committee accepted the argument that the costs of hampering the work of the department supplying the information will be significant:

'Once citizens know that information about themselves or their affairs will be passed on by the Board of Inland Revenue to persons and for purposes different from those for which it was supplied in the first instance, temptations to dishonesty and deception will multiply.'

It is important to appreciate that the Finer Committee's approach was
informed by the idea that, as default often occurs because the order
cannot be afforded, disclosure provisions would only lead to marginally
better collections. Therefore, it is simply not worth prejudicing the
collection of taxes and national insurance contributions.

The Canadian and American governments plainly believe the scales
are weighted differently. Due to the post-divorce mobility of many men,
keeping track of the movements of the non-custodial parent is a
potentially difficult problem for the single parent. She is unlikely to
be able to afford the services of a private investigator! Her own
resources, in terms of time, energy and personal contacts, are probably
limited. In these circumstances, is the State to allow the order of the
court to be thwarted? The Finer Committee was right to recognise that
there is a potential problem regarding the frankness with which
information is supplied to government departments if it is thought that
it might be passed on to the detriment of the supplier of the
information. It would not be the only disincentive to honest
disclosure of information but it would be an additional one. The
difficulty lies in assessing the degree to which collection of payments
would be improved by the institution of a locator service using
government information. Unless the service is part of a larger plan,
such as that administered by the Office of Child Support Enforcement,
improvements will not be great.

My assessment is that a locator service is crucial to the success
of any policy to enforce the transfer of resources to the single parent
family. It is the first stage and, unless it is successfully
accomplished, nothing further can be done. Without such a service,
evasion by the paying parent is much simpler. The parent with the
responsibility for looking after the children from day to day cannot afford to look for the non-custodial parent. It is an unequal struggle. Public resources must be available at this first stage of the enforcement process.

ii Institution of proceedings: deciding to take enforcement measures

The Australian Institute of Family Studies' research in Victoria found that 16% of respondents who were not paying or receiving the full amount of maintenance referred to the ineffectiveness of court proceedings as part of the explanation. For example, the expense of enforcement proceedings compared with the uncertainty of the result is discouraging to recipients who are considering trying to enforce the order.

Steel points out that leaving it entirely up to the single parent to bring enforcement proceedings assumes a level of legal sophistication and awareness of available choices which, in any particular case, may be quite unjustified. Furthermore, the single parent may not have the resources, in terms of money, time and energy, to engage in a protracted dispute with a recalcitrant former spouse. If there remains hostility between the former spouses, attempts to enforce maintenance orders may invite violence or, at least, further acrimony which can become evident when the simplest co-operation with respect to the children is attempted. Viewing matters in the round, it is hardly surprising that many single parents consider enforcement to be more trouble than it is ultimately likely to be worth.

The Committee on Enforcement of Maintenance Orders in Canada favoured replacing enforcement mechanisms based upon individual initiatives with provincial programmes in which enforcement is initiated
by provincial government officials. The rationale is that removing the onus to begin proceedings from the single parent to a government agency will lead to more efficient collections, thereby more effectively asserting the responsibility of the biological parent and reducing expenditure on welfare.

Though the comprehensiveness of the automatic enforcement processes described by Steel in Manitoba and by Chambers in Michigan is not replicated in other jurisdictions, there are examples of older schemes of more modest ambition. In order to reduce welfare expenditure, schemes have been developed along the lines of the diversion procedure in the United Kingdom. Under this procedure, the recipient assigns the right to receive payments to the Department of Social Security, which pays the sums due under the order, being no more than the recipient's benefit entitlement, and takes over enforcement of the order. This is popular with single parents receiving welfare payments for it assures them a regular income. Assuming the government department is not entirely altruistically motivated, there must also be the rationale that the department will enforce the order more effectively than the individual. If this is so, welfare payments are reduced as the burden is placed on the biological parent. It is interesting to note that the proposition that a central agency will enforce orders more effectively than the individual recipient has not been universally accepted. In Nova Scotia, a pilot project similar to the British diversion procedure worked well but was not extended beyond Cape Breton because it was felt that the recipients were the best enforcers.

The self-starting, computerised programme in Manitoba is far more ambitious in its scope. Payments under all orders enrolled in the
programme are monitored by the computer operators in Winnipeg. Orders made under provincial legislation are automatically enrolled unless the recipient opts out of the scheme. With respect to the federal divorce legislation, the onus is on the recipient to opt in. All payments pursuant to enrolled orders are made through the agency of the court offices and enforcement procedures follow, without any action on the part of the recipient, if the payer defaults.

We have so far focused on the institution of proceedings for recovery and the disincentives to taking even the first step in the procedure, as opposed to the conduct of the proceedings themselves. It should be considered whether it is proper for the State to initiate proceedings to enforce obligations when the beneficiary of the obligation has given no specific indication that enforcement is required on this occasion and, in more extreme cases, when enforcement is not desired by the beneficiary of the obligation. Is the convenience and potential efficiency in collecting payments of the Manitoba model to overshadow the requirements of a particular case? If such a model is put in place, when will it be permissible for a recipient to choose not to enforce an order? Clearly, these questions require an identification of the purpose for which the scheme is implemented. If it is established solely to assist single parents for whom enforcement would otherwise be too daunting a prospect, it follows that the agency must follow the wishes of its clients, the recipients of the orders.

However, if part of the motive for implementing a scheme of automatic enforcement is to reduce government expenditure and to emphasise the responsibility of the biological parent, it follows that the agency is also responsible to the treasury of the government. To
implement unquestioningly the wishes of single parents who do not want enforcement measures taken but who receive money from the State would be contrary to a possible purpose of the scheme.

The final problem in connection with opting out of a self-starting enforcement process is one that is less susceptible to detection by a computer, which could quite easily single out those maintenance recipients on welfare. It is the question of what is best for the children of the single parent family. Should their custodial parent be permitted to forego payments in return for the non-custodial parent agreeing not to visit the children? This may suit both parents who are glad to be rid of each other but not the children whose interests may be best served by continuing the relationship with the non-custodial parent. Similarly, the individual adults involved might agree that the present household arrangements should be recognised and that no support payments will be made or received by that household. It is not too far fetched to conceive of a chain of such households in which step-parents agree to take on primary responsibility jointly with the natural, custodial parent. The administrative burden for the enforcement scheme would be lessened though whether this is to the children's benefit is hard to say. These are not really questions for administrators of a system akin to taxation even if such agreements were detectable.

In evaluating self-starting enforcement procedures, it cannot be ignored that the automatic and prompt commencement of proceedings for recovery may be an important component of a comprehensive, cost-effective system. Whilst Steel views the dependent spouse's lack of responsibility for the Manitoba system as its 'most important characteristic', the better view is that it is the monitoring of
orders and the efficiency with which default is dealt with that
demonstrate the value of the computerised procedure. Whether this
mechanism is activated by the individual or the State is not so crucial.

Recognising that the State has a legitimate interest in minimising
its expenditure and emphasising the primary obligation of the natural
parent, there is no objection to the State automatically beginning
recovery proceedings. If the natural parent is not to pass financial
burdens to the taxpayer, the decision whether or not to pursue him for
his contribution should not be left up to the head of the single parent
family who has no financial interest in the decision or the proceedings
in those cases where the maintenance payments have simply been replaced
by welfare. This lack of interest explains why it is advocated that the
enforcement proceedings in these circumstances should be a matter
between the State and the non-custodial parent. The interest of the
State in cases involving welfare payments should be made explicit.

In cases not involving welfare payments, there is no need for the
procedure to begin automatically. This is not necessarily to put the
onus on the single parent to involve herself in costly, acrimonious
proceedings. It is accepted that it is quite wrong that custodial
parents should be dissuaded from seeking money which will improve their
financial situation by the complexity or worry of the contemplated
proceedings. What is suggested is that the single parent should have to
indicate to the agency that enforcement is desired. This should be an
informal procedure which encourages its use. A letter, telephone call
or personal visit to the agency should all suffice.

In advocating that, in cases other than those involving welfare
payments, the process should not start automatically, it is accepted
that some custodial parents may omit to request enforcement for reasons which are not in accordance with the best interests of the children in the household. Nevertheless, it is argued that such reasons are very difficult to detect and that the State should not take it upon itself to enforce private obligations unless its own financial interests are at stake.

iii Conduct of proceedings

Steel's review of Canadian enforcement systems leads her to the conclusion that 'when the state involves itself more actively in the enforcement of maintenance and shifts the onus for enforcement onto its own shoulders ... the rate of compliance increases significantly'. It is in the efficient conduct of enforcement proceedings once a complaint is made by the recipient that State agencies are potentially more capable than the individual. They are presumably fully informed of the options open to them and, like any debt collection department, advantage can be taken of economies derived from processing large numbers of similar cases. Neither do emotional conflicts intrude upon the prosecution of the task of collecting the money.

In Manitoba, the recommendation of the Committee on Enforcement of Maintenance Orders in Canada that administrative powers be increased and time spent on judicial proceedings curtailed has been implemented. There are options open to the administrator before he brings the defaulter before the court to show cause why he did not pay. For example, the defaulter can be examined with respect to his financial circumstances by an officer of the court. This can serve as the basis for a negotiated settlement of the dispute.
In evaluating administrative enforcement systems, it would be wrong to focus exclusively on the possibility of collecting money by the regular and automatic initiation of court proceedings. No matter how efficiently and promptly such proceedings are pursued, a voluntary settlement holds out the prospect of a cheaper resolution to the dispute and a better relationship between payer and former household. The Scandinavian countries have systems which demonstrate the value of mechanisms for reaching settlements with respect to maintenance responsibilities, which are buttressed by the credible prospect of compulsory procedures if the non-custodial parent fails to address his responsibilities.\footnote{119}

In Sweden, child welfare officers with integrated powers, including the enforcement of obligations, are effective in limiting judicial time spent on such matters. The single parent has a particular officer for a close adviser, part of whose role it is to seek a settlement of the dispute. As Cockburn and Heclo point out, a 'great deal of effort in Scandinavia goes into determining paternity, fixing and enforcing private maintenance'.\footnote{120} There is clearly a determination to deal with the problem in a more personal manner, to refrain from using court proceedings if possible and to reject an approach which stresses an initially punitive response. This is not to say that the action taken will be any less purposeful. It is clear from the wide access to personal information about the non-custodial parent which the Swedish authorities are granted\footnote{121} that, although settlement is desired, there is no compromise from the position that the non-custodial parent is responsible.
It has already been argued that the payer has no legitimate complaint that the custodial parent has an ally in a bureaucracy which is designed to enable her to vindicate her rights and to emphasise the non-custodial parent's continuing responsibility. If an impartial determination of the issues has been made, the State is not compromised if it implements a scheme to preclude the avoidance of court orders. Administrative schemes are open to criticism if payers are not treated fairly and reasonably. Possibilities for abuse abound. Personal information may be unnecessarily transferred from other bodies or disclosed. The simplicity with which court proceedings may be instituted and prosecuted may prove seductive, leading to a failure to use other less punitive options. Guidelines quite properly propounded to supply administrators with ideas about how to deal with particular cases may be rigidly adhered to, no regard being paid to the facts of the particular dispute. The very efficiency of the computerised system with orders from a wide area entered into it and constantly monitored is an image of power. It could be exercised for laudable purposes. It can be argued that it is the abuse of economic power by non-custodial parents that produced the momentum for the implementation of such systems. Nevertheless, the image of the executive using its powers for the purposes of victimisation persists. The traditional remedy for abuse of administrative discretion is to seek judicial review of the exercise of the discretion. There is already some evidence that the courts are aware of the powers given to enforcement authorities and of the need to ensure that the individual who finds himself the opponent of the authority is fairly treated.
It is clear that the implementation of the Support and Custody Orders Enforcement Act in Ontario was not without teething problems which the courts had to correct. By s 2(2) of the Act, it is the duty of the Director of Support and Custody Enforcement 'to enforce support and custody orders ... in the manner, if any, that appears practical'. 

Costello v Somers is one case in which the Ontario Supreme Court has investigated the ambit of this discretion. The former husband had custody of the child of the marriage and the former wife was ordered to pay child support. She fell into arrears when she left her job to care for a baby of her second marriage. The Manitoba Court of Queen's Bench provisionally varied the order by remitting arrears and reducing the amount payable pursuant to ss 18(2) and 19 of the Divorce Act 1985. When she returned to Ontario, application was made to have the provisional order confirmed by the Ontario courts but there was a delay of about a year because of the Manitoban authority's failure to send the required documentation to Ontario. Undeterred by knowledge of the provisional order, the Director seized the former wife's car. No search for incumbrances had been undertaken in Manitoba and it transpired that the Director had to return the car to satisfy a prior lien. The court ordered the Director to bear the costs of the needless seizure. A curious argument was advanced that the Director should be allowed more leeway because the system of enforcement was in its infancy but this was rejected:

'there is nothing novel about seizing chattels nor making a proper investigation prior to seizure.'

The Director also adopted a policy whereby no dispute would be settled unless the defaulter agreed to an attachment of one half of his net wages. This rigid policy, which gave the lawyer representing the
Director no room to negotiate and thereby save time and expense, was disapproved of by two Provincial Court judges in *Director of Support v Glover*¹²⁶ and *Director of Support v McIntyre*¹²⁷. In the latter case, Vogelsang Prov. J. commented:

'Any rigid adherence to the 50 per cent exemption ... without any chance for movement or freedom to negotiate in accordance with existing circumstances, I think, is unfair to debtors generally and, collaterally, to counsel appearing for the director.' ¹²⁸

Fleury DCJ. is not so ready to criticise the Director's inflexibility in *Director of Support v Couling*.¹²⁹ A provincial court judge had transferred the Director's application to attach the defaulter's earnings to the court most convenient to the defaulter, apparently out of exasperation at the Director's unwillingness to negotiate. Fleury DCJ. disapproved of judicial criticism of the Director's stance and continued:

'Litigants have every right to press their claims to the full extent authorised by law. This is even more so in the case of an official appointed by the government to eliminate longstanding injustices.' ¹³⁰

As Professor McLeod points out in his annotation, this is a move towards recognition of the Director as a special litigant with an enormous caseload.¹³¹ If it is adjudged unreasonable for the Director to adopt policies, the promptness and efficiency of the agency is undermined. On the other hand, if the judiciary adopts an absentionist stance, there may be a failure to balance pursuit of the statutory purposes against fairness of treatment for the subject of the enforcement procedure.
Chambers also expresses concern about how decisions are made within the agency charged with enforcing maintenance orders. How is it decided who is to be brought before the court and who is to be subjected to punitive measures when there are many candidates with the same characteristics? How great is the risk of enforcement measures being used disproportionately against particular groups who may, for some reason, be more vulnerable than others?

These are valid concerns and it is important that the enforcement agency's work is open to public scrutiny and to judicial review in order to curb excesses which inevitably occur when a body has a clearly defined aim and a project which it is charged with bringing to fruition. The eagerness of those involved can lead to a lack of insight with respect to the full dimensions of the problem. It is for this reason that a competitive atmosphere amongst collection agencies in different regions should not be fostered. If the agency is not equipped with the integrated powers of the Swedish model discussed above, there is the danger that the agency will be imbued with the undesirable ethos that the problem of default arises simply due to the stubbornness of non-custodial parents and begin to deal with default in the same manner as a finance company.

It is with these dangers in mind that the establishment of agencies of the State to deal with the conduct of enforcement proceedings is to be welcomed. The burden of enforcement was too great for the single parent to bear alone. Complications of procedure, renewed acrimony, expense and delay all militated against a successful conclusion to the proceedings. Avoidance by wearing down the would-be enforcer was a possibility. It is right that the State should seek to correct an
unsatisfactory position by implementing centralised, methodical procedures which relieve the custodial parent of the strain of personal commitment to the prosecution of the proceedings. It is, however, crucial to recognise the potential for arbitrary measures against the individual which such schemes involve and to avoid fostering too zealous an attitude amongst those administering it. This is not to argue for inefficiency but for appreciation of the need for fairness towards the non-custodial parent.

