A "Dual System" of Family Law
Revisited: Current Inequities in California's Child Support Law

By Shannon Bettis Nakabayashi*

All happy families are alike but an unhappy family is unhappy after its own fashion.2

Contemporary life offers countless ways in which . . . families [can be] made unhappy . . . . No society can assure its children that there will be no unhappy families. It can tell them, however, that their Government will not be allowed to contribute to the pain.3

Forty years ago, Stanford law professor Jacobus tenBroek wrote a series of landmark law review articles calling attention to what he termed a "dual system" of family law in California: one system for the middle and upper classes and one for the poor.4 While noting terms such as "the poor" and "poor law" were anachronistic, if not condescending, in the twentieth century, tenBroek used these words to highlight the biggest problem with California's family law system—the California legislature's adoption of the ideologies and structures of seventeenth century Elizabethan Poor Law.5

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Professor tenBroek postulated that a dual system of family law existed in California. One system was for the poor based on the Aid to Families with Dependent Children Act ("AFDC") and the California Welfare and Institutions Code, directly borrowed from Elizabethan Poor Law. The other system was for the "non-poor" based on the California Family Code and common law. Although he acknowledged "some intermingling of provisions and concepts among all four of these legal complexes," tenBroek felt that "the major gap lies between the two public aid laws on one hand and the codes and common law on the other."\[10\]

We have two systems of family law in California: different in origin, different in history, different in substantive provisions, different in administration, different in orientation and outlook. One is public, the other private. One deals with expenditure and conservation of public funds and is heavily political and measurably penal. The other deals with the distribution of family funds, focuses on the rights and responsibilities of family members, and is civil, nonpolitical, and less penal. One is for underprivileged and deprived families; the other for the more comfortable and fortunate.\[11\]

This Comment focuses on tenBroek's hypotheses as they apply to one of the more contentious and volatile family law issues—child support. This Comment argues that not only does a dual system of family law persist in California, but that state and national legislatures have created a new tripartite system of child support—one for the very rich, one for the very poor, and one for the rest of society. Part I traces the history of child support law as it is inextricably linked with welfare and poor laws, beginning with English common law and continuing with the later invention of child support by American courts. Part II examines the uniform child support guidelines of today, showing that while the very wealthy are allowed to determine their own levels of child support, the separate child support law of the poor, enshrined in today's welfare reform acts, egregiously burdens those who can least afford to pay child support. The problem is only exacerbated by the constant shifts in the public's attitude toward those receiving public assistance. Part III examines several possible models of child support.

8. See tenBroek, supra note 4, at 257.
9. See id.
10. Id.
11. Id. at 257-58.
and suggests that only by reevaluating our basic assumptions and attitudes about child support can we hope to achieve a truly uniform and fair system, one that recognizes that child support is both a public and a private responsibility.

I. Background

A. Family Law and Child Support Prior to the Twentieth Century

1. English Common Law Roots

Family law as it is known today did not exist prior to the late nineteenth century.\(^{12}\) What is commonly thought of as family law traditionally encapsulated only the legal rights of husbands and fathers—the right to control their property, wives, and children.\(^{13}\) Divorce was not prevalent until the late nineteenth century.\(^{14}\) The concept of child support was also foreign to the English common law. According to Sir William Blackstone, "[t]he duty of parents to provide for the maintenance of their children is a principle of natural law . . . . By begetting them, therefore, they have entered into a voluntary obligation, to endeavor, as far as in them lies, that the life which they have bestowed shall be supported."\(^{15}\)

Support of children was considered no different than support of any other indigent person and was handled as part of a complex system in which responsibility was allocated among various local public and private institutions.\(^{16}\) Unlike family law established for the rest of


\(^{13}\) See tenBroek, supra note 4, at 258; see also tenBroek, supra note 12, at 915.

\(^{14}\) See Drew D. Hansen, The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law, 108 YALE L.J. 1123, 1127 (1999). Any legal issues that arose during a marriage were originally decided by ecclesiastical courts. See tenBroek, supra note 4, at 266. As tenBroek notes, "[f]amily law . . . was created by the common law courts. It was integrated into the main body of the nation's statutory law only as it was a part of the feudal law of inheritance and wardship. Here the role of the courts was primary." Id. at 261.