The establishment of such agencies is also desirable in connection with collecting payments from other jurisdictions, whether internationally or within a federal system. The existence of specialist bodies with computerised information banks should facilitate the co-operation envisaged by enactments such as Part 4.1 of the British Columbian Family Relations Act. Similarly, the operation of the Uniform Reciprocal Enforcement of Support Act in the United States may be improved by the existence of better organised central agencies to which the State requesting enforcement can submit information. Takas complains that presently, although the Act is of potentially great value to single parents seeking to enforce across State boundaries, the failure of States uniformly to implement amendments recommended by the Conference of Commissioners on Uniform State Laws in 1958 and 1968 has resulted in numerous different systems across the country. Whilst establishing a bureaucracy would not directly affect this incongruence, it would assist the processing of requests for enforcement from other States and may even provide momentum for further change.
6. Enforcement: A First Priority for the Single Parent Family?

At this stage, it is pertinent to ask whether it has been proved that prompt and full enforcement of support orders at a cost, in terms of time, money and energy, which the single parent can afford will solve the single parent family's financial problems. On the basis of the material discussed above, the proper conclusion is that it would be a mistake to believe that the single parent family can attain an appropriate standard of living, whether this is a certain minimum standard or a standard comparable to that of the absent parent, by ensuring that court orders are honoured in full. Although one motive for the State's intervention in the enforcement process is to reduce the amount spent on single parent families, it is very unlikely that single parent families will be able to attain an appropriate standard of living without any reliance on public funds. This could be because the amount of the order is inadequate for the purpose or because no order has been obtained.

If it is accepted that only a proportion of those eligible for orders proceed so far as to obtain an order, it cannot be maintained that intervention at the stage of enforcing the order will effect a beneficial redistribution of income for all single parent families. This would imply that the focus should be on enforcing the obligation to support rather than on enforcing the court order, for this would supply the rationale for intervening at an earlier stage of the process in order to ensure that more of those who are eligible take up the opportunity to obtain a court order. The extent to which this earlier intervention takes the form of assistance to those requesting it or pressure to vindicate rights will depend upon how concerned the
authorities are to emphasise the primacy of the obligation of the non-custodial parent.

Admitting that a comprehensive programme of enforcement would only affect a proportion of the total number of single parent families does not prejudice a conclusion that the programme would be worthwhile because it would somewhat improve the financial situation of those single parent families with court orders and it would decrease public expenditure on them. Possible features of an ideal programme were considered and it was suggested that it was undesirable for such programmes to be akin to debt collection agencies, entirely removed from the domestic circumstances of the people involved. The more awareness of the context of support debt that there is within the agency, the more likelihood there is of promoting future patterns of regular payment and of avoiding abuse of the discretions vested in the agency. What is envisaged is an agency with the resources to attempt to conciliate when disputes arise but with the power to use the courts if, in cases in which the State has no financial interest, the recipient of support requests it. The sanction of jail, with its deleterious effects on the individual jailed and possibly on those for whom he should be providing, should be removed and its place taken, for the persistent defaulter who is in work, by a power to attach wages on a continuous basis, not merely to clear arrears. This prospective enforcement is well suited to the recurrent nature of periodical payments but should not be used until it is clear that the payer is not attaching a sufficiently high priority to payment of support and has forfeited his right to receive his wages intact. Otherwise, responsible payment is not respected and needless intervention is promoted.
It should be clear that the position advocated is that enforcement of orders, no matter how swift and persistent, is no panacea for the problems faced by single parent families. Nevertheless, it is argued that there should be improvements to the procedure for recovering arrears, including an enhanced role for the State which has a legitimate interest in privatising support obligations. It is not accepted that enforcement is a bureaucratic exercise from which the single parent family can derive no significant benefit. Improved enforcement is part of the solution but it is not enough in itself.

What are the consequences of such an approach to the enforcement of support obligations? That new domestic responsibilities should entirely supplant those derived from former relationships is not accepted but, in pursuing a policy which involves the promotion of responsibility of members of the former household amongst non-custodial parents, the risk of unintentionally impoverishing the payer's second household must be recognised. Bissett-Johnson refers to the prospects for a second household whose resources are depleted by support payments but which is not receiving payments due from the absent parent of children living in it.136 The equilibrium posited by a system which asserts the primary obligation of the natural parent is quickly upset by such non-compliance. The question which Chambers poses137 is when will the successive re-organisation of families reach such a pitch that it is no longer appropriate, indeed merely a nostalgic anachronism, for the State to seek to assert the responsibility of the biological parent. This point probably will not be reached if closer links between children and absent parents are forged. It is nearer at hand if Chambers' other 'plausible future'138 of steady disengagement between absent parents and
children is the one that comes to pass. In such a world, the single parent family does not merely cast off its image as part of the 'little cluster of deviants from the marital norm'\textsuperscript{139} but becomes usual, normal, not deprived or disabled. Ironically, the assumption of a strong, independent image may diminish the sense of responsibility, whether in the absent parent or society at large, which has partly enabled the single parent family to become enfranchised, and herald another downward spiral.

The basic danger of the proposed endorsement of an improved enforcement system is that it may result in a re-arrangement of households in poverty. Harris, McDonald and Weston, in their investigation of an appropriate formula for calculating child support,\textsuperscript{140} graphically demonstrate how men with a new dependent partner who does not receive support from a former partner would be affected in a disproportionately adverse manner by an otherwise apparently fair procedure. The problem is best considered in the context of the calculation of entitlements. If the result of enforcing an order is to impoverish the payer, it is an indication that the order is awry for the balance between the parties has been upset.

Another possible consequence of an improved enforcement procedure is that some non-custodial parents will disappear rather than stay near their former households where they will be easily accessible to the enforcement process. This abandonment may be more detrimental to the children in the former household than the failure to pay. This is why an initially aggressive attitude towards default by the collecting agency may be counter-productive. A policy of seeking the least punitive manner of dealing with default which still holds out the
prospect of effectiveness may enable additional money to be collected and avoid alienation of the non-custodial parent.
Footnotes


2. Supra, footnote 1 at pp 203-204.

3. Supra, footnote 1 at p 205.


6. Supra, footnote 5 Part II passim.

7. Supra, footnote 5 at p 110.


9. Sorenson and MacDonald, supra, footnote 8 at p 37.

10. Sorenson and MacDonald, supra, footnote 8 at p 41.


12. Supra, footnote 8 at p 45.


14. Supra, footnote 8 at p 42.

15. Sorenson and MacDonald, supra, footnote 8 at pp 55-56.


17. Harris, McDonald and Weston, supra, footnote 5 at p 97.


19. Chambers, supra, footnote 18 at p 245 comments that practice in State courts regarding constitutional prohibitions against jailing for debt is almost uniform.


22. Supra, footnote 4 at p 148.

23. See In re Robinson (1884) 27 Ch D 160 and Sugden v Sugden [1957] P 120.

24. Supra, footnote 16 at p 53.


27. Supra, footnote 25, paras 4.72-4.90.

28. Supra, footnote 25, para 4.87.

29. Supra, footnote 25, para 4.88.


31. McGregor, Blom-Cooper and Gibson, supra, footnote 30 at p 70.


33. Supra, footnote 32, para 103.

34. Supra, footnote 25.

35. See The Finer Report, supra, footnote 25, section 4.6 and McGregor, Blom-Cooper and Gibson, supra, footnote 31.

36. Supra, footnote 25, para 4.90.


38. Supra, footnote 37 at p 21.

39. Ibid.

40. Ibid.

41. Ibid.

42. Supra, footnote 37, Survey of Men, para 4.0.
43. Ibid.
44. Supra, footnote 37 at p 22.
46. Supra, footnote 37, Survey of Men, para 13.15.
47. Supra, footnote 25, para 4.90.
48. Supra, footnote 37 at p 16.
50. See p 72 above.
52. Supra, footnote 51 at p 267.
53. The Canadian Institute for Research, supra, footnote 37 at p 21.
54. Supra, footnote 37 at p 22.
55. Supra, footnote 37, Survey of Men, para 13.16 and Survey of Women, para 13.2.
56. Harrison and Tucker, supra, footnote 51 at p 266.
57. The Canadian Institute for Research, supra, footnote 37, Survey of Men, para 13.3.
58. Supra, footnote 18 at p 128.
59. Harrison and Tucker, supra, footnote 51 at p 265.
60. Supra, footnote 37, Family Court Records Study, para 3.2.1.
61. Supra, footnote 18 at p 111.
62. Supra, footnote 18 at p 277.
63. Chambers, supra, footnote 18 at p 126.
65. Supra, footnote 18 at p 132.
66. Chambers, supra, footnote 18 at p 135.


69. Of all the studies reviewed, only Maclean and Eekelaar, *supra*, footnote 16, so much as suggest that this is not the case.

70. Chambers, *supra*, footnote 18 at p 245.


72. *Supra*, footnote 18 at p 258.


74. *Supra*, footnote 18 at p 152.

75. This Report was produced by the Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada in 1983.


78. *Supra*, footnote 18 at p 154.


84. *Supra*, footnote 18 at p 249.


86. Chambers, *supra*, footnote 18 at p 249.

87. *Supra*, footnote 18 at p 244.


89. *Supra*, footnote 25, para 4.163.


92. This is J.M. Eekelaar's argument in connection with the Finer Committee's proposal to assess maintenance administratively. See J.M. Eekelaar, 'Public Law and Private Rights: the Finer Proposals' (1976) Public Law 64 at p 72.

93. Weitzman, supra, footnote 49 at p 263.

94. See Takas, supra, footnote 4 at p xii.

95. See Takas, supra, footnote 4 at p 7 and Weitzman, supra, footnote 49 at p 307.


97. Jacob, supra, footnote 96 at p 747.

98. Takas, supra, footnote 4 at p 55.


100. Family Orders and Agreements Enforcement Act 1986 ('FOAEA') s 15.

101. FOAEA s 3.

102. FOAEA s 4.

103. FOAEA s 13.

104. FOAEA ss 7-12.


106. Supra, footnote 25, para 4.156.

107. Loc. cit.

108. Harrison and Tucker, supra, footnote 51 at p 266.

109. Supra, footnote 105 at p 198.

110. Supra, footnote 76 at p 7.

111. Supra, footnote 105 at pp 210-5.

112. Supra, footnote 18.

113. In 1970, 74% of maintenance orders in the UK were diverted. See The Finer Report, supra, footnote 25, Table 4.12.

115. See Steel, supra, footnote 105 at pp 210-5.

116. Supra, footnote 105 at p 214.

117. Supra, footnote 105 at p 200.

118. Supra, footnote 76 at p 9.

119. See C. Cockburn and H. Heclo, 'Income Maintenance for One-Parent Families in Other Countries', Appendix 3 to The Finer Report, supra, footnote 25, paras 131-144.

120. Supra, footnote 119, para 137.

121. Loc. cit.


125. Doyle LJSC in Costello v Somers, supra, footnote 123 at p 220.


128. Supra, footnote 127 at p 91.


130. Supra, footnote 129 at p 57.

131. J.G. McLeod, annotation of Director of Support v Couling, supra, footnote 129 at p 53.


133. cf 'Child Support Report', published by the Office of Child Support Enforcement in the U.S.A., which periodically gives league tables of recovery by different states. One danger is that orders from other states will receive a low prioritisation because the particular office will receive no credit for the enforcement of the 'foreign' order.

134. R.S.B.C. 1979, c 121.

135. Supra, footnote 4 at p 21.

136. Supra, footnote 114 at p 220.

138. Supra, footnote 137 at p 1,626.

139. The Finer Report, supra, footnote 25, para 2.4.

140. Supra, footnote 5 at p 119 et seq.
CHAPTER 5
LIMITING THE IMPACT OF JUDICIAL DISCRETION

In the previous chapter, it was argued that the financial problems of single parent families would not be solved merely by putting in place a system designed to ensure prompt and full payment of maintenance orders. The reasons put forward were that such a mechanism does nothing for those who are potentially eligible for an order but have not secured one and that the State has a material interest in securing compliance with orders which is not necessarily connected with furthering the welfare of the single parent family. Due to the availability of financial assistance from the State, the single parent may have no financial interest in enforcing the order. Whether it is paid or not, the single parent's income remains the same because the maintenance payment and the social assistance payment are set off against each other. Sometimes, as in the U.S.A., there is a disregard: a recipient may keep the first $50 of child support, regardless of the recoupment provisions.  

To develop the argument further, it can be said that enforcement of orders can never provide a solution until earlier steps in the process of securing a transfer of resources are reformed. In particular, the order itself may be inadequate for the purpose which it is supposed to fulfil and similarly situated individuals may be treated quite differently with respect to the amount they are due to receive. The proposition which will be investigated in this chapter is that replacement of the discretionary system of judicial adjudication is
essential if the alleged inadequacy in the amount of orders and the inconsistency of treatment of similarly situated individuals are to be overcome. Without such measures the present system will ensure the continued economic disadvantage of single parents, no matter how high a proportion obtain orders and no matter how efficient and unrelenting the enforcement process.

Would the eradication of judicial discretion be a straightforward task? Problems of co-ordinating a system of fixed standards for calculating child support and perhaps spousal support with a system of discretionary adjudication in connection with property and capital resources are identified in section four of this chapter. Such problems would not only be administrative in character. There are matters of principle such as the extent to which a generous capital settlement should moderate the effect of guidelines for spousal or child support, and whether courts should be empowered to ratify negotiated settlements which embody a less generous transfer of income than would have been the case had rigid guidelines been applied.

Another issue is whether the replacement of judicial discretion should be approached differently in the areas of child support and spousal support. Problems of co-ordination between other areas of the court's financial jurisdiction and guidelines for calculating support may well be more acute where spousal support is concerned. This is because of the need to strike a balance between a spouse's capital settlement and support award. Child support may be regarded, probably wrongly, as an adjunct to the settlement between the spouses rather than an integral part of it, and as a consequence it is a more promising candidate for separate treatment than spousal support.
Child support is also less hemmed in by doctrinal controversy than spousal support. It remains generally accepted that parents should share their financial resources with their children, even when the children have ceased to be in a particular parent's custody. The idea of a life-long duty of support between spouses is no longer so widely held.

Nevertheless, once policy-makers have fixed upon a dominant justification for spousal support, whether it be to tide one spouse over the difficult period after separation or to compensate for economic opportunities foregone, there is no reason why quantitative guidelines could not be established. Therefore, many of the issues examined in this chapter apply equally to spousal support and child support. Examples drawn from North America, and more modern examples, tend to use child support as a model whereas those drawn from Britain focus on spousal support. In blurring the distinction somewhat, it must also be borne in mind that only single parents who are separated (while remaining married) or divorced are eligible for spousal support whereas child support can be claimed by all single parents except widows.

I will consider first of all what is known of the methods of assessment presently employed by adjudicators and whether their methods are responsible for the alleged inadequacy of orders.

1. Present Methods of Assessment

It is interesting to draw attention at the outset to the relative importance which has been attributed to the dissolution of marriage compared with the financial consequences of dissolution in the historical context. Bartrip analyses this question with reference to
the devolution of powers from the judges of the Court for Divorce and Matrimonial Causes to their registrars in nineteenth century England. He recognisesthat pressure of work explains the need for delegation but the order in which jurisdictions were devolved indicates their relative importance, for the judges would tend to retain powers considered more important for as long as possible.

In 1865, the registrars were instructed to investigate pleadings in matters involving maintenance and marriage settlements and to report their findings to the judge. By 1875, the level of petitioning had reached such a level that the registrars were empowered in alimony, as distinct from maintenance, proceedings to 'direct such order to issue as [they] shall think fit'. Similar powers with respect to maintenance were introduced in 1924. The impact of these changes was limited by the centralisation of divorce procedure in London. It was not until 1926 that even a petition under the so-called Poor Persons' Procedure for litigants of limited means could be dealt with in a provincial district registry. From that date onwards, decentralisation proceeded in step with the increasing importance of the role of court registrar, in and out of London.

The interest of Bartrip's historical analysis of the jurisdiction of the English registrar for present purposes lies in the fact that the question of the dissolution of the marriage was retained by the judges. Even with the advent of the special procedure for undefended petitions in 1977, the decree nisi is still pronounced in open court by the judge, although it is the registrar who has conducted the investigation, such as it is, into the facts alleged and certified the petitioner's entitlement to a decree. The judge's other function is
to inquire into the arrangements which the parties have made for the children. On this basis it can be argued, though not very convincingly, that the dissolution of marriage and the welfare of the children are the highest priorities in the matrimonial proceeding, whereas financial matters occupy an ancillary position or, to use the terminology of the Canadian Divorce Act 1985, are a corollary of the divorce proceeding. Bartrip makes it clear that the registrar has not acquired such an important matrimonial jurisdiction by any far-sighted design but rather as a result of the power of the President of the court to make rules for the purpose of arranging the business of the court and the dictates of pressure of work.

During the course of this delegation of functions to the registrars, there are occasional instances of qualms about the competence of registrars to deal adequately with their additional responsibilities. Bartrip refers to the Denning Committee on Procedure in Matrimonial Causes which, in its Final Report, recommended that registrars should not decide ancillary relief matters, yet three months earlier, in November 1946, in its Second Interim Report, it had given the registrars a vote of confidence. Bartrip suggests the change of heart arose from an appreciation of the gravity of the work undertaken by the registrars. Whatever the truth of this, the jurisdiction was not taken away from them and it is their decisions which dispose of the vast majority of contested financial relief matters in England today.

Therefore, if the proposition is that the financial difficulties of single parent families are attributable to erratic and ill-informed decisions at the adjudication stage, it is important to examine the
procedure of those adjudicating at first instance. E.W. Cooey recognises this in his essay 'The Exercise of Judicial Discretion in the Award of Alimony' but remarks that 'the records of the trial courts are almost inaccessible for study, and this necessitates the present approach' which is to consider appellate decisions during the previous year, the opposite end of the judicial spectrum. Since 1939, when Duke University in the USA published its symposium on alimony of which Cooey's essay forms a part, it has become possible for researchers to gain access to records at the trial level and to consider the methods of particular decision-makers. It is proposed to review three such studies with a view to identifying deficiencies in the process of adjudication.

1 The Oxford Study of Registrars

This took place in 1973 and was based on interviews with 81 of the 142 registrars in England and Wales. These interviews were not formal and standardised along the lines of most large-scale surveys and market research, but they were designed to enable the registrars freely to express their views about all aspects of their matrimonial jurisdiction and to permit investigation of opinions raised by the respondents which a strictly circumscribed schedule of questioning would have ruled out. Although the researchers knew which broad areas of the registrars' work they wished to discuss, it was a consequence of the design of the survey that, when results were tabulated, some indications were more significant than others simply because of the varying numbers of respondents who had dealt with the particular point.

What conclusions were drawn about how the decision in a particular financial relief matter is arrived at? For one registrar it was very much a matter of doing the best he could and of 'what one feels rather
than a computerised decision'. For another, more metaphorically, considering the list of factors in s 25 of the Matrimonial Causes Act 1973 'is rather like swinging a golf club - there are so many considerations to consider simultaneously'. These are frank admissions of the limitations of the adjudicator when faced with a wide-ranging list of relevant considerations. The factors are each to be reviewed and prioritised in the light of the facts of the particular case and an integrated view of the whole situation arrived at. It is readily conceded that this is a taxing exercise and one made more complex by the statutory duty, as it was at the time of this survey, to exercise the discretion so as 'to place the parties, so far as is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down'. It is hardly surprising that, rather than dissecting the guidelines, it was found that the registrars sought to take an overall view of the situations with which they were faced.

In the context of such a broad discretion, has arithmetic any place? Is arithmetic too incongruously mechanical to assist in the exercise of a discretionary jurisdiction? In the ecclesiastical courts, a practice had arisen of fixing alimony at the rate of one third of the husband's income, or if the wife also had resources, at one third of their joint incomes. If the husband's property was substantially derived from his wife, more could be awarded. This guideline was adopted by the judiciary in the secular courts when matrimonial jurisdiction was transferred and, though Bromley and Lowe are correct to regard its history as 'chequered', it receives periodic leases of life. In his judgement in *Wachtel v Wachtel*, Lord Denning MR. was
prepared to start his consideration of the relevant factors by using the one third calculation for dealing with income and capital. He justified this by a dubious argument that the former husband's expenses were bound to be greater than the custodial parent's but went on to emphasise that:

'It is only a starting point. It will serve in cases where the marriage has lasted for many years and the wife has been in the home bringing up the children. It may not be applicable when the marriage has lasted only a short time or where there are no children and she can go out to work.'

There followed a period during which the limitations of the simple arithmetical approach were exposed. In Cann v Cann, the former husband applied to reduce to a nominal amount an order of £7 per week for his former wife on the basis that that would be the result of the one third approach. The former husband had some savings but both parties relied on their state old age pensions for income. Hollings J. and Baker P. were agreed that in a case of very limited resources the one third approach was unhelpful in determining how to exercise the discretion. Instead, a broad view was taken of the parties' needs and the parties' incomes virtually equalised, the former husband being required to use some of his savings to cover his expenses.

For cases at the wealthy end of the spectrum, Potter v Potter marks the nadir of the one third approach. This was an appeal against the award of a lump sum of £23,900 to the former wife. The trial judge had arrived at this figure by dividing the joint capital by three, deducting the former wife's capital and discounting to allow for the shortness of the marriage. Ormrod LJ. held that this was not a proper exercise of the discretion, principally because of the difficulty in valuing the capital assets in this particular case though he suggests that the speculative nature of valuation is always to be borne in
mind. Dunn LJ. took a similar line, stating that the Court of Appeal 'has said over and over again that in cases involving the redistribution of capital, the one-third approach is not appropriate'. However, in Bullock v Bullock in 1985, a differently constituted Court of Appeal was prepared to endorse a trial judge who had adopted the one-third approach to capital, though in this case the valuations were more certain and, as Douglas points out in her annotation, the same result may well have been achieved without reference to the one-third guideline. In 1986, Anthony Lincoln J. in Dew v Dew was prepared to use the one-third approach 'as a starting-point from which one could take a bearing in one's journey through the provisions of s 25 of the Matrimonial Causes Act in determining an appropriate lump sum in the case of a wealthy couple.

To return from the appellate courts to the jurisdiction of the registrars, is an arithmetical approach used as a starting-point and a guideline or is it really a useful means of circumventing the onerous exercise prescribed by s 25 of the Matrimonial Causes Act? Is it a short-cut remote from the requirements of the Act? It is interesting to note that one of the registrars, whose approach was always to deal with child maintenance first in any financial relief application, felt that 'the one-third rule is something devised by judges a little bit remote from the realities of life'. Although aware of its limitations in connection with very low and very high income cases, it was found that only ten out of 77 registrars do not usually refer to the one-third approach or never use it. Whether or not it assists as a starting point, what evidence is there that it serves as a finishing point, as a check on the final order? That one-third persists as the relevant
fraction is a demonstration of the tenacity of legal tradition rather than of the appropriateness of one third over other fractions. The flimsiness of its economic basis is clear from Lord Denning's judgement in Wachtel, in which he speaks of the former husband's need for a housekeeper as the rationale for his needing the lion's share of the joint income. It is this quaintness which has given momentum to the use of the one-third approach well into the 1980's despite recurring doubts about its appropriateness in various categories of case. The conclusion to be drawn is that if the guideline is widely used, albeit with varying degrees of conviction, there should be a more serious modern examination of its theoretical justification. In Sansom v Sansom, Simon P. had rationalised it by pointing out that:

'in a typical case the court was concerned with three groups of needs - those of the wife, those of the husband and those of the children for whose support the husband was liable.'

This quotation exemplifies the lack of sophistication of this guideline. No reason is given for thinking the three groups of needs will require equal resources.

The researchers also examined the registrars' responses to particular problems in connection with the evaluation of criteria and, although differences in attitude were identifiable, they conclude that, in the vast majority of cases, the registrars' room to manoeuvre is so limited given the available resources that these differences will rarely become explicit. One area in which divergent opinions were apparent was that of the weight to be given to the eligibility for social assistance payments of the recipient of the order. Despite a direction from the Court of Appeal in Barnes v Barnes that social assistance is to be taken into account only when the proposed order would depress the
payer's resources below the limit of eligibility for social assistance, twenty seven of the sixty four registrars would consider it relevant that the beneficiary of the order was receiving social assistance. Practical considerations required them to do so. Some were astute enough to recognise explicitly how involved public and private maintenance had become. These registrars were willing to make orders a little lower than they might otherwise have done in order to enable the recipient of the order to take advantage of the procedure whereby the maintenance payments are diverted to the State, which makes a full benefit payment to the single parent. They recognised the value of the security of regular payment. Others felt that planning orders with a view to making use of social assistance was an imposition on the State and wrong in principle.

Another special problem is how to calculate the amount of income which a wage-earner has available for support payments. The Court of Appeal's view is that gross figures should be used in any calculations. One registrar regarded this as 'quite unrealistic' and concerned himself 'with what a man has got in his hand'. For the 40 out of 66 registrars who either work exclusively with net income or consider it in conjunction with gross income, there is the additional question of what deductions to make from gross income in order to arrive at a net figure representing income available for the members of the former household. What will be regarded as an essential deduction? The question is rhetorical, for it is plain that registrars have significant latitude with respect to the method of arriving at basic facts, such as income, which are integral to the exercise of their discretion.
A third particular problem for the registrars in evaluating criteria is that of conduct. In Wachtel v Wachtel, Lord Denning MR. had propounded the test of grossness and obviousness for determining whether conduct was relevant. Nevertheless, the researchers found that 32% of the registrars were still taking conduct into account in less serious cases. Though this approach is doctrinally incorrect, the registrars said that it was difficult to dismiss conduct entirely from the mind, especially if it is in the forefront of the parties' considerations and is generally considered relevant in the community where the registrar adjudicates.

A number of conclusions can be drawn from the findings of this study. There are significant variations in practice between registrars, who are the trial adjudicators in the vast majority of contested ancillary relief applications. These variations will influence not only orders made after contested hearings but also orders pursuant to negotiated settlements which are submitted to the registrar for approval. It can be hypothesised that it is as important to be aware of the idiosyncrasies of the local registrar as it is to know about the Court of Appeal's approach to the interpretation of the particular guidelines, for this research discloses that the Court of Appeal's views are not slavishly adhered to in any event.

The final comment is to endorse one of the researchers' conclusions. This is that, even if the differences in the registrars' approaches only rarely lead to significant differences in the outcome, there is no reason why guidance on matters such as the relevance of receipt of social assistance and the method of calculating available income should not be set out in the statute. Differences of opinion on
these two matters alone were fundamental, not technical or peripheral. It is ironic that fifteen years after the publication of the Finer Report, which so clearly identified the consequences of the co-existence of public and private duties to maintain, English legal periodicals are still publishing articles discussing whether social assistance is a relevant financial resource of the applicant for financial relief. It can also be argued that even minor differences in outcome due to varying approaches to the problem of assessment are significant because of the small means of the parties involved. 'The smaller the loaf, the more meticulous the division needs to be.'

Further aspects of the research of Barrington Baker et al lead to the question whether the division can ever be more than rough and ready given the procedures in the registrars' courts. Even acknowledging the variations in time spent from case to case, it is remarkable that only fourteen out of sixty-seven registrars thought that hearings lasted more than half an hour on average. In the majority of cases, lack of time precluded the registrar from reading the papers before the hearing. It was acknowledged that the affidavits on the court file may in any event be out of date and unreliable, but the extent to which discovery of documents with a view to verifying factors such as income was insisted upon varied. Given the disadvantages of documentary evidence, it is surprising that, whilst forty registrars considered it an advantage to them to have the parties present for oral examination, thirteen registrars saw it as a disadvantage. One of the latter group felt that solicitors could reach the point quicker and waste less time. It could be, therefore, that some registrars will abandon a quest for the best available evidence in the interests of the efficient
functioning of the courts. Alternatively, the results disclose a divergence of opinion with respect to the value of documentary and oral evidence in this context.

It would be interesting to learn whether, 16 years after this study, the practice of registrars has become more standardised and the procedure more rigorous. Certainly, the writer's recent experience with respect to the procedure of registrars in the north-west of England is different from the results of the survey. Contested matters are almost always investigated for longer than half an hour and the presence of the parties is required. Hearings are also occasionally required for approval of a settlement if one of the parties is unrepresented. There is the possibility that matters not involving legal representation are dealt with more expeditiously and that the writer's impression is irrelevant to a large number of cases. However, it is felt unlikely that problems arising from the process of adjudication are to be attributed to registrars adopting procedural short-cuts.

This study was undertaken in 1978 and involved a review of a random sample of 287 child support matters before the District Court in Denver, Colorado. In all cases, the parents were resident in different counties and the matters were brought before the court pursuant to the Uniform Reciprocal Enforcement of Support Act. It was the practice of the court to assign such matters, as a general rule, to two domestic relations judges. The variable of the lawyers' different abilities was controlled to a large extent because all petitioners were represented by the author or her fellow district attorney. The hypothesis was that variations in the range of the orders could be explained with reference to one or more
of the following six variables: the income of the non-custodial parent, the judge, the non-custodial parent's attorney, the district attorney, the season of the year and the non-custodial parent's expenses. Her conclusion was that orders were not made consistently but that none of the six factors could explain the variation. What might be more important is how the judge, the attorneys and the respondent react to each other. If this is so, not only does it seem quite arbitrary but, as the author points out, it is also unfair because only one of the parties, the respondent, is personally before the court to make a good or bad impression as the case may be.

Even if the reasons for variations in the adjudications remain obscure, what was the scale of the observed differences in decisions? With respect to the non-custodial parent's income, it was observed that the percentage of income paid for one child varied from 5% to 41%. The data does not suggest that this is due to the judges' adherence to a policy that the non-custodial parent need only meet the child's needs up to a certain basic standard, which would lead to wealthier parents being ordered to pay a smaller proportion of their income.

It is suggested that the specialist domestic relations judges were less predictable than the other judges, none of whom were specialists. This may indicate the specialist judges' concern to be as independent of the district attorneys as possible and their greater confidence in their ability appropriately to depart from the established path in certain cases. However, the specialist judges' decisions after contested hearings are relatively consistent and predictable. It is when their orders approving settlements negotiated by the parties are considered that a wider range of decision-making emerges. This is not indicative
of erratic adjudication but of an unwillingness to interfere with settlements with which the parties themselves are happy.

It is interesting to note that the greatest range of variation was found in the negotiated settlements, and this is particularly so when bargaining power is somewhat unequal, as it will be when the respondent has no legal representation. Although the predicted result will probably influence the course of negotiations, this observation concerning the inconsistency amongst settlements should lead to some reticence about whether it is erratic adjudication that causes similarly situated individuals to be treated differently in support matters.

This study also has some interest for those who advocate the introduction of scales with reference to which the amount of support can be fixed. In 1973, some five years before the study, guidelines were propounded for reference purposes only by a judge who had died by the time of the study. Yee found that these guidelines had had little effect. On average, non-custodial parents were paying 57% of the amount recommended for two children. The guidelines recommended a differential between orders for one child and orders for two children of 87% whereas in practice the differential was 28%. The mere existence of guidance does not standardise practice. Perhaps it is necessary to give guidelines a higher status than merely recommendatory and to generate accountability between those laying down the guidelines and those using them if the two groups are different. In Denver, it may have been that the absence of the judge who devised the guidelines enabled the judges to disregard them without embarrassment.
The purpose of this study was to discover if judges adhered to any financial or economic principles in exercising their discretion in child support and alimony matters. From 1971 to 1974, 532 cases were analysed including eighty which did not involve children. White and Stone concluded that the statute governing the exercise of judicial discretion was aiming to establish some form of objective procedure but that this had not been achieved. With respect to child support, they observed inconsistency amongst the judicial body as a whole, though it appeared that each judge was consistent as to his own approach. Not even this individualism was discernible when it came to alimony determinations:

'[J]udges were not themselves clear as to what variables should be used to constitute an alimony model.'