\(^{15}\) 1 WILLIAM BLACKSTONE, COMMENTARIES *447 (emphasis added).

\(^{16}\) See Hansen, supra note 14, at 1129. It should be noted the role of children in seventeenth and eighteenth century society, was dramatically different than today or even a hundred years ago. See id. Except for the children of the wealthy, children were expected to work and often provided an important source of income and support for their family. See id. Indentures and apprenticeships were very common. See MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 92 (1988). It was not until the nineteenth century that the growing American middle class began to keep their children in school rather than putting them to work. See Hansen, supra note 14, at 1130. Poorer families, however, had no choice but to keep their children working. See id.
society, law applying to the family relations of the lower classes "evolved as an integral part of the labor and poor law systems [and] was the creation of Parliament."17 The laws that governed poor families had nothing to do with "family law" but instead focused on putting as many people, including children, to work as possible.18

Five fundamental beliefs encapsulated the goals and strategies of Elizabethan Poor Law.19 These ideas shaped public aid laws in Britain and America for centuries.20 The English legal system at that time believed that (1) all poor must work; (2) helping the poor actually hurts the poor; (3) poverty is the result of moral failure (and the corollary that all poor parents must be bad parents); (4) government responsibility for the poor is best located at the local level; and (5) local assistance is to be strictly limited to local poor.21 Guided by this philosophy, the common law began to divide the poor into worthy and unworthy, limiting aid to those who truly "deserved" it.22 In the case of children, the poor law's idea of child support was to remove children from their morally unfit parents' home and place them in apprenticeships or workhouses.23

2. Dependency and Punishment—Supporting the Poor in Early America

English common law was implanted without much change in the American colonies.24 Poverty continued to be a problem in early America and the colonists soon enacted their own poor laws.25

17. tenBroek, supra note 4, at 261. The first attempt at a unified and cohesive poor law was the Elizabethan Poor Law of 1601. See Quigley, supra note 5, at 102. "Labor law" refers to the Statutes of Labourers (1350), considered by many to be the first poor law which was concerned with vagrancy and making sure that all who were able worked and were not "idle." See id.

18. See Quigley, supra note 5, at 102. Typical provisions of the Elizabethan Poor Law included: "[B]egging was forbidden. Employable poor were to be put to work in manufacturing projects . . . . The able-bodied refusing to work were to be sent to [prison] . . . . Poor children were to be put to work or apprenticed." tenBroek, supra note 4, at 259.

19. See Quigley, supra note 5, at 101.

20. See id.

21. See id. at 101–05.

22. See Abramovitz, supra note 16, at 151.

23. See Quigley, supra note 5, at 105.

24. See id. at 102.

25. See Abramovitz, supra note 16, at 77. For example, in 1692 Massachusetts passed a law that required officials to "set to work all such persons, married or unmarried, able of body, having no means to maintain them, that live idly and use or exercise no ordinary and daily lawful trade or business to get their living by." Id. at 77–78. Poor law legislation appeared even earlier in the Plymouth Colony (1642), Virginia (1646), and Connecticut (1673). See id. at 78.
Modeled after the English laws, the colonial statues emphasized local responsibility and support of one's own family members. They provided differential treatment . . . based on . . . status as neighbor (resident) or 'stranger' (non-resident) and as deserving (helpless) or undeserving (able-bodied) . . . .”

Colonists usually took care of “paupers” individually, giving them work, taking them into their homes, or providing them with meals. “Puritan Calvinism considered economic rewards to be a sign of predestined grace, and class hierarchies provided an opportunity for the well-to-do to serve society and God by caring for those with less.”

One of the more egalitarian features of colonial poor law was the provision of “outdoor relief.” Outdoor relief allowed a family to receive aid quietly in their own home through the charity of their neighbors. Women were not forced to work outside the home and children were not forcibly taken from their families.