To draw together the observations from these three studies of first instance adjudicators, the dominant theme is lack of consistency. This may be evident in the way particular recurring problems, such as receipt of social assistance and matrimonial misconduct, are dealt with, in the procedure adopted for discovering facts and hearing the case or in a comparison of treatment of apparently similarly situated individuals. What is also demonstrated is that this inconsistency persists notwithstanding statutes that set out a range of actions for the court's consideration and, in the case of the Matrimonial Causes Act 1973 at the time of the research of Barrington Baker et al, an objective for the court to aim for in exercising its discretion. The inconsistency may also survive the introduction of recommendatory guidelines if nothing further is done to render such guidelines acceptable to the judiciary.
More fundamentally, all three studies come to the conclusion that inconsistency is a matter of serious concern. Barrington Baker et al., whilst believing that differences in approach will usually not affect the outcome materially, nevertheless propose that 'areas exist where guidelines might be more clearly or more successfully laid down'. Yee advocates taking time 'to establish fair, consistent standards to be used in establishing support orders, so that all children and all fathers would be treated equally'. White and Stone claim that an econometric model would be valuable in minimising inequity.

Yet how valuable are certainty and predictability of adjudication in this branch of the law? How crucial are they to the future well-being of single-parent families? One argument why consistency is valuable in itself is that it leads to greater efficiency in the disposal of matrimonial cases because settlements are encouraged. Litigiousness can be reduced if eventual outcomes are more easily predicted. Not only the State benefits from efficiency in the courts. Those cases which cannot be settled will be adjudicated upon sooner to the greater satisfaction of those involved. The parties also have an interest in settling the matter to save time, money, anxiety and the strain of continuing, exacerbated conflict. Therefore, any factor which conduces to the settlement of disputes is important to the welfare of the single parent family.

Allied to this point is the argument that, if decisions are made in accordance with well-known and accepted standards, the parties are less likely to believe they have been poorly treated and compliance with the terms of the order may be rendered more probable as a result. The less surprising the final outcome, the more likely it is to be accepted as
proper. Likewise, fewer litigants will be tempted to press on in the hope that they will obtain a windfall in the lottery.

Wexler questions whether we take 'the injustice of defeated expectations too seriously'? Even if the above suggestions about litigants' responses to a relatively certain outcome are correct, is the operation of rules leading to rigidly consistent adjudication to be unequivocally welcomed? It is implicit in the above outline of the benefits of consistency that people will more readily comply with an order if they feel it is in accordance with established standards and has been arrived at by a recognised procedure. Wexler argues that this association of rules with justice and the tendency to view discretion as especially susceptible to arbitrariness are both mistaken. He believes that:

'rules can work effectively in the situations where the differences between people can be ignored, where the factual situations to be regulated are fairly well known in advance, and where the policies behind the rules are relatively clear and non-contradictory.'

On this analysis, disputes over support obligations do not lend themselves to resolution with reference to rules. To seek to do so might lead to a failure to distinguish properly between cases and to group together cases which do not belong together. Where is the virtue in using rules which are too rigid to categorise matters adequately?

Wexler's argument is that consistency of approach is worth striving for but that rules will not achieve it. Limiting judicial discretion in these cases is to imply that there is a correct answer towards which the judge can be pushed. As Asquith LJ. remarked in the English Court of Appeal in Bellenden (formerly Satterthwaite) v Satterthwaite, it could be that 'widely different decisions' could be reached on the same
evidence without either being wrong. However, what is to be said against the dogged pragmatist who concedes that there may be a range of notionally correct answers but insists, contrary to Wexler, that the 'defeated expectations' of litigants are to be taken seriously because of the need to foster a constructive continuing relationship between them? It can be argued further that the requirement in matrimonial litigation to promote satisfaction with the outcome can justify a selection from amongst the range of correct answers of the answer which best fits the policies of the State towards matrimonial breakdown. The virtues of consistency as a goal in itself are such that the policy choices should be made by the legislature, thereby cutting down the range of possible outcomes. It will be examined subsequently how this might be done with a view to furthering the welfare of the single parent family.

To summarise, the conclusion to be drawn is that it is correct to be concerned about the inconsistent exercise of discretion and that consistency is likely to promote the welfare of single parent families, regardless of the particular standards employed, to a greater extent than inconsistency.

2. Problems of Adequacy of Orders

Thus far, the benefits of consistent adjudication have been discussed in the abstract. If it is proposed to devise a model for support awards with a view to its comprehensive application, it is clearly of crucial importance to have an idea of what is adequate provision for a single parent family. For some, limiting judicial discretion in this field is an opportunity to ensure adequate standards
of support for, in the past, so it may be argued, awards have been consistently too low.

If this proposition can be shown to be true by empirical investigation, it clearly provides the rationale for the legislature to circumscribe the ambit of judicial discretion with a view, in the words of Ronald Reagan's 1983 Presidential Proclamation, to placing 'the financial responsibility where it rightly belongs - on the parent who has been legally ordered to support his child'. The obtaining of more funds from the non-custodial parent is the chief aim of the Child Support Enforcement Amendments 1984 which provide, amongst other matters, for the establishment in each State by October 1987 of quantitative standards with reference to which the amount of child support can be calculated. 89

As was noted in the previous chapter about enforcement of orders, an approach to the financial problems of single parent families which seeks to impose greater burdens on the non-custodial parent proceeds in the belief that there is money available. The Finer Committee in Britain doubted the ability of non-custodial parents to pay more 90 and recognised 'that most one-parent families could not subsist on the proceeds of the maintenance orders, or on any amount to which it would be possible to increase them'. 91 Harris, McDonald and Weston's review of the Australian Institute of Family Studies' research in Victoria in 1984 suggests, on the other hand, that there is scope for 'a sharp increase in levels of maintenance while leaving most non-custodial men better off than they had been during the final year of their marriage'. 92 The capacity of the non-custodial parent to make greater provision for the former household is an issue which has received different analyses according to time and location.
What is perhaps more important to appreciate in the present context is that greater provision by the non-custodial parent may lead not to more adequate levels of income for the custodial parent but to more acceptable levels of recoupment of welfare expenditure by the State. It can be argued that this is especially likely to be so if a state agency, which also has responsibility for enforcement of orders, assists the custodial parent in settling the support claim. In Sweden, the child welfare officers have an important role in establishing paternity and fixing a figure for child support to be paid by the father. This leads to a very high proportion of fathers having orders against them with respect to their children born out of wedlock. In Sweden as a whole in 1968, 92% of fathers whose children were receiving public assistance were subject to an order.

In the U.S.A., Takas claims to have identified a tendency on the part of some Offices of Child Support Enforcement to negotiate a settlement on the mother's behalf which is just less than her welfare entitlement. This has the advantage of retaining the family's eligibility for the benefits such as Medicaid. However, an artificially low settlement is disadvantageous when the single parent's source of income changes to earnings. These points could equally well be made concerning the preparedness of some of the registrars in England and Wales interviewed by Barrington Baker et al to reduce orders slightly below the level of welfare payments. In both cases, the government is able to recoup its expenditure, which is one of the chief aims of the agencies involved.

So far, two possible causes of inadequate provision, lack of money and the policies of state agencies charged with enforcing obligations,
have been identified which are not connected with the exercise of judicial discretion. A third cause, again not connected with the initial fixing of the amount of support, is the failure of orders to keep pace with inflation and the rising costs of children as they grow older. The reasons why orders are permitted to devalue are complex and, in some aspects, akin to the reasons why single parents do not enforce their support orders. The costs of regular variation proceedings over the life-time of an order in terms of legal fees, time and energy may, in the minds of many single parents, outweigh the likely benefits. In England, for example, proceedings to vary an order pursuant to s 31 of the Matrimonial Causes Act 1973 involve a review of all the matters which would be taken into account were the application for a first order. This is quite proper, but it emphasises that variation proceedings are not necessarily an easier or more manageable undertaking than the original financial relief proceedings. If the onus is placed on the single parent to up-rate the order every three years or so, it should come as no surprise that orders which, when issued, may have been quite substantial make a minimal contribution to the welfare of a teenager twelve years or so later.

Williams illustrates the problem with respect to Delaware which, in his estimation, has 'an unusually accessible court system'. In 1985, 58% as many variation applications were received as applications for new orders, whereas variations should outnumber fresh applications if existing orders are being regularly reviewed. A further indication of the scale of the problem can be gleaned from Williams' description of the modification programme for welfare cases in New Jersey. The continuing appropriateness of orders more than two years old was tested
with reference to the New Jersey guideline. This administrative procedure led to modification hearings which increased the amount of the order by an average of 2.23 times.\textsuperscript{100} These examples demonstrate the potential for constantly improving the adequacy of support awards. At present, however, the single parent or indeed the paying parent is faced with an often arduous task which he or she may have little stomach for.

This brief survey of possible causes of inadequacy in support orders is necessary to illustrate that alleged deficiencies cannot always be attributed to the process of adjudication. This is not to say that the adjudicators survive scrutiny without criticism. Chambers draws attention to the development of practices in the Michigan courts for fixing child support which have arisen out of custom rather than knowledge of expenditure on children.\textsuperscript{101} To the best of his knowledge, the approach of the Michigan courts was resulting in orders higher than elsewhere in the USA, when the amount of the order is compared with the non-custodial parent's earnings.\textsuperscript{102} Nevertheless, the prior standard of living of the children was not maintained, even if the order was paid.\textsuperscript{103}

Those who criticise the amounts ordered for the support of children deploy as their principal argument the suggestion that decisions are taken in ignorance of the out-of-pocket costs of raising a child and of the total expenses of the household in connection with the child, which include the income-earning opportunities foregone by the custodial parent due to custodial responsibilities. For example, Espenshade remarks on 'the apparent haphazard nature by which child support is meted out,'\textsuperscript{104} and praises Delaware as an example of a jurisdiction which has conceptualised its strategy with respect to child support and
established figures for minimum needs. Household economics is a technical subject and not a matter of common sense or worldly knowledge. One of the purposes of Espenshade's study of 8,547 households across the USA is to educate parents about the likely levels of their parents and future expenditure on their children because 'most people are grossly misinformed about the economic liabilities of rearing children'. Weitzman, in her analysis of the divergent economic fortunes of men and women under the no-fault divorce regime in California, regards Espenshade's figures for the costs of raising children as conservative but useful for indicating the low level of support being ordered.

So far in this chapter, it has been attempted to offer a diagnosis of some of the problems of determining support entitlements at first instance and, where appropriate, it has been pointed out how matters which might appear to indicate poor adjudicative practices might be explicable with reference to other factors. It is now appropriate to be more than descriptive of the present and to offer an analysis of how these methods are being improved.

3. Reform of the Process of Calculating Support

In this section, consideration will be given to a number of proposals to guide adjudicators towards particular solutions within the range of possible solutions. The adjudicator's field of choice can be limited by, for example, weighting the relevant considerations for him or her rather than allowing him or her to attribute varying degrees of significance to the factors according to how the facts of the case are perceived. It would be wrong to regard the impetus to extract much of
the element of discretion from the process as exclusively American in origin but there is no doubt that the Child Support Enforcement Amendments 1984 and the obligation upon States to establish quantitative guidelines have concentrated American minds on the problem. The discussion will focus first of all on proposals to accord greater weight to the cost of raising children and how this can be calculated and shared.

1 Emphasising costs and expenditure

It is important to be clear whether the discussion is limited to out-of-pocket costs on food, clothing, transport, shelter, recreation and so on, or whether the foregone earning opportunities involved in spending time looking after children are to be considered in addition. This immediately raises a dilemma, which will be mentioned further below, for those who would seek to reform one element of the process of financial adjustment after divorce. How are the issues of matrimonial property, spousal maintenance and child maintenance to be kept separate? How can the costs of children be separated from those of the caregiver? How can support be offered to one member of a household without affecting other members? The solution to this problem of categorisation of need and cost has been to attribute the opportunity costs to the spouse and apply somewhat different policies to the treatment of this less tangible expenditure. The spouse's loss with respect to time spent in caring for children rather than in economically rewarding activities is not within the ambit of child maintenance. There is no compelling justification for this compartmentalisation and Giampetro is correct to criticise so-called cost-sharing formulae which omit this head of expense.
There are other problems with relying too heavily on data concerning the costs for children. It may be that the cost of raising children within an intact household cannot meaningfully be translated to the situation after marital breakdown. Too devoted an adherence to figures derived from studies of two-parent households may lead to inaccuracies in constructing schedules for child support awards. Clearly, the duplication of expenses involved in running two households will lead to an increase in total expenditure but by how much and to what extent is the increase referrable to the children's expenses? Chambers suggest that, to 'maintain the same standard of living, total income of the two parents will have to rise between 10 and 25 percent'. This is a broad range but, as with all the factors which comprise the deceptively simple concept of cost, an underestimation of its importance would lead to a greater share of the burden of the child's upkeep falling to the custodial parent. If cost cannot be comprehensively defined, it is inevitable, no matter how fairly the costs figure is divided, that charges of inadequacy will again be raised. An item of expense left out of the calculation of cost is likely to be an item paid for totally by the custodial parent.

It is argued that the main appeal of a formula based upon cost lies in the simplicity with which it can be operated once the problems of its design are overcome. If the non-custodial parent's obligation is that proportion of the cost which his income bears to the total of the parents' incomes, very little information is required to arrive at the appropriate figure. For White and Stone, this is a great advantage of such models. Adjudicators simply fit the cases into the model and the savings in time are immense. Indeed, simplicity of operation is
relevant to the whole process of decision-making. If fixing child support is only a matter of relating two people's incomes to a schedule of expenses, it ceases to be an adjudication and a matter for judicial determination. Removing discretion in the process could easily open it up to administration by a bureaucracy, which is another issue of policy entirely.

Once the formula becomes more sophisticated, it is less easy and more time-consuming to apply. Bergmann would go beyond a division of the out-of-pocket expenses in proportion to income by crediting the custodial parent with the monetary value of one half of the unpaid personal services which that parent has given the child. This is explicitly to recognise that the custodial parent is doing the work of both parents. No doubt the formula could be further refined to cope with arrangements for joint parenting. What is significant is that Bergmann chooses to deal with the issue of unpaid services by adding it to the division of costs as a separate item rather than subsuming it within a formula which divides costs, liberally defined to include the cost of work in the home, in accordance with the time spent with each parent. As Giampetro points out in her criticism of Franks' attachment of significance to how the child divides his or her time, this is unrealistically to assume that a parent's contribution to the cost of a child's clothes, shelter and other fixed expenses varies proportionately to how much time is spent with each parent.

What can be drawn from Bergmann's proposal is that, in seeking to recognise a particular aspect of the problem and to devise a system which gives it proper weight, greater complexity is inevitably introduced into what was previously a relatively simple exercise,
rendering it potentially very difficult to use. Presumably, this difficulty could be reduced by devising a schedule of the value of unpaid personal services which, whilst open to criticism, would avoid the need to receive expert evidence on the point. To adopt the tenor of Giampetro's argument, the formula will only promote certainty to the extent that the terms are certain and uncertainty only keeps the door ajar for judicial discretion to come to the fore once again. Admittedly, Bergmann's division of costs strives for fairness, not certainty, but it is surely true that terms like 'income' and 'personal services' require subsidiary formulae for the purposes of definition in order that whatever purpose the designer of the formula had in mind can be achieved.

Contrasting to this broad approach to the child's situation within the single parent family is White and Stone's attempt to allocate weightings to the consumption rates of the members of the household. They seek to evaluate the economic impact of an individual's presence in the household. In this way, the needs of each member of the intact household can be determined relative to all other members and this scale of need can be directly employed on marital breakdown, allocations being determined not in accordance with the numbers in the household but in accordance with the weightings derived from the scale.

There are problems with this attractively simple approach. There is the danger that Bruch's warning of the inadequacies in our economic knowledge with respect to the different costs in two-parent and one-parent families will not be taken sufficiently seriously. Further, how is the choice of commodities and services to be made for the purpose of devising the index, given that it may be impossible to measure everything?
This is raising once again the problems surrounding the issue of cost. Espenshade found 'great variation [in parental expenditures] depending on the parents' socioeconomic status ... , number of children, and wife's employment status'. He does, however, go on to report that the fraction of family income committed to the children does not vary much with socioeconomic status but does vary with the number of children. This pattern has been utilised in some states which have established guidelines based only on the non-custodial parent's income and the number of children. Wisconsin and Illinois both employ systems which set fixed percentages of the payer's income, depending on how many children there are.

However, if the children's standard of living is to be maintained, a greater percentage of joint income may have to be committed to them than was the case in the two-parent household. Maintenance of the prior standard of living is in many instances an unattainable target and the question arises as to what standard should be substituted. There is no logic in choosing a minimum acceptable standard rather than any other. However, the fear has been expressed that focusing on the costs of raising children when fixing general standards for child support will lead to the establishment of the notion that there is a basic cost of children. The lowest common denominator will be sought and, Cassetty predicts, these amounts will come to be seen as 'all that are necessary, fair, and reasonable'. Weitzman believes that too much emphasis on costs leads to 'a welfare-like basic-needs approach to raising children'.

Yet this need not be so if a cost-based formula is subtle enough to respond to factors such as the influence of socioeconomic status by
dealing with percentages of income rather than absolute figures. Neither need the heads of expense to be taken into account be limited to the necessities of life. However, if the concern is to enable the single parent family to share in the non-custodial parent's standard of living which, if he has no new dependants, may well have improved within a short time of divorce, consideration should be given to the possibility of a resource-sharing model.

11 Emphasising a sharing of resources

Isabel Sawhill, an American economist, has provided an exceptionally lucid account of the possibilities of this approach with a view to discovering how far transfers of income at the present day fall short of her ideal and to promoting the marginalisation of judicial discretion within the process.\(^{128}\) The guiding principles are that children's standards should not decline after the parents separate but if, as in the vast majority of cases, the loss of the economies of scale of the two-parent family renders this inevitable, available resources should be shared on the basis of household size.\(^{129}\) This is to seek to compare standards of living with some former tie rather than with an absolute level. It has been argued that it is erroneous to regard this as a distinguishing factor between the resources-based and the costs-based models, for there is no theoretical inevitability in the selection of a lowest common denominator for child-rearing expenditure.

However, the requirement to dissect household budgets and to attribute items of expenditure to particular members of the household is diminished in importance, particularly if the division of resources according to household size is performed in an unsophisticated manner, simply on numbers present rather than on the basis of rates of
consumption of particular items. Indeed, critics of those who advocate the promulgation of guidelines founded on the sharing of resources have suggested that it is the elusiveness of an adequate definition of cost rather than any particular attraction of the resource-sharing model which has led them to adopt this approach. 130

Another criticism goes to the heart of the model. It is that the parents should not be expected to share their resources after separation. 131 Particularly, it is debated whether resources should be shared between the parents. If there is little attention paid to the needs, consumption rates and general economic impact of particular individuals, it is inevitable that the resulting model will address maintenance of the household rather than maintenance of the children within it. It is submitted that this in fact accords more closely with the realities of the situation. Maclean and Eekelaar are right to lament the English Law Commission's failure to review family support as an option, 132 thereby melding the concepts of spousal and child support into a more coherent whole and answering the complaint of the non-custodial parent who claims that payments designated for the children benefit the custodial parent. Whatever its theoretical appeal, the concept of maintenance payments 'to the household' is out of step with a legal tradition which has distinguished between the bases for spousal and child support and is now favouring the severance of financial relations between the spouses at the earliest opportunity. It should not be forgotten that the immediate concern of States in the USA is to devise guidelines specifically for the support of children rather than for the household as a whole.
In Delaware, where the so-called Melson formula has been implemented, a compromise between emphasising costs and emphasising resources has been sought. The obligation to the child is divided into a basic entitlement, which includes child-care expenses related to the custodial parent's employment and extraordinary medical expenses, and a standard of living allowance. This is a proportion of the income remaining after deducting the parents' own basic needs allowance, the child's basic entitlement and allowances for any new dependants. The model can also be adjusted to cope with joint physical custody. It is important to note that, although new dependants are recognised, they are prioritised lower than the first family which is assured the standard of living allowance out of the non-custodial parent's remaining income.

The question for designers of schemes which go beyond assuring a minimum standard is the extent to which this sense of priorities can be inculcated into the payers. This subject was discussed in the previous chapter.

iii The desirability of a quantitative standard

Weitzman's research in California revealed that 60% of the judges claimed that they consistently relied on the advisory guidelines propounded by the Los Angeles Superior Court in 1978. These guidelines suggested ranges of support awards appropriate to particular income levels. What concerns Weitzman about the establishment of guidelines throughout the USA is that her observations lead her to conclude that they can depress the level of awards. It appeared that the top of the range was regarded as a ceiling and consequently it was rarely reached, whether in contested hearings or in negotiated settlements. Solutions might be to limit judicial freedom to
manoeuvre within the set range, to use proportions rather than figures or, as Weitzman herself suggests, to set the ranges higher. That there might be an effect such as that described by Weitzman does not make guidelines undesirable, but it does emphasise the importance of monitoring for unanticipated consequences.

What should be the status of the quantitative guidelines? Is there to be a residual role for judicial discretion? The temptation is to try to reproduce the best of both worlds: established standards with the possibility of a more flexible approach in the exceptional case. This is presumably why States have favoured the implementation of guidelines which are presumed to apply unless the parties can show cause why they should not, or perhaps unless the court of its own motion rejects the outcome according to the guidelines. The argument in favour of a rebuttable presumption that guidelines apply is that an escape route is provided when the rigid application of the guidelines would lead to an unfair result. Williams cites the terminal illness of the payer as an exceptional circumstance but, if the guidelines take into account the payer's income and basic needs, it is not immediately obvious why this case should be set apart. More convincing is the example of the teenager who has left school and is in work but, here again, surely the guideline itself could contemplate the child's earnings. It is not disputed that the notion of limiting judicial discretion by implementing guidelines makes it less likely that the nuances of the individual case will be reflected in the result. The question is whether, having removed the power of the adjudicator to tailor outcomes to particular cases, the policy should be blurred by returning it in a different package, namely the power to determine that a case is out of the ordinary.
O'Donnell recognises this problem in commenting on the Oregon Supreme Court's decision in Smith v Smith. Whilst providing a formula with a view to promoting consistency in the lower courts, the Supreme Court would allow for the modification of the result in the light of policies enunciated in earlier cases. Too ready a resort to those modifying factors undermines the purpose of the formula.

How difficult will it be to rebut the presumption that the guidelines apply? Different standards for this initial hurdle can be envisaged. The adjudicator could be left at large to designate cases as exceptional or there may be a standard of unfairness, perhaps with reference to a list of factors. The latter is the scheme of s 51 of the British Columbian Family Relations Act in the different context of division of matrimonial property. It is interesting to note that Anderson J.'s restrained approach to the use of his power to depart from the formula of equal division of family assets in Margolese v Margolese was over-ruled on appeal in favour of a broad discretion to divide the assets fairly. The purpose of citing this example is to suggest that it would not be difficult for an activist judiciary to bury the presumption that the guidelines apply simply by taking a lenient view of what constitutes exceptional circumstances or unfairness or whatever initial hurdle is put in the path of the party seeking to depart from the prescribed course. This capacity of an unsympathetic judiciary to undermine the purpose of implementing the guidelines leads to the conclusion that the guideline should be mandatory. No State in the USA has yet gone this far. Involved in this conclusion is the proposition that it is worth arriving at some imperfect outcomes, which could have been improved upon by the judicious exercise of a residual
discretion, in order to preserve clarity of approach. The problem lies in defining the degree of imperfection which can be tolerated in the pursuit of a general clarity. Designing a guideline of universal application is extremely problematic. In England, the simple one third approach was rejected in cases where the parties had very low incomes and has been disapproved of in cases at the wealthier end of the spectrum. In Oregon, the Supreme Court, in putting forward a formula based on a division of costs of the child in Smith v Smith, made it clear that the formula was not designed to be applicable to cases in which the Support Enforcement Division was seeking to recover funds disbursed by the State on welfare payments. In the latter cases, the Division's own formula, based simply on a percentage of the non-custodial parent's earnings, remained appropriate. The courts must at least be conceded the leeway to depart from the guidelines in the light of its other orders for financial relief in the particular case, though this deviation could itself be constrained by guidelines. For example, capital could be notionally converted to income and deducted from what would otherwise be the weekly entitlement.

If adjudicators are to have no scope to depart from the solution dictated by the guidelines, are the parties themselves to be similarly limited? What is the position of an adjudicator who is asked to approve a settlement which does not conform to the guidelines? The answer to these questions will depend, especially in low income cases, on the extent to which the interest of the State in minimising its expenditure on the single parent family is upheld. For example, it may be considered contrary to policy to approve a settlement below the level dictated by the guidelines, even when this would have no effect on the
single parent family's income, because to do so permits maintenance to become a public liability. The court might also be tempted to intervene if it felt that the settlement paid insufficient heed to the children's interests, quite apart from the issue of state expenditure.

It is argued that to limit the parties to the solution dictated by the guidelines would be unjustifiably to circumscribe the process of negotiation. It is preferable that matrimonial disputes are resolved by negotiation because so much of the parties' and the court's time and expenses can be saved and because adherence to an arrangement which has not been imposed may be more likely. Therefore, it is important to promote settlement and to allow the parties themselves to invent their own solutions to the problem. It may be an obstacle to this process to render certain items incapable of negotiation. Given that the parties must have the freedom to negotiate outside the guidelines in order to ensure that voluntary solutions are promoted in all cases, the court must be given the power to endorse settlements which do not adhere to the guidelines. Otherwise, the negotiation process is thwarted.

Is there a flaw in this approach which permits departure from the guidelines outside the process of adjudication but not within it? If the adjudicator's approach to a particular issue is known within a small margin for error, is there any incentive to negotiate about it? It is submitted that incentives to settle for less than the figure which it is known would be achieved at trial can still exist if one party wants more of another item, for example the house. However, the propriety of this approach can be questioned with respect to child maintenance if this item is viewed separately from the total accumulated by the single parent family. This discussion involves another issue, however, and
that is the basic question of co-ordinating the use of formulae for calculating child and possibly spousal maintenance with the remainder of the discretionary financial relief jurisdiction.

4. Who should use the Guidelines?

In the field of taxation, it is accepted that assessments to tax based on often complex formulae will be rendered by the bureaucracy of the State rather than by a judicial body. The same goes for the assessment of entitlement to social security allowances. Once discretion is marginalised in connection with the assessment of support obligations, is there any longer the need to keep it a judicial preserve?

It can certainly be argued that the nature of the exercise makes it better suited to administrative action. The Finer Committee advocated allocating the task of assessing maintenance to the Supplementary Benefits Commission which they considered 'better suited in the normal run to discovering the facts regarding the finances and circumstances of each of the parties and making consistent decisions'.¹⁵² Their report cites the otherwise unreported decision of Payne J. in Winter v Winter which is to similar effect.¹⁵³ Although the court has procedures for discovery of documents, they can prove expensive to use when faced with a recalcitrant non-custodial parent. This leads Payne J. to prefer the Commission which 'has officers skilled in making enquiries and facilities for obtaining relevant information'.¹⁵⁴ The research of Barrington Baker et al also casts doubt on the efficacy of judicial procedures for obtaining relevant information.¹⁵⁵ It is interesting to note in the context of extracting information the punitive provision of
s 60(2) of the British Columbia Family Relations Act whereby the court is authorised to order up to $5,000 for the benefit of the applicant if a request for disclosure is not complied with reasonably. This provision is a recognition of the need to foster the expeditious disposal of matrimonial proceedings and, to put the point another way, an acknowledgement of the possibility that applicants for support can be worn down by procedural battles prior to the determination of their applications for support.

A further reason why administrative agencies may be better suited to the task is that it is possible to conceive of the assessment as simply the first stage in the integrated process of tracing the non-custodial parent and enforcing the award. If there is an enforcement agency, it may be thought wasteful not to use resources already in place for the purposes of assessment. For example, the process of determining the rate at which arrears are to be reduced involves similar exercises to the process of assessing the order in the first place. The defaulter's income has to be ascertained and present obligations prioritised. Allocating the task of assessment to such an agency may not be to herald radical reformation of the agency for the means to perform the task may already be largely in place, especially if the guideline is relatively straightforward.

What is there to be said against a transfer of functions, if it is accepted that a bureaucracy is capable of using the particular guideline? In the case of the non-custodial parent whose payments will simply diminish the expenditure of the State on the single parent family, it should be welcome that the procedure would be considerably simplified, the number of agencies involved diminished and the interest
of the State in reimbursing itself made explicit. This process is the privatisation of the State's role as maintainer of the single parent family.

The circumstances are not so straightforward when the guidelines operate so that the non-custodial parent has to pay an amount in excess of the State's expenditure. Eekelaar is right to caution against '[t]he harnessing of bureaucratic power on the side of one party in a dispute over private rights'. What is the agency's interest in doing more than ensuring that it is reimbursed? The issue turns on the degree to which the non-custodial parent is to be subject to the exercise of discretion, notwithstanding the implementation of the guidelines. If the guidelines are mandatory and cannot be deviated from, it cannot matter who makes the calculation. The legislature has already established a rigid framework. However, if there is only a rebuttable presumption that the guidelines apply or if they are merely advisory, there is scope for the non-custodial parent to argue that the application of the guidelines is inequitable. In these circumstances it might be thought harsh to place the onus of putting the matter before the court on the non-custodial parent. In an argument between two private parties, a State agency adopts a partial position. It will be observed that this point does not have the same force when the disputants are the non-custodial parent and the State for in this case the State has its own financial interest to protect.

Is it important to distinguish between those cases where the State acts on its own behalf and those where it is acting on the single parent's behalf for the purpose of deciding whether the function of assessment should be carried out administratively? If the guidelines
are not to be mandatory, the best way to preserve the even-handedness of the State is to oblige the administrative agency to transfer to the courts any cases where it does not think the guideline should apply, but the bureaucrats should have no power to depart from the guidelines in their determinations. The non-custodial parent should also be able to apply for a complete re-hearing in the courts on the ground that the guidelines should not have been applied. It is not believed that placing the onus on the non-custodial parent to do this is unduly prejudicial.

The other principal argument against transferring assessment of support to an administrative agency is that it would fragment and disrupt the decision-making process in financial relief applications in which matrimonial property and lump sum provision are in issue. In areas with high rates of owner occupation of housing, this is an especially cogent argument. There will, of course, still be many cases in which there is no property involved and lump sums, whether used to set off uneven property settlements or as a capitalisation of an admitted maintenance entitlement, are out of the question due to lack of capital. In these cases, the administrative agency will deal with the entirety of the financial relationship between the former spouses and between them and the State.

Does any problem arise if the formula is concerned only with child maintenance? In this situation, it can be argued that the administrative agency is not dealing at all with the financial relationship between the former spouses but with the separate question of the non-custodial parent's liability to the children. Consequently, the agency's determination of the level of periodical payments can
simply be tacked onto the settlement between the spouses. If this were the case, 'the total financial balance between the parties' would not receive consideration as an entirety unless the child maintenance had been worked out first. This, in fact, is what will happen in the majority of cases for the single parent family will need income immediately that the separation takes place whereas property provision is not of such immediate concern. Therefore, by the time property comes to be negotiated, the non-custodial parent's liability to the children, or to reimburse the State, will be known and the needs of the single parent's household assessed in the light of it. This would go some way towards curing the artificiality inherent in the system proposed which makes a formal and procedural distinction between the needs of different members of the same household.