As the nation expanded and moved from an agricultural economy to an industrialized one, seventeenth century methods for helping poor families became impractical. “Given the incompatibility between the colonial poor laws and the emerging economy, new means had to be found to assist families in distress while stemming rising relief costs, maintaining the labor supply, and enforcing the . . . family ethic.” Coupled with economic changes was the “new explanation of poverty”—the emerging idea that the problems of the poor were located in their lack of work and family ethics.

The responsibility for supporting the poor soon fell on private charities, which proliferated through the 1800s. The private organizations devoted themselves not only to helping poor women but to promoting the “proper family life.” Many poor were also institution-
This was especially true for children. The law increasingly sanctioned the practice of breaking up families to 'help' them. Children were taken to orphanages where all contact with their parents was cut off so that the parents' poverty would not improperly influence the children.

Private charities, however, proved to be an imperfect solution. As America moved into the Progressive Era, many began to look to the state legislatures and courts to create solutions to social problems.

3. The American Invention of Child Support—Applying Poor Law Principles to Create a Support Obligation

Child support is an American invention. Prior to the 1800s little thought was given to the imposition of an affirmative legal duty on parents to support their children. As broad social changes began to transform the family, there was a rise in single-parent families. American lawmakers began to notice a correlation between divorce, or more commonly desertion, and the subsequent poverty of a single mother and her children. Fearing that the poverty and dependency

38. See id. at 155.
39. See id. at 163–65.
40. Id. at 168.
41. See id. at 165–68.
42. See id. at 150–71.
43. See id. at 181.

Progressivism, the name given to the social reform movement that emerged at this time, sought to modify the imperfections of capitalism without overthrowing it. Led largely by corporate leaders and middle-class reformers, Progressivism called for greater state involvement in the political economy in spheres where voluntary solutions seemed to have failed.

Id. at 181–82.
44. See id. at 182.
45. See Hansen, supra note 14, at 1125.
46. See id. at 1133–34. There was, however, a remedy under the Elizabethan Poor Law of 1601 for local parishes, as third parties, to recover costs of child support where a child was absolutely destitute. See id. at 1134 n.59; see also tenBroek, supra note 4, at 279–87.
47. See Hansen, supra note 14, at 1127–29. There were numerous reasons for children to be living with one parent or with other relatives, including death, divorce, desertion, or migration by a parent to find work. See id. at 1127–31. However, this Comment focuses on divorce and desertion as the primary cause of single-parent families, and assumes, for the sake of simplicity, that it is almost always the mother who is left taking care of the children. See generally Abramowitz, supra note 16 (discussing the broad effects of divorce and desertion upon American women).
48. See Hansen, supra note 14, at 1127. During the nineteenth century the divorce rate increased throughout America. See id. The number of divorces increased at a greater rate in the western states because they had more liberal divorce laws. See id. at 1127 n.18. Yet,
of these mothers and children would overwhelm local charitable resources, American courts began to create a child support obligation, "assert[ing] that a father had a legal duty to support his children." Lawmakers created this new cause of action by implying a contract between the father and whomever had taken over the responsibility of providing "necessities to the child." Under the new child support doctrine, "any other person who supplies such necessaries is deemed to have conferred a benefit on the delinquent . . . [father], for which the law raises an implied promise to pay on the part of the parent." Soon, mothers were allowed to sue the fathers of their children for the recovery of child support on the theory that they were also providing necessities to the children.

A significant part of the growing law of child support also included the imposition of criminal sanctions on the non-supporting parent. This idea was taken from Elizabethan Poor Law provisions, which provided that one who ignores his support obligations is defrauding the state by forcing single mothers and children to be dependent on state aid.

While child support was being created in family law courts, state legislatures continued to develop their own remedies to the financial pressures on communities caused by indigent children. California enacted legislation in 1901, which adopted the traditional features of the Elizabethan Poor Law provisions. This was followed by the Indigent Act of 1933. According to tenBroek, these laws regarded [the poor] as a distinct class . . . ruled by provisions and procedures which are not of general application . . . [These laws] regulated [the lives of the poor] as to the time, manner, form, and recompense of labor, if any, movement and travel, place of abode