Harris, McDonald and Weston would criticise this approach for failing to give sufficient prominence to the possibility that the children's needs will be recognised in the property settlement. Their need for long-term residential security might be acknowledged by transferring the matrimonial home to the custodial parent, for example. Consequently, they urge that the formula for child support should take into account imbalances in property distribution designed to provide for the children in order that parties are not discouraged from arriving at such settlements. In this way, through provision in the formula itself, a link is forged between the outcomes of the administrative and judicial processes. However, if the child maintenance is fixed first, rules of court would have to permit the court to refer the matter back to the administrative agency in the light of the property settlement or, alternatively, allow the court to re-apply the formula after it has
decided the property issues. As the Finer Committee pointed out, these considerations 'call for close liaison between the court and the authority'.161 Problems 'of machinery, not principle'162 they may be, but the potential for administrative chaos, lost files, delays in transferring files from one body to the other, is readily apparent. Unless the machinery is in place and well oiled, the transfer of jurisdiction over child support from court to administrative agency, especially where the formula to be applied has the refinements suggested by Harris, McDonald and Weston,163 may effect no great improvements in efficiency over the present system in which the courts and the social assistance authorities may exercise a duplicated jurisdiction.

As the Finer Report demonstrates,164 problems of co-ordination between periodical payments on the one hand and capital sums and matrimonial property on the other would become more acute if the formula was designed to deal with spousal maintenance in addition. The new variable of guaranteed maintenance allowance proposed by the Finer Committee consists of allowances for each child and a child-care allowance for the custodial parent.165 It is noticeable that the Report is quite sanguine about the possibility of a lucid co-ordination being achieved when the absent parent's liability goes beyond making periodical payments.166 It is suggested that the capital received by the single parent, whether by way of lump sum or transfer of property, could be notionally converted to income and the weekly payments by the non-custodial parent reduced by the same amount.167 Alternatively, the court or the parties could take into account the state benefit, the guaranteed maintenance allowance, and reduce it, but not increase it, in the light of the capital provision.168 The latter suggestion would seem
to prejudice the achievement of certainty in quantification of income for the single parent family and is also novel in so far as it concerns bargaining for a State benefit.

It is in this context that Eekelar's criticism of the Finer Report is best understood:

'It is possible that a too single-minded concentration on the problems of one-parent families dependent on social security blurred the Committee's vision slightly when considering the impact of their proposals on the divorce process.'

For the Finer Committee:

'the standard situation is, and so far as we can see ahead will remain, one in which the need would be only for an offset of [guaranteed maintenance allowance] against maintenance.'

Perhaps it is now an equally standard situation for the couple to own a house with a small equity, perhaps, in Britain, purchased from the local authority from which they previously rented it, and for the wage-earner to be anxious to buy out the custodial parent's claims by raising a lump sum on the strength of the already mortgaged property. The problem of achieving a coherent final result from the division of responsibility between the executive and the judiciary will arise as a matter of routine.

There are benefits which it is hard to quantify, for example the right to continue to occupy the matrimonial home during the children's minority. How accurately can the value of an uneven property settlement be assessed in terms of weekly income? Should distinctions be drawn between cash and income producing assets on the one hand and assets like the matrimonial home which are bound up with other liabilities and add nothing to the single parent's weekly resources? It is concluded that the problems of co-ordination within each individual application for
financial relief are so great that the proposal to transfer administration of a guideline for calculating spousal maintenance from the courts to an administrative agency should be abandoned as impractical and likely to result in uncertainty of outcome and unnecessary delay. Any guidelines for calculating spousal maintenance should be used by the courts.

If the distinction between spousal and child maintenance is not abandoned in favour of some form of household support which comprehends all members of the single parent family, it may be possible successfully to transfer the assessment of child maintenance to an administrative agency. This will become a steadily more viable proposition if orders for spousal maintenance of indefinite duration become rarer, for there would then be one less variable with which the formula would have to co-ordinate within the totality of the settlement.

5. **Concluding Remarks**

The replacement of the discretionary jurisdiction for setting levels of support may be advocated from a standpoint of dissatisfaction with the inefficiency of the present system, its propensity for inconsistency and the inadequate orders it generates.\(^{173}\) As The Finer Report\(^{174}\) illustrates, the limiting of judicial discretion in this field can form part of a policy which advocates a greater role for the State in supporting single parent families. Alternatively, as with the US Child Support Enforcement Amendments,\(^{175}\) the dominant philosophy may be to privatise the support obligation and to determine how the economic expenses of the separation are to be shared. Legislatures and, if permitted, the courts can elaborate upon the malleable principle that guidelines for consistent adjudication are to be established.
Without this elaboration, however, the only benefits which the single parent obtains are relative certainty of outcome and the knowledge that the case has been treated in accordance with the established principles, no differently from anybody else's case. The guidelines cannot assist the members of the formerly intact household to overcome the unavoidable economic losses consequent upon divorce: the duplication of expenses; in many cases, the single parent's sole responsibility of the children which affects her employment prospects. If they are not supplemented by State income support programmes, guidelines are at best selecting an appropriate distribution of the economic hardship of divorce and perhaps seeking a greater equity of economic fortunes than, for example, Weitzman identified in California\textsuperscript{176} or the Australian Institute for Family Studies identified in Victoria.\textsuperscript{177} For those who doubt the sufficiency of available resources, no matter how refined the process of adjudication and how efficient the process of enforcement, guidelines in themselves are no cure for the single parent family's financial ills. Neither would the implementation of guidelines address the problem of the numbers of single parents whose needs are never adjudicated upon by the courts because the single parents are, for one reason or another, discouraged from making application. However, guidelines do offer the prospect of a solution to the problem of the devaluation of orders with time for much of the uncertainty and expense of variation proceedings could be eliminated by using the guidelines to review the present sufficiency of the original order.
Footnotes


3. Bartrip, supra, footnote 2, para 11.

4. Rules and Regulations for Her Majesty's Court for Divorce and Matrimonial Proceedings, nos 101 and 102.


7. Rules of Supreme Court, Order XXXVa.


9. Supra, footnote 2, para 12.


14. Supra, footnote 2, paras 16 and 17.


17. Supra, footnote 2, para 17.

18. (1939)6 Law and Contemporary Problems 213.

19. Loc. cit..


22. Supra, footnote 2, para 3.30.

23. Loc. cit.


25. Supra, footnote 2, para 2.2.


29. Supra, footnote 28 at p95.

30. [1977] 3 All ER 957.


32. Supra, footnote 31 at p 326.

33. Supra, footnote 31 at p 324.

34. (1986) 16 Family Law 129.

35. Loc. cit.


37. Loc. cit.


39. Supra, footnote 2, para 3.29.

40. Supra, footnote 2, Table 9.

41. Supra, footnote 28.

42. [1966] P 52.

43. Supra, footnote 42 at p 55.

44. Supra, footnote 2, para 2.27.

45. [1972] 3All ER 872.
46. There are signs that the courts are shifting their ground somewhat in the light of their duty to sever the parties' financial relationship as soon as possible. See Ashley v Blackman (1988) 18 Family Law 430.

47. Supra, footnote 2, Table 2.

48. Supra, footnote 2, para 2.6.


50. Supra, footnote 2, para 2.10.

51. Supra, footnote 28 at p 90.

52. Supra, footnote 2, para 2.22.

53. Supra, footnote 2, paras 2.22-2.23.

54. Supra, footnote 2, para 3.30.

55. Supra, footnote 26.


57. Finer Report, Supra, footnote 26, para 4.108.

58. Supra, footnote 2.

59. Supra, footnote 2, Table 10. It is not absolutely clear whether this includes reviews of settlements or only contested hearings.

60. Supra, footnote 2, para 4.6.

61. Supra, footnote 2, para 4.9.

62. Supra, footnote 2, Table 13.

63. Supra, footnote 2, para 4.18.


65. Supra, footnote 64 at pp 25-37.

66. Supra, footnote 64 at p 37.

67. Supra, footnote 64 at p 38.

68. Loc. cit.

69. Supra, footnote 64 at p 27.
70. Supra, footnote 64 at p 29.
71. Supra, footnote 64 at p 30.
72. Supra, footnote 64 at p 34.
73. Supra, footnote 64 at p 27.
74. Supra, footnote 64 at p 25.
76. Supra, footnote 75 at p 83.
77. Loc. cit..
78. Loc. cit..
79. Supra, footnote 2.
80. It will be recalled that the objective was broadly to place the parties in the position they would have been in had the marriage continued: Matrimonial Causes Act 1973 s 25(1) as originally enacted.
81. Supra, footnote 2, para 3.30.
82. Supra, footnote 64 at p 50.
83. Supra, footnote 75 at pp 83-84.
85. Supra, footnote 84 at p 149.
86. Supra, footnote 84 at p 135.
87. [1948] 1 All ER 343 at 345.
88. Wexler, supra, footnote 84 at p 153.
90. Supra, footnote 26, para 4.90.
91. Supra, footnote 26, para 4.217.
93. C. Cockburn and H. Heclo, 'Income Maintenance for One-Parent Families in other Countries', Appendix 3 to The Finer Report, supra, footnote 26, para 138.

94. Supra, footnote 93, para 139.

95. Supra, footnote 1 at p 14.

96. Supra, footnote 2, para 2.6.


98. Loc. cit.

99. Supra, footnote 97 at p 320.

100. Loc. cit.


102. Loc. cit.

103. Chambers, supra, footnote 101 at p 41.


105. Loc. cit.

106. Supra, footnote 104 at p 6.


108. Infra, Section 4 of this chapter, 'Who would use the Guidelines?'.


110. Supra, footnote 101 at p 45.


113. Supra, footnote 109, p 378 at her footnote 30.

115. Supra, footnote 112.


117. Supra, footnote 112.

118. Supra, footnote 111.

119. Supra, footnote 111 at pp 245-246.


121. Supra, footnote 104 at p 2.

122. Supra, footnote 104 at p 3.

123. Williams, supra, footnote 97 at p 290.


127. Supra, footnote 107 at p 269.


129. Supra, footnote 128 at pp 80-81.

130. See Bergmann, supra footnote 112 at p 115.

131. Bergmann, supra, footnote 112 at p 116.


133. See Williams' discussion, supra, footnote 97 at pp 295-301.

134. Supra, footnote 97 at p 268.

135. Loc. cit.

136. Loc. cit.
137. *Loc. cit.*


139. *Supra*, footnote 97 at p 312.


143. RSBC 1979 c 121.

144. [1980] 2 WWR 723 at p 745.

145. 24 RFL (2d) 176, especially per Hinkson JA at p 182.

146. Williams, *supra*, footnote 97 at p 312.


149. *Supra*, footnote 141.


152. *Supra*, footnote 26, para 5.185.


155. *Supra*, footnote 2, Chapter 4, Part A, passim.

156. *Supra*, footnote 143.


158. *Loc. cit.*

159. *Supra*, footnote 92 at pp 113-114.


161. *Supra*, footnote 26, para 5.211.

162. *Loc. cit.*
163. Supra, footnote 92 at p 114.

164. Supra, footnote 26, paras 5.234-5.247.

165. Supra, footnote 26, para 5.104.

166. Supra, footnote 26, para 5.247.

167. Supra, footnote 26, paras 5.240-5.242.

168. Supra, footnote 26, paras 5.243-5.245.

169. Supra, footnote 157.


171. Supra, footnote 157 at p 63.

172. Supra, footnote 26, para 5.246.

173. This is Williams' approach to the need for reform, supra, footnote 97.


175. Supra, footnote 89.

176. Supra, footnote 107 at pp 337-340.

In this chapter, the argument that the community as a whole should be exclusively responsible for the maintenance of the single parent family will be investigated. The rationale for allocating responsibility to the State and for emancipating members of the former household will be explored but, in putting forward these arguments, an effort will be made to remove the veneer of radicalism and to emphasise how far some Western countries have already moved towards accepting primary responsibility for the welfare of single parent families. It could be argued that the State already has primary responsibility in all but theory and that the real question is whether responsibility should be moved once again to the members of the former family unit themselves, or whether present practice should be formalised and former members of the household explicitly absolved from responsibility for transferring income.

In the first place, two principal arguments put forward by those who adopt the position that maintenance of the single parent family should be an exclusively public concern will be considered. The first is essentially that single parenthood has no special characteristics to distinguish it from any of the other vicissitudes of life with which the State concerns itself. The second argument emphasises the impossibility of preserving dependencies in the light of changing family patterns, which are to some degree related to the State's own legislative actions with respect to dissolution of marriage.
1. Single Parenthood as a Vicissitude of Life

In 1968, Professor Brown was prepared to predict that:

'by the year 2000 the law will have abandoned as socially undesirable, frequently ineffectual and wholly uneconomic the hounding of spouses through the courts for non-support of their families. Non-support by spouse or parent will be ranged alongside those other vicissitudes of life - unemployment, sickness, industrial injury, child-birth, death itself - for which social insurance should make provision.'

As will be considered in greater detail below, for this prediction to become true, it must be politically acceptable to allocate large amounts of public money to single parent families when the suggestion is that competing interests, for example the elderly and the physically handicapped, are more popular with the public. How is it that the public could, over a period of time, become sanguine about the public support of single parent families? The answer to this question will extract from Brown's prediction some of the elements of the argument that single parenthood can be viewed in the same way as unemployment, for example.

First, the examples which Brown gives in the extract quoted above are all ordinary occurrences. If single parenthood, whether arising from separation, divorce or birth outside marriage, is to be added to the list of events in life with the consequences of which the State should involve itself, it must shed any pathological aura which still surrounds it. To be regarded as just another unfortunate occurrence, single parenthood must cease to be considered a peculiar affliction and become usual. The demographic material reviewed in Chapter 1 suggests
that there is certainly nothing unusual about single parenthood. To cite but one example here to avoid repetition, in the mid-1980's in Australia, there was a chance in the range of 11-12% of a parental divorce before a child reached ten, and an 18-19% chance before the child reached sixteen, a five-fold greater chance than in the 1960's.\textsuperscript{5}

The scale of single parenthood can be fully appreciated only when other events as well as divorce are taken into account, however.

This demonstrable prevalence may lead to single parenthood being regarded as usual but it does not, without more, preclude stigma and promote the neutrality which Drinan advocates:

'Should society begin to admit that divorce, like death and disability, is a fact of existence and that children adversely affected by the divorce should, like other disadvantaged children, receive from society those benefits normally available to all children?' \textsuperscript{6}

Before society will make this admission and regard single parenthood as 'a fact of existence',\textsuperscript{7} there must be a lack of that marked censoriousness which led to the giving of relief by means apt to deter the remainder of the population in the days of the Poor Law.

Considerations of fault rule out the simplicity of Drinan's approach, summed up in the rhetorical question quoted above.\textsuperscript{8} If the complex factors which lead to the creation of the single parent family are to be represented as capable of dissection in such a manner that degrees of personal fault are disclosed, on what basis other than charitable compassion can the argument for the assumption of public responsibility be sustained?
Kevin Gray argues that:

'Once the notion of personal responsibility for marriage breakdown is abandoned, it becomes impossible to draw any logical distinction between marital dysfunction and those forms of breakdown which are already covered by social insurance.'

In short, once the allocation of blame is dispensed with as a pre-requisite for divorce, loss of support from a marital relationship can be assimilated to loss of support from a job or loss of the ability to earn a living due to poor health. The individual is not held responsible for loss of health or employment and therefore, the argument runs, no-fault divorce fits easily into the model.

Although responsibility for the marital breakdown may not be assigned on an individual basis to the former husband or former wife, as the case may be, it is not to retreat from the abandonment of personal responsibility for marriage breakdown to suggest that, from the point of view of society as a whole, the responsibility is assigned to the former spouses jointly. What has been discarded is the notion that it is possible or proper fairly to allocate responsibility between them. That this task is impossible or improper does not unwaveringly lead to the conclusion that economic losses arising out of the marriage breakdown should be primarily a collective responsibility. It remains appropriate to study the financial history of the marriage with a view to determining whether economic advantages have been gained by one spouse, or disadvantages sustained by the other, as a consequence of the organisation of their married life.

It is important to point out that in the passages cited above, Brown and Gray are principally concerned with spousal maintenance.
Brown explicitly recognises that the withering away of the private law of maintenance must be counter-balanced by reforms in the field of matrimonial property. A property award is presently of less potential value than a maintenance award in the majority of cases. This arises from definitions of matrimonial property which exclude many assets associated with earning capacity and from the paucity of property in so many cases. Glendon seeks to demonstrate how property awards are inappropriate as a substitute for maintenance by pointing out that a capital of $100,000 (US) is required to raise the federal government's poverty level income for a family of four. Perhaps it is inappropriate to reject proposals to abolish the private law of maintenance with reference to the inadequacy of what would be left of the present financial relief jurisdiction. McDonald et al find 'the division of economic relationships of parties to a marriage into maintenance and tangible property ... no longer an adequate basis for family law' and propose a new basis for economic adjustment: compensatory payments for economic disadvantages already sustained but without regard to post-divorce events. Whilst such an idea recognises the joint responsibility of the marital partnership for economic disadvantages sustained, it fails to give full credit to the possible durability of these disadvantages if circumstances after divorce are regarded as irrelevant in all circumstances. Events after divorce may emphasise a hitherto relatively unimportant disadvantage traceable to the married years. For example, the spouse with principal responsibility for care of the children may never have left the labour market completely and may apparently have maintained earning capacity. However, due to taking part-time or temporary jobs to accommodate the
children's needs, training may have been neglected and developments some years after divorce may expose this failing.

The point of this excursion into arguments associated with the wisdom of effecting a clean break between the former spouses is to show how single parenthood is not merely another of life's events which leads to economic hardship. The flaw of the argument is that, even if financial relief is no longer preceded by an allocation of fault, the economic disadvantages against which the single parent seeks relief may well be traceable to a pattern of married life from which the other spouse has gained an advantage but has not the wherewithal to make a full and final settlement, taking possible future exigencies into account. It may be protested that this notion of responsibility for the spouses' divergent economic fortunes is unresponsive to the State's role in regulating the economy on a national scale.

This issue was explored by Lamer J. in his dissenting judgement in the Supreme Court of Canada in Messier v Delage. McIntyre and Wilson JJ. concurred with his judgement in which he sought to demonstrate that a former spouse who has marketable working skills but is unable to break into the labour market due to the condition of the national economy should properly be regarded as in the same predicament as any other single unemployed person. This approach led Lamer J. to try to delineate factors causing inability to find employment which are intrinsic to the particular individual and for which the former spouse may have to shoulder responsibility and those factors 'extrinsic to the individual, such as the labour market and the economic situation'. In the latter case, '[t]he problem is a social one and it is therefore the responsibility of the government rather than the former husband'. The
difficulty of trying to extricate the marriage from its economic context
is clear from Wilson J.'s judgement in *Richardson v Richardson*. 18

Apart from two temporary jobs, Mrs Richardson, who was seeking a
variation in her maintenance from the amount formerly agreed, had not
worked in the past thirteen years, that is since the birth of their
second child. The problem of attributing Mrs Richardson's present
difficulties in the labour market to prevailing economic conditions
rather than to her departure from the labour market during the marriage
is far greater than Wilson J. presents it:

"In sum, she was employed more often than not during
the marriage. Moreover, the period of time from her
last employment until the date of the separation was
not that great. In this sense it cannot be said
that the marriage atrophied her skills or impaired
their marketability." 19

Finding a half-way house where former spouses are held responsible
for certain economic disadvantages but not for those attributed to
larger-scale economic forces beyond their control will be far from easy
and likely to result in some marked divergences amongst adjudicators.
More important than this distinction between the supposed sources of
economic hardship for the single family is that between those who view
single parenthood itself as a social risk, the costs of which should be
accepted by society, and those who would eschew this 'radical
liberalisation'. 20 The latter are presumably content that 'the effort
at liberalisation today is practically limited to confining itself
behind the frontiers of private law which unavoidably impedes its
efficacy'. 21

The conclusion to be drawn from this discussion is that single
parenthood is not another of the usual vicissitudes of life which the
State should offer relief against. The assimilation of divorce to
unemployment and illness is unconvincing, for it fails to delve into the reasons for the single parent family's present need, research which is not precluded by the abandonment of the matrimonial offence as the foundation stone of financial relief. The seductive simplicity of the argument is well exemplified by Glendon who quotes in translation from a report of a Finnish Government committee concerned with reform of the Marriage Act:

'the need of the divorced spouse generally is caused either by unemployment or by inability to work, and traditionally caring for citizens who for such reasons have been left without subsistence has been considered to be a task for society.'

The next question is why the former spouse is unemployed or unable to work, the answer to which is often disclosed by an examination of dependence fostered during marriage. It is unfair to the taxpayer to facilitate the changing of the rules in the middle of the game, to employ Weitzman's metaphor, and to enable the former spouse to evade the consequences of economic patterns which arose during the marriage.

In the case of single parent families created by births outside marriage, the history of the parents' relationship may be significantly less important in a large number of instances. To rebut the argument that the State should accept exclusive responsibility for the support of the child, it is necessary to move the focus away from encouraged dependencies and economic activity during the relationship and to enquire whether, in the light of the needs and resources of the parties involved, it is proper for the State to excuse the father from contribution. To do so would be to render the birth a matter of financial concern to the mother and State alone. This imbalance with respect to the children's upkeep is unfair and explains why the
arguments for abolishing private maintenance in favour of public support are at least more credible in the context of spousal maintenance.

Finally, it is worthwhile to question briefly whether the analogy between single parenthood and loss of work fails on the grounds that the State does not unquestioningly offer relief to citizens who find themselves unemployed. Contrary to the model put forward by Gray, the State may regard unemployment as a matter of personal responsibility. It may refuse to pay unemployment benefit if the citizen is voluntarily unemployed or at fault. For example, the citizen may have been dismissed for misconduct connected with his work or may have resigned without good cause. As well as investigating fault, the State may decline to be primarily responsible for the former worker's upkeep, fulfilling instead a secondary role. An example is the payment of redundancy money in Britain to employees who are made redundant after two or more years of continuous employment. The point is that the State is not a primary and unquestioning provider in other, more established fields of State activity.

2. The Effect of Changing Family Patterns

This second justification for the State accepting exclusive responsibility for the maintenance of single parent families is more concerned with pragmatic considerations than the first argument. For this reason, it provides a useful introduction to a discussion of the extent to which some countries have already accepted social responsibility for single parent families. It is also more concerned with children, for the idea that divorce is like any other vicissitude of life can be applied more comfortably to the severing of the spouses' financial relationship than to the parent and child relationship.
The conclusion that the State should have an exclusive responsibility may be reached somewhat reluctantly, only after an appreciation of the irremediable faults of the present system:

'by the year 2,000 the law will have abandoned as socially undesirable, frequently ineffectual and wholly uneconomic the hounding of spouses through the courts for non-support of their families. Non-support by spouse or parent will be ranged alongside ... other vicissitudes of life.' 28

The State will have to admit the single parent families at its doors because there will be no alternative. As Harris, McDonald and Weston point out, 29 the important choice open to the community is how, rather than whether, to pay. Chambers is equally concerned that, if the future for children in single parent families in the USA is one of even greater detachment between them and their non-custodial parents, 'we should be reluctant to retain a system of government enforced nostalgia for a world that has been lost'. 30

Despite the present emphasis on the collection of child support in the USA, 31 Chambers predicts that the consensus concerning the financial obligations of absent parents may grudgingly alter, even though the numbers of children in single parent families continue to increase. 32 Resistance to support obligations 'will never be commended, but ... it may someday be condoned and grudgingly accepted, like the incidence of divorce itself'. 33 To summarise Chambers' argument, it is not that the alterations in responsibilities are to be enthusiastically welcomed, but they are inevitable as long as non-custodial parents drift out of the 'inner core of most families' and become 'in the end just visitors'. 34 Lord Denning's hope, expressed extra-judicially some twenty years ago, 'that the tide will turn' 35 has proved vain.
On this basis, it is accepted that the State should play a greater role but whether it should totally supplant the absent parent is more problematical. It is one thing for the public to accept the distancing of the non-custodial parent from the former household, but it is another to accept the burden of supporting that former household. This raises an important issue in connection with the proper role of the State. Would an unintended consequence of the emancipation of the non-custodial parent be to foster that parent's disengagement from the former household to the detriment of the children?

A requirement to support a particular person is an indication that the relationship is regarded by the State as significant at this particular moment. Chambers utilises this notion of significant involvement as a key to understanding how obligations to support have varied. They have been by no means constant, even in the context of the parent and child relationship: it was not until the United States Supreme Court decided Gomez v Perez that the father of a child born out of wedlock was obliged to support the child in Texas. The Scottish Law Commission demonstrates the width of the family group which can be obliged to aliment a child born in marriage: the obligation is primarily that of the father, secondarily that of the mother, and then it passes to the ascendants of the parents in direct line. This wide network of alimentary obligations is also reciprocal. This is not a unique approach amongst the Romano-German legal systems and, indeed, Chambers refers to American state laws requiring support payments from grandparents and siblings though he explains their nineteenth century origins with reference to then existing family patterns rather than the foundation of the particular state legal system. As family patterns
and notions of domestic responsibility have altered, so have American states whittled down the family group potentially liable to support a particular child. Chambers cites eight states which have repealed laws obliging grandparents and siblings to support in the early 1970's, notwithstanding concern about the social assistance budget.\(^{44}\)

The dilemma is whether to respond to further changes in family patterns by further limiting the set of relatives who can be called upon to maintain a child. Such a limitation may be unwelcome to many of the non-custodial parents themselves. The Institute of Law Research and Reform conducted a survey of men in Calgary and Edmonton with a view to gaining some insight into the reasons why some men pay support and others do not.\(^{45}\) Of 261 respondents, only 4.6% thought the State should support their former wives, and of 245 respondents, only 1.2% thought the State should support the children.\(^{46}\) It is also interesting that, of 202 respondents who were good payers, 47% agreed and 21.8% disagreed with the statement: 'I would not like to see my ex-wife being supported by social assistance'.\(^{47}\) Furthermore, just over 75% of 199 good payers expressed responsibility for and closeness to their children,\(^{48}\) positive feelings which might be prejudiced by intrusive policies of the State. For some single parents, the concern of non-custodial parents, if manifested solely in financial assistance, may appear to emphasise a continuing, debilitating dependence on the economically powerful former spouse rather than to represent a positive contribution to the household.

It would be unduly cynical to attribute payment in all, or even the majority of cases, to a wish for power over the household of which the payer is no longer part. Rather, in some cases it may demonstrate a
continuing desire for a stake in the household, for relationships which have been disrupted and to demonstrate the persistence of affection for the children. The availability of the non-custodial parent may be of profound psychological value to the child and assist the child in coming to terms with the parents' separation.\textsuperscript{49} Whilst failing to establish a causal link, Furstenberg has demonstrated how regular payment of child support often corresponds with regular visits to the children.\textsuperscript{50} If it is accepted that the prevalence of single parenthood and inefficacious procedures for obtaining transfers of income necessitate the displacement of the non-custodial parent as primary provider, the reform adopted must not leap ahead of the expectations of the community at large or of those immediately affected by the reform and must be sympathetic to the desirability of nurturing the relationship between non-custodial parents and children.

3. **Social Responsibility: the Present Position**

In the conclusion to the previous section, it was suggested that there may be unintended deleterious consequences for the children if the State were to relieve the non-custodial parent of financial responsibility. It is also necessary to enquire whether the replacement of the family as the major institution for dealing with dependence has had or will have any other undesirable consequences. A possible scenario is that there will be a progression in State activity from assistance and responsiveness to the needs of the single parent family to, on the other hand, an unwelcome intrusiveness. Put simply, the single parent family may find there is a price to pay for the resources which the States makes available.
Lawson, in his review of social assistance reform in Denmark after World War II, comments that the 'most important feature of the reforms for single parents was a new recognition of their financial problems as social risks'. This is not to indulge in the emotive language of Lord Denning in his foreword to Latey's book, The Tide of Divorce, in which he promotes the thesis that civilisation is threatened by the irreparable psychological harm sustained by the many children who do not live in two-parent families. However, it is important to appreciate that measures introduced to shield the child, and the family unit as a whole, from avoidable harms which are believed to be prevalent in the particular circumstances of the family can, unless monitored, germinate into a strategy of general intervention in the affairs of the family. The danger is that the over-responsible State will prove unpopular and its potentially valuable services become notorious and under-used.

Specifically, the State's adoption of the role of provider for the welfare of the single parent family should not be a threat to parental custody of the children. Samuels suggests that the single parent is especially vulnerable to pressures to give up the care of the children. With the demand for children from potential adoptive parents so great, having a child adopted may appear the easiest option. Perhaps the single parent family which arises from a birth outside marriage is the most vulnerable to this form of disruption. Duncan relates how a 'very high percentage' of unmarried mothers in the Republic of Ireland do not raise their own children due to the stigma attaching to their situation. Voluntary care agreements with a child care authority are a possible response to the frustration and loneliness of single parenthood and are often a prelude to the permanent
separation of parent and child. As Packman, Randall and Jacques point out, this route to care casts 'parents as unfortunate rather than blameworthy, and casts the local authority in the role of the child's caretaker, acting on the parents' behalf'. How often is this ideal of supportive care, ideally temporary and enabling the custodial parent to cope with a particular crisis, delivered in practice? The concern to which attention is drawn in this passage is that, if society is to undertake greater responsibilities, the State may, as a corollary, take greater power to intrude into private affairs, thereby prejudicing the rate at which valuable services are taken up by single parents.

Lawson suggests that reluctance to apply for the available social assistance is particularly marked in West Germany and he attributes this to 'intense pressures on many poor people in the Germany of the 'economic miracle' to keep silent about their poverty'. Poverty in Germany is, he contends, often considered to be limited to marginal groups who have contributed to their own misfortune, thereby eliminating the subject as a major topic for debate. In any event, since the Nazi era, successive West German governments have adopted an essentially abstentionist approach to family affairs, being chary of encroaching on the preserves of the family. This reaction to the intrusiveness of Nazism, with its stress on the need to reproduce, may have led to what Lawson considers 'a widespread public expectation that [single mothers] should work and be 'independent of the state', a view which appears to have been encouraged by some of the courts and social assistance authorities'.

The balance struck by the West German social assistance authorities between the citizen's obligation to work and the need to avoid prejudicing the upbringing of the children brings into focus the
question of the availability of earnings as a resource of the single
parent. Heclo and Cockburn state that the usual interpretation of the
regulations is that the parent of school-age children should be able to
work. In West Germany, it would appear that there are a number of
sources of pressure on single parents to work, and a desire to work, or
acceptance that it is necessary and demanded, on the part of single
parents.

Thus far in this chapter, the issue of earnings and the single
parent's own resources has been kept in the background and the choice
has implicitly been presented as between the public purse or the
non-custodial parent's resources. At this stage, it is appropriate to
add the custodial parent's earning capacity to the list of variables and
to enquire, in the context of this discussion of the extent of
acceptance of social responsibility for the single parent family, to
what extent the State can relieve its own financial burden by promoting
employment of single parents. The acceptance of social responsibility
does not necessarily imply the indefinite provision of social assistance
in the form of money. It could equally well include the development of
the single parent's earning capacity with a view to the family's
principal source of income becoming, over a period of time, the earnings
of the single parent. This could be a model by means of which the State
could promote the goal of severing the financial relationship of the
former spouses and, also, curtailing the dependence of the single parent
on the state, a dependence which may well have arisen due to a
single-minded pursuit of its first goal. This broader view of social
responsibility, embracing facilities with respect to employment and
child-care as well as provision of money, could be more intrusive if
insensitively managed but it does hold out the prospect of a long-term, sustainable solution to the problem of replacing the single parent's existing dependencies. In so far as they fail to take full account of the economically debilitating effects of past dependency, laws which provide for only a transitional transfer of income from the non-custodial parent in the belief that this will give the custodial parent sufficient leeway to establish a financially independent life will inevitably lead to some custodial parents becoming dependent on the State for support. It is unavoidable that some will fail to re-organise successfully within the period during which maintenance is available. It is in this sense that Glendon's comments on a possible unintended consequence of the clean break theory are best understood:

'[Self-support laws] enshrine and perhaps reinforce the sense that the economic problems of divorce are, like illness and unemployment, problems for the society as a whole.' 64

The difficulty which the custodial parent who has been economically inactive will experience in finding work which is compatible with child-care responsibilities and which enables independence to be attained exemplifies the need for the involvement of the State in providing assistance which is, in any event, beyond the means of the non-custodial parent.