See id. at 1131.
49. Id. at 1134.
50. See id. at 1136.
51. Id. at 1137 (citing Van Valkinburgh v. Watson, 13 Johns. 480 (N.Y. 1816)). “Necessaries” were very narrowly defined as “only those items required for bare subsistence.” Id. at 1140.
52. See id. at 1139.
53. See id. at 1147-49.
54. See id. at 1145.
55. See tenBroek, supra note 12, at 939-44.
57. See tenBroek, supra note 12, at 939.
and living arrangements, personal and civil rights, and family relationships. 59

B. Creation of Welfare and the Decline of Judicial Enforcement of Child Support Payments

In 1935, the federal government enacted the Social Security Act,60 eliminating the need for many state laws dealing with indigent parents and children.61 The federal legislation included provisions for low-income families that did away with any need for local governments and courts to pursue child support enforcement at all.62 AFDC,63 which is part of the Social Security Act, established a partnership between the federal government and the states in which the federal government provided appropriations to those states adopting plans approved by the Department of Health and Human Services.64 The states in turn provided minimum monthly assistance payments to families who met the AFDC requirements.65 Since the AFDC system was paying for most children in need of child support, many states, including California, no longer pursued delinquent parents as a method of funding poor relief.66

The fact that child support assistance was a product of legislative rather than judicial efforts, however, did not make it any easier to receive assistance. Families had to meet certain conditions mandated by the state in order to qualify.67 If they failed to meet such condi-

59. tenBroek, supra note 5, at 614 (emphasis added).
62. See id.
65. See id.
66. See Krause, supra note 61, at 4-5. According to tenBroek, by the 1960s there were almost 250,000 children in California being supported by AFDC. See tenBroek, supra note 5, at 618. Ninety percent of these children were living in a single-parent family with an absent father. See id. Almost forty percent of the children's parents had never been married at all. See id.
tions, they were denied assistance. As tenBroek stated, "[H]e who pays the bills can attach conditions, related or unrelated to the purpose of the grant." These conditions emanated from the "public . . . need to keep the bill down" and were constantly changed by legislatures depending on popular whim. The conditions that applied only to AFDC families included: criminal sanctions; regulations on family relations, such as who could live together and where; financial impositions upon non-relatives, such as step-parents; and caps on the number of children for which the state was willing to pay. These conditions were absent from the child support system used by those in the upper and middle classes.

C. Reform in the 1970s and 1980s

1. Title IV-D—Mandatory Enforcement

As stated above, for the first forty years that the AFDC was in existence, many states all but ignored child support enforcement, especially when it came to enforcing obligations owed to low-income families. This changed in 1974 when Congress passed the Family Support Act ("FSA"), codified as Title IV-D of the Social Security Act, which required states receiving AFDC funds to establish and enforce child support obligations. Title IV-D required states to design...
nate agencies to collect support. The primary goal behind the legislation was to reduce the federal cost of the AFDC program. Congress increasingly recognized that AFDC costs could be reduced by extending support enforcement to potential recipients, therefore making sure that families never "got on" welfare to begin with. However, unlike AFDC, the FSA enforcement provisions applied to any family regardless of whether they were receiving public assistance.

Title IV-D cemented family law and child support to Social Security and welfare. After Congress passed Title IV-D, the two systems became even more intertwined. A result of this interaction was a multi-track policy for child support enforcement. Welfare families still continued to bear a larger administrative and procedural burden while, ironically, research shows middle-class families benefited the most from FSA child support enforcement.

The child support system for welfare recipients became more burdensome because of its mandatory requirements. While child support enforcement for middle-class parents was voluntary, filing for and assigning child support was a prerequisite for poor women to receive aid. One advocate noted that this created a relationship be-

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74. See id. Until recently, the designated agency in California was the district attorney's office for each county. See Cal. Welf. & Inst. Code § 11475.1 (West 1991) (repealed 1999). The district attorneys' offices in turn established special Family Support Divisions. See id. Legislation passed in 1999 called for a phasing out of the use of district attorneys' offices and the creation of a separate state agency under the direction of the Franchise Tax Board to handle collections. See Cal. Fam. Code §§ 17300-17320 (West Supp. 2001).

75. See Krause, supra note 61, at 6.

76. See id. The enforcement legislation throughout the past thirty years has been quite extensive. AFDC recipients are required to legally assign all rights to any support payments to which they are entitled to the local enforcement agency. See Cal. Welf. & Inst. Code § 11477 (West Supp. 2001). That agency has the power to establish paternity, use a national law enforcement locator service to track the putative father down, and then attach his wages, imposing criminal sanctions if necessary. See Krause, supra note 61, at 8-9.

77. See Krause, supra note 61, at 6 n.26.


79. See id. at 734.

80. See id. at 735.

81. See Krause, supra note 61, at 6-7. One of the most controversial aspects of the enforcement measures is that AFDC recipients get none of their child support payment at all, while non-AFDC, usually middle-class, families get their checks directly, using the government as a free collection agency. See id. In AFDC cases, the government keeps the entire support payment for the child, even if the amount exceeds the amount the government has made in AFDC payments. See id. For example, if the calculated child support for a particular child is $350 per month, the state will keep the entire $350 it received from the non-custodial parent, even if the state only paid out $100 to the custodial parent for AFDC.

82. See Hirsch, supra note 78, at 735.

83. See id.
between the recipient and the government akin to a "supersexist marriage."

You trade in "a" man for "the" man. But you can't divorce him if he treats you bad. He can divorce you of course, cut you off anytime he wants. But in that case "he" keeps the kids, not you. "The" Man runs everything. In ordinary marriage, sex is supposed to be for your husband. On AFDC you're not supposed to have any sex at all. You give up control over your body. It's a condition of aid. . . . "The" man, the welfare system, controls your money. He tell[s] you what to buy and what not to buy, where to buy it, and how much things cost. If things—rent, for instance—really costs more than he says they do, it's too bad for you.

2. Uniform Guidelines

Another significant congressional child support reform of the 1980s was the creation of a national uniform guideline for establishing support. The 1988 FSA mandated that by 1994 all states wishing to continue receiving federal funds must implement presumptive guidelines for child support. The goal of the child support guidelines was "increasing compliance through fairness" by eliminating any factor that could lead to arbitrariness. In California and a majority of states, judges were given a formula that was theoretically applicable to all families, taking into account both parents' net income and the percentage of time each spent with their children. It was hoped this unified system of child support would eliminate the duality problems between poor and middle-income families previously pointed out by critics such as tenBroek.

II. The Problem: A Tripartite System of Child Support

The problem with the child support system in California today is that despite federal legislative efforts, it is not uniform. Not only is there still a tiered system of family law in California, but a tripartite system has developed—one for the very rich, one for those receiving

84. Abramovitz, supra note 16, at 313.
85. Id. at 313–14 (quoting Johnnie Tillmon, a welfare mother and leader of the National Welfare Rights Organization).
88. See Morgan, supra note 64, at 176.
welfare or AFDC,\textsuperscript{90} and one for everyone in between.\textsuperscript{91} The new ostensibly "uniform" system does function well for a greater majority of Californians. However, the disparity between rich and poor results in a fundamentally unfair system, as the family lives of the poor are still governed by legislative proposals and popular anti-welfare sentiment.

A. The Uniform Statewide Guidelines—How Child Support Works for the Majority of People

The mandated statewide uniform guidelines establish the required child support for most families.\textsuperscript{92} California has chosen to use an income-share child support model.\textsuperscript{93} This model takes a flat percentage of both parents' income and factors in how much time they spend with their child.\textsuperscript{94} Under the uniform guidelines, there is little room for judicial discretion. Instead, regardless of circumstances, the same formula and factors are used for everyone and are presumed to be correct.\textsuperscript{95}

The formula in its simplest form is as follows: $CS = K[H_N - (H\%) (T_N)]$, where $CS =$ child support amount, $K =$ amount of income to be allocated for child support (a constant set forth in section 4055(b) (3) of the California Family Code), $H_N =$ high earner's net monthly disposable income, $H\% =$ approximate percentage of time high earner has or will have primary physical responsibility of the children, $T_N =$ total net monthly disposable income of both parties.\textsuperscript{96} The formula is based on the presumption that a more equitable result comes from using the parents' net disposable income, rather than factoring in their monthly expenditures.\textsuperscript{97} Rather than having all families pay a


\textsuperscript{91} See CAL. FAM. CODE § 4057(b) (3) (West 1994) (creating exceptions to the guideline presumption for extraordinarily high-income parents); see also discussion supra note 81 (describing the different procedures for AFDC families).

\textsuperscript{92} See CAL. FAM. CODE § 4055 (West Supp. 2001).


\textsuperscript{94} See CAL. FAM. CODE § 4055 (West Supp. 2001).

\textsuperscript{95} See CAL. FAM. CODE § 4057 (West 1994).

\textsuperscript{96} See CAL. FAM. CODE § 4055 (West Supp. 2001).

\textsuperscript{97} See RUTrER GROUP, CALIFORNIA PRACTICE GUIDE: FAMILY LAW § 6:165 (2000).
flat rate percentage, the formula operates similarly to federal income
tax on a somewhat progressive scale. Once a guideline amount is
calculated, it is then adjusted upwards depending on the number of
children the parent is required to support. As the formula is cum-
bersome for most people to apply, most counties use a spreadsheet
program to perform the calculations.

The amount of child support determined under the guideline
formula is presumed to be correct. This presumption can be rebut-
ted only by showing that application of the formula would be "unjust
or inappropriate in the particular case." In general, however,
judges are required to order the guideline amount and may deviate
from this rule only in special circumstances. "[W]hen ordering

98. See id. Section 4055(b) of the California Family Code provides the following table:

<table>
<thead>
<tr>
<th>Total Net Disposable Income Per Month</th>
<th>K</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0–800</td>
<td>.20 + TN/16,000</td>
</tr>
<tr>
<td>$801–6,666</td>
<td>.25</td>
</tr>
<tr>
<td>$6,667–10,000</td>
<td>.10 + 1000/TN</td>
</tr>
<tr>
<td>Over $10,000</td>
<td>.12 + 800/TN</td>
</tr>
</tbody>
</table>


100. The Judicial Council permits the use of approved spreadsheet programs to calcu-
late guideline child support. See RUTHER GROUP, supra note 97, §§ 6:186–195. The following
spreadsheet is an example. Half of the spreadsheet, which indicates a proposed payment
schedule that would be advantageous for tax purposes, has been left out. In this example, a
non-custodial father, with one child, not in daycare, who spends no time with that child
and makes $3,513 a month, or $2,530 after taxes, will have to pay $633 a month in child
support. The important variables are emphasized in bold.

101. See CAL. FAM. CODE § 4057(a) (West 1994).

102. CAL. FAM. CODE § 4057(b) (West 1994).

child support the trial court lacks discretion to vary from the presumptively correct amount, calculated by applying the algebraic formula in the statute”\textsuperscript{104} unless there is a statutorily defined exception, such as the one for very wealthy parents discussed below.\textsuperscript{105} If a court wishes to deviate from the guideline amount, the judge must state in writing or on the record “[t]he reasons [why] the amount of support ordered differs from the guideline formula amount.”\textsuperscript{106} Given that judges must get through dozens of cases every day,\textsuperscript{107} the likelihood of having time to make an exception is very small.

Several cases have challenged the validity of the guidelines’ presumptions.\textsuperscript{108} One of these cases, \textit{County of Stanislaus v. Gibbs},\textsuperscript{109} actually shows how the guidelines can yield positive results. In \textit{Gibbs}, the defendant father had an illegitimate child with a woman who had no choice but to apply for welfare assistance.\textsuperscript{110} Pursuant to state welfare rules, the mother had to file a complaint to establish paternity and to collect child support against the defendant Gibbs.\textsuperscript{111} Gibbs admitted paternity but contested the $838 he was ordered to pay in child support, claiming that the court should not have used the guideline factors and challenging the statutory presumption that the guideline amount was correct.\textsuperscript{112} Gibbs argued that even though he made over $50,000 per year as a parole officer, his substantial debt and the three children he was supporting with his current wife made it impossible for him to pay the $838 per month.\textsuperscript{113} The trial court believed Gibbs’s argument and reduced the amount of support to $675 per month.\textsuperscript{114} The county appealed.\textsuperscript{115}

On appeal, the fifth district court found that the family court judge had abused his discretion.\textsuperscript{116} The court held that the guideline principles are not to be altered unless there are clear special circum-

\textsuperscript{104.} In \textit{In re Marriage of Carter}, 33 Cal. Rptr. 2d 1, 2 ( Ct. App. 1994).
\textsuperscript{105.} See CAL. FAM. CODE § 4057(b)(3) (West 1994); see also discussion infra Part II.B.
\textsuperscript{106.} CAL. FAM. CODE § 4056(a)(2) (West 1994).
\textsuperscript{107.} See Catherine Bridge, \textit{The Do-It-Yourself Dilemma: Family Courts Trying to Cope with Crush of Pro Per Litigants}, RECORDER, June 30, 2000, at 1.
\textsuperscript{108.} See generally \textit{In re Marriage of Fini}, 31 Cal. Rptr. 2d 749 (1994); \textit{In re Marriage of Norvall}, 237 Cal. Rptr. 770 ( Ct. App. 1987).
\textsuperscript{109.} 69 Cal. Rptr. 2d 819 ( Ct. App. 1997).
\textsuperscript{110.} See id. at 821.
\textsuperscript{111.} See id.
\textsuperscript{112.} See id.
\textsuperscript{113.} See id. Gibbs actually argued he was entitled to a hardship deduction, a deduction from child support due to a party’s extreme financial burdens. See id.
\textsuperscript{114.} See id.
\textsuperscript{115.} See id. at 822.
\textsuperscript{116.} See id. at 822–23.
stances, usually reserved for those who are truly impoverished and, therefore, entitled to a hardship deduction.117 The defendant owned a $340,000 home in the San Francisco Bay Area and the combined income in his home was over $100,000 per year.118 Gibbs's illegitimate child was entitled to share in the income and lifestyle of Gibbs's other children, and the court admonished the defendant for complaining after he had "received a windfall by not having had to support [his son] until he had reached the age of 15."119 The order of the lower court was reversed, showing that, at least in this example, justice was served by rigorous adherence to the formula.120 Moreover, the case also illustrates the difficulty that a trial court may have in fashioning child support outside of the uniform guidelines.


California Family Code section 4057121 states that "[t]he amount of child support established by the [guideline] formula . . . is presumed to be . . . correct [unless] . . . [t]he parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the [child]."122 In such cases the guideline formula is discarded, and the court makes its own independent inquiry into the appropriate amount of support.123

The philosophy behind providing special rules for extraordinarily high-income parents is the fear that: "(1) such support constitutes the distribution of the obligor [custodial] parent's estate; (2) such support provides an inappropriate windfall to the child; [and] (3) such support may also infringe upon a parent's right to direct the lifestyle of his or her children."124 Several state courts have determined that although children are entitled to support from their parents, they are not entitled to too much, distinguishing between the necessities of life and what has been termed a "good fortune trust."125 One professor called this "the three pony rule," as in "no child needs three po-

117. See id.
118. See id. at 821.
119. Id. at 825.
120. See id. at 824–25.
121. CAL. FAM. CODE § 4057 (West 1994).
122. Id.
124. Morgan, supra note 64, at 192.
125. See id. at 194.
There is a need for judicially determined support from high-income earners to be limited. Non-custodial parents are often leery of having the other parent benefit from a high award of child support and, in order to prevent a windfall to the custodial parent, will try to limit support to their child’s basic needs.

One disturbing trend in child support litigation among the very wealthy is the tendency of courts not to require high-income earners to provide financial documentation. While it is customary to allow parties in support actions discovery of each other’s financial records before a support determination is made, several California appellate courts have held that financial information regarding high-income earners is “irrelevant” and that courts should not inquire into the party’s net worth or lifestyle.

One illustration of the different rules for wealthy parents is the infamous case of actor Emilio Estevez. Estevez had been paying more than $14,000 per month for the support of his children, without a court order. The children’s mother sought a court order to guarantee the support and requested financial information to prove Estevez earned $300,000 monthly. The mother was not permitted to make any discovery motions pertaining to Estevez’s income. The court felt such discovery was “burdensome and oppressive” to the actor. Since the actor stipulated he was a high-income earner and that he was willing to pay any reasonable amount of child support, the court did not make any further inquiries. Although under the uniform guidelines, Estevez would have had to pay $35,000 a month, the court held he only had to pay what was deemed fair, not a percentage of his salary, like non-wealthy parents.

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126. *Id.* at 198 n.69.
128. *See id.*
131. *See id.* at 472.
132. *See id.*
133. *See id.* at 475–76.
134. *See id.*
135. *See id.* at 475.
136. *See id.* The parties ultimately agreed that $14,500 a month was reasonable support. *See id.* Some jurisdictions appear to be softening the strict discovery rules for wealthy parents. *See Johnson v. Superior Court*, 77 Cal. Rptr. 2d 624 (Ct. App. 1998) (holding that in a support action against professional basketball star Larry Johnson, the mother of Johnson’s child was entitled to discovery of Johnson’s net worth).
One factor that the rules pertaining to extraordinarily high-income earners seem to ignore is that the purpose of child support law in California is not just to make sure that the child’s needs are met, but to ensure that the child has a share in the high-income earner’s standard of living, regardless of who has custody.\(^{137}\) The California Family Code specifically states as one of its mandatory principles that “[c]hildren should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.”\(^{138}\)


1. A Typical Case

As a 1998 portrayal of the child support system in Los Angeles\(^{139}\) pointed out, the people who arrive at courthouses to contest child support orders are not stereotypical deadbeat parents, “pulling up in a flashy car with a new wife on one arm and a high-priced lawyer on the other.”\(^{140}\) Rather, such parents are “overwhelmingly blue-collar workers who ride the bus or drive aging cars, showing up for court in jeans and a work shirt.”\(^{141}\) In a system where over half the cases feature pro per, or self-represented, litigants,\(^{142}\) what happens can often seem to be the product of “a soulless, wretched system.”\(^{143}\)

A family profiled in the Los Angeles Times provides an all too typical example. Omar Moreno, a 35-year-old teacher’s aid, paid $191 a month in child support for an ex-girlfriend’s child.\(^{144}\) The mother’s welfare debt “weighed so heavily on Moreno and his [current] wife that they declared bankruptcy and moved in with his mother.”\(^{145}\) In

\(^{137}\) See Seastrom & Kusmider, supra note 127, at 44.
\(^{138}\) Cal. Fam. Code \(\S\) 4053(f) (West 1994).
\(^{141}\) Id.
\(^{142}\) See Bridge, supra note 107, at 8.
\(^{143}\) Krikorian & Riccardi, supra note 140, at A1 (quoting defense attorney Art Goldberg).
\(^{144}\) See id. Under state welfare laws, the money actually went to repay the welfare system and not directly to the child. See Krause, supra note 61, at 6–7.
\(^{145}\) Krikorian & Riccardi, supra note 140, at A1.
an effort to improve his life, Moreno went back to school part-time.\textsuperscript{146} He wrote letters to the district attorney’s office to lower his payments, but he received no response.\textsuperscript{147} Not long after writing the letters, Moreno was summoned to court during a routine effort by the district attorney’s office to raise his payments.\textsuperscript{148} Moreno appeared at the hearing and received the good news that due to his reduced income, he was entitled to a decrease in support payments.\textsuperscript{149} However, since Moreno did not file the proper paperwork, he forfeited his right to the decrease.\textsuperscript{150}

Because his income was too high to retain free legal assistance, Moreno was left to confront the situation without an attorney.\textsuperscript{151} He began missing payments and his debt grew along with compounded interest.\textsuperscript{152} The district attorney’s office then seized half of his paycheck and his entire income tax refund in order to reduce the debt he owed.\textsuperscript{153} At the time of the \textit{Los Angeles Time} article, Moreno and his family were receiving assistance from food banks.\textsuperscript{154} When reporters questioned the district attorney’s office about Moreno’s case, they replied that it was not their “obligation to represent this person in court . . . . [I]n the end it is still an adversarial legal system.”\textsuperscript{155} Moreno may have even gotten off easy. Other parents have been put in jail for failure