Lawson cautions against too enthusiastic an endorsement of the State's role in promoting employment amongst single parents. 65 In West Germany, he argues that hardships have arisen as a result of the pressure on the single parent to find employment: many single parents work long hours at low-paid jobs which are all that are available due to their lack of training. 66 Such an existence is not independence but to exchange one form of insecurity for another.
It is possible, however, to identify policies which would assist single parents in becoming economically independent in the approaches of certain Western European countries which do not hold out to single parents the choice of whether or not to work. First, the treatment of earnings from part-time work within the social assistance system is informed by the goal that payments of assistance will eventually become a supplement to earnings. Whereas in Britain part-time work, an appealing first step into the labour market, is discouraged by parsimonious disregards of earnings and pound for pound deductions from assistance payments, in West Germany part-time work is encouraged by a scale of disregards of earnings which becomes more stringent as more is earned. The important point is that the earnings are not deducted Mark for Mark from the assistance. Lawson shows that part-time work is not penalised in Denmark to the same extent as in Britain though part of the explanation is that non-means-tested family allowances are more prominent than the means-tested assistance payments on which single parent families often rely in Britain.

Part-time work is ideal for some single parents because they can cope with their child-care responsibilities more easily as a result. Another policy designed to accommodate work and parenting is the provision of child-care facilities during the day. This is an area in which Denmark is far advanced, having 41,650 places in day nurseries for children under three in 1974. Provision is either free or is priced at 40% or 60% of the costs, depending on the parents' means.

The third field of policy which contributes to the frequency of work amongst single parents is education and training. Denmark once again sets the international pace, providing training centres to attend
which non-means-tested grants are available. Effort is put into co-ordinating training and employment but commentators have questioned the delivery of the service:

'even with so specialised a scheme only about one in every six unmarried mothers contacting the centres in fact receives training. The general picture which emerges is one of disappointment with the extent to which lone mothers in fact succeed in taking advantage of training facilities.'

Nevertheless, training facilities are widely emphasised in Scandinavia. In Sweden, occupational training is available for women who have been out of the labour market. A taxable occupational training allowance is payable. The Swedish system acknowledges that job-training is not appropriate in every case and that it will not always be successful by providing for the payment of what is essentially an early retirement pension if it can be shown that the ability to work has been permanently diminished by half. The existence of such a benefit makes explicit the debilitating effect upon earning capacity which removal from the workforce can have.

These examples from northern Europe give an indication of the extent to which the concept of social responsibility for the single parent family has already been accepted, especially with respect to facilitating the entry or re-entry into the labour market of the single parent. It has been appreciated in these countries that public subvention by way of assistance payments can be reduced if the independence of the single parent family can be promoted. Ideally, assistance payments should supplement earnings to bring the single parent family closer to the standards of two-parent families.

However, the principal theme of this chapter is the investigation of the possibility of the State assuming exclusive responsibility for
the single parent family in so far as the single parent family is not self-sufficient. It must be emphasised that the northern European countries from which the examples have been drawn have not accepted exclusive responsibility. To take Sweden as an example, if the non-custodial parent defaults in paying maintenance, the local insurance office will pay the single parent the amount of the order and will then seek to reimburse itself from the non-custodial parent. In order to take advantage of this system of maintenance advances, the single mother must co-operate with respect to the establishment of paternity, if this is in question. Cockburn and Heclo point out that:

'The fiction of an advance has gradually given way over the years to a more substantial reality - the provision of a guaranteed level of maintenance to children of divorced, separated or unmarried couples, a guarantee independent of the vagaries surrounding a father's private legal responsibilities and his ability or willingness to pay.'

The system of advance maintenance, begun by Denmark in 1888 with a guarantee of 60% of the costs of a child's upkeep in a particular locality, is properly interpreted as a system which allocates to the State a primary responsibility for maintenance but, when it is studied in conjunction with the resources available for recovering money from the non-custodial parent, it is clearly not the State's intention to assume exclusive responsibility.

4. Concluding Remarks

In the Eleanor Rathbone Memorial Lecture in 1955, Professor Titmuss identifies a steady recognition of various states of dependency as collective responsibilities. These may be broadly divided into the natural dependencies, such as extreme old age, and dependencies which
arise due to human activity, which range from some forms of illness to unemployment. The dependency of the single parent family falls into the latter category, which comprehends those dependencies which are often less popular with the public.

Hennessy's review of public attitudes to social security in the United Kingdom discloses some interesting opinions relevant to the acceptability of future policies. For example, Norris conducted two postal surveys of three thousand people in 1973 and 1976. Recipients of the survey were asked whether particular social groups should be helped at all by the State and which groups are most in need of help. In both surveys, unsupported mothers were sixth priority out of the sixteen groups, behind the elderly and the physically handicapped who were the most popular. The Schlackmann Research Organisation also identified sympathy for the elderly and the sick. It found there was general sympathy for single parents but some opposition to assistance for mothers of children born outside marriage. The empirical research does tend to bear out Glendon's wry comment:

'Even if one can imagine good citizen taxpayers who are not opposed to assuming more and more responsibility for such social risks as illness, disability and old age in society, it would take an almost saintly taxpayer to cheerfully assume the cost of other people's serial marital adventures.'

The public has assumed some responsibility but it does not want exclusive responsibility, not only because it feels that former members of the household should provide for the single parent family, but also because there are perceived to be higher priorities amongst the competing groups of the poor. The time is not yet ripe for the State to concede that domestic responsibilities are limited to the unit within
which the citizen is presently residing. To do so, the State would have to be sanguine about its own economic future for it is so much cheaper for the State if dependency can be accommodated within the family.

As will be suggested in the following chapter, the choice of appropriate roles for the State is wide. The present suggestion that the State should have exclusive responsibility should be rejected, but that is not to dismiss the proposal that broadening the ambit of social responsibility, with special reference to opportunities for employment and provision of child-care facilities, would be beneficial for single parent families. Neither is the proposal completely to emancipate the non-custodial parent dismissed simply on the ground that the cost to the State outweighs the benefit of a guaranteed income to the single parent family. Like the French National Assembly, when faced in 1975 with a proposal emanating from the Socialist and Communist Parties to introduce a guaranteed maintenance scheme which would not in fact have ruled out the seeking of contributions from non-custodial parents, rejection is partly based on a concern for the social effects of no longer holding non-custodial parents responsible. Assuming exclusive responsibility for a family's financial security may involve severing that family's financial links with other significant individuals, notably of course an absent parent. Severing that link may lead to the severing of other links, emotional and psychological, to the possible detriment of the children of the single parent family.
Footnotes

3. Supra, footnote 1.
4. Ibid.
7. Ibid.
8. Ibid.
10. Ibid.
11. Supra, footnote 1 at p 137.
12. M.A. Glenden, State, Law and Family (Amsterdam: North Holland 1977) at p 263.
16. Supra, footnote 15 at 362.
17. Ibid.
19. Supra, footnote 18 at 311.
20. The words are Carbonnier's in 'La question du divorce' D.S. 1975. Chr 115 at p 118. The translation is M.A. Glendon's, supra, footnote 12, p 298, her footnote 22.


22. Supra, footnote 12 p 261.


27. Employment Protection (Consolidation) Act 1978, Part VI.

28. Brown, supra, footnote 1 at 137.

29. Supra, footnote 5 at 100.


32. Supra, footnote 30, pp 1614-1617.

33. Chambers, supra, footnote 30 p 1615.


36. Chambers, supra, footnote 34 at p 272.

37. Supra, footnote 34 at pp 272-277.


41. Loc. cit.

42. Loc. cit.
43. Supra, footnote 34 at p 272.
44. Supra, footnote 34 at p 273.
46. The Canadian Institute for Research, supra, footnote 45, Table 11 on p 289.
47. Ibid on p 290.
52. Ibid at p 282.
53. Supra, footnote 35.
54. This is similar to the rationale which informs his judgement in the Court of Appeal in Re L [1962] 3 All ER 1 at 3.
55. A. Samuels, 'Conclusions' in Samuels, supra, footnote 51 at p 321.
56. I. Grant and D. Cohen state, at p 7-01 of their family law materials (University of British Columbia 1988) that, in British Columbia at present, 'the waiting list for prospective parents exceeds 3,100 (a ratio of 200 couples for every one child) and waiting periods of up to five years are commonplace'.
57. W.R. Duncan, 'Republic of Ireland' in Samuels, supra, footnote 51 at p 52.
58. See, for example, ss 4-6 of Family and Child Service Act, S.B.C. 1980, c 11.
60. Supra, footnote 51 at p 287.
61. Lawson, supra, footnote 51 at p 288.
62. Loc. cit.
63. C. Cockburn and H. Heclo, 'Income Maintenance for One-Parent Families in Other Countries', Appendix 3 to the Report of the Committee on One-Parent Families, supra footnote 40, para 145.

64. Supra, footnote 12 at p 291.

65. Supra, footnote 51 at p 290.

66. Loc. cit.

67. Lawson, supra, footnote 51 at p 289.

68. Supra, footnote 51 at p 284.

69. Lawson, supra, footnote 51 at p 281.

70. Loc. cit.

71. Loc. cit.


73. A. Agell, 'Sweden' in Samuels, supra, footnote 51, p 174.

74. Loc. cit.

75. Loc. cit.

76. Lawson illustrates how this is achieved in Denmark in the case of an unmarried mother with two children earning two thirds of average male earnings, supra, footnote 51, p 283.

77. Agell, supra, footnote 73 at p 172.

78. Ibid at p 173.

79. Supra, footnote 63, para 140.

80. Lawson, supra, footnote 51 at p 278.

81. See Cockburn and Heclo, supra, footnote 63, paras 137-138.


83. Loc. cit.

84. Supra, footnote 2.


87. Supra, footnote 12 at p 279.

88. Glendon, supra, footnote 12 at pp 276-277.
In allocating responsibility for the financial security of single parent families, the goal should be to ensure that the single parent will eventually be able to make his or her own way in the world, at least by the time the youngest child has attained the age of majority. Most single parents would embrace such an aim enthusiastically, provided that the rhetoric of self-sufficiency is tempered by an acknowledgement of the obstacles to independence presently placed in the way of single parents. Few single parents want to depend, whether on the non-custodial parent or on the State, and the vast majority would welcome policies designed to avoid their marginalisation by society.

It should be noted that the goal for policy which I am advocating is independence at a future date for the single parent, not for the family as a whole. There is bound to be a period of transition of varying duration immediately after the crisis of the onset of single parenthood. This is so however the episode of single parenthood begins. With birth outside marriage, separation, widowhood, there will be a period of adjustment. Immediate independence from State and non-custodial parent is not a realistic aim.

Neither is it suggested that we should aim for a situation in which the single parent is taking total responsibility for himself or herself and for the children, to the exclusion of the non-custodial parent and the State. The non-custodial parent must acknowledge a personal responsibility to contribute to the children's maintenance and the State
a collective responsibility to its potentially disadvantaged young citizens. The relationship between these responsibilities is problematical but their continued co-existence is advocated nevertheless. We are some way from approving of an individualistic morality which allows people to absolve themselves from responsibility for their children simply because they no longer live in the same household.

It is tolerably clear that, in very many cases, the obtaining of an order for child support against the non-custodial parent and the rigorous enforcement of the order will not materially alter the single parent's situation. This is because, so often, payments from the non-custodial parent are simply set against social assistance payments received from the State. This, in itself, is a disincentive to the single parent to seek a financial contribution to the maintenance of the children from the non-custodial parent.

If one accepts that the non-custodial parent should contribute, such disincentives should be removed. If the basis for arguing that the non-custodial parent should contribute is that it is for the good of the children that such a link is preserved or, more generally, that it accords with widely held notions of parental responsibility, the removal of disincentives to the single parent presents no problem. It is those who insist that the non-custodial parent must pay in order to save public money who will baulk at the suggestion that payments received from the non-custodial parent should be disregarded when calculating an entitlement to payments from the State.

There is the possibility of compromise between the two positions, namely a partial disregard, and this is probably the best solution. Of
the payments received from the non-custodial parent, the single parent should be able to retain, let us say, 60% without affecting entitlement to social assistance. This would give a much-needed incentive to the single parent to put in place and enforce an order for child support whilst preserving the State's independent financial interest in assisting the single parent in doing so.

There is great scope for the State to assume an enhanced role in connection with the obtaining of child support from non-custodial parents. It is to be welcomed if the State can relieve the single parent of some responsibility in this area. Otherwise, the expenditure of scarce financial resources, time and energy can seem too daunting a prospect for the single parent. The State's responsibility should not be limited to providing assistance in the conflict-ridden area of enforcement but intervention should take place much earlier. It should not be the case that single parents fail to obtain orders to which they are entitled due to intimidation or other discouragements, and assistance in connection with the obtaining of the order should be available, perhaps most appropriately through an improved system of legal aid. Computerised records of orders would facilitate enforcement, which should not simply be retrospective, limited to arrears already accrued. The periodic nature of support payments can lead, in the case of recalcitrant payers, to repeated, time-consuming efforts at enforcement. Once enforcement has had to be undertaken, a system of prospective enforcement should be put in operation whereby the payments are deducted from wages by the payer's employer and this should continue until the payer can convince the registrar of the court that he will pay voluntarily.
With respect to the support of children in single parent families, it is unnecessary to express a preference between public and private means of support for the role of both forms of support can be enhanced as outlined above. The choice is not so much between public and private means of support as between whether the support is to improve the standing of the single parent family or not. Unless there is far greater public investment to bolster the non-custodial parent's financial obligation, support from this quarter will continue to be insignificant for many single parent families. The reforms which have been suggested, in particular the generous disregard of support payments for social assistance purposes, are designed to make both forms of support meaningful items in the budget of the single parent family.

Let us now consider further how the independence of the individual single parent can be assured, in particular once the children have reached majority. This is a worthy aim of social policy because it seeks to avoid the single parent being pushed to the periphery of society, dependent on the State or perhaps a former spouse, with few means of improving his or her situation other than by finding another partner. The citizen in this position should have other alternatives besides finding a new partner. The question of re-integration should never arise because the situation whereby single parents are marginalised should not be allowed to occur. Therefore, the present situation whereby many single parents find themselves unable to break into the labour market once their children have departed must be avoided.

The policies required in order to give single parents an opportunity to continue to earn are necessarily radical. The key is to
permit and to encourage a range of commitment to employment. In a labour market still widely committed to the forty hour week and to career structures which do not accommodate breaks in a person's working life, this is a controversial idea. What is envisaged is an explicit recognition that spouses are not liable to maintain each other for the rest of their lives, despite the severance of the marital bond, and that the spouse who is financially dependent must seek to earn as soon as possible, but not to an extent which prejudices the welfare of the children. Therefore, where younger children are involved, a full forty hour week is probably inappropriate. Commitment to employment can increase as the demands of the children lessen.

In parallel with flexibility over working hours, there will have to be a greater willingness to accept the possibility of job-sharing. Greater provision of affordable day-care facilities is also essential. The extent to which day-care places are available will to a large extent determine the number of hours which it is practicable for a single parent to commit to employment. Ideally, by the time the children reach their teenage years, the single parent will be ready for full-time employment.

It may be protested that this progression into full-time work demands a revolution in the labour market. Hosts of discriminatory and inflexible practices would have to be reformed. In particular, attitudes to women in the labour market would have to undergo profound change. The answer to this is not simply that the labour market is ripe for reform. It is that, unless it is reformed to accommodate the needs of those potential employees who have responsibility for children, the much vaunted ideal of independence for those who have divorced or had a
child outside marriage will have no substance. The clean break between adults which is now so fashionable will, in reality, be unachievable until the hostility of the labour market is tempered. Until then, there will be no viable alternative for the single parent but dependence, whether on a former spouse, family, friends or the State.
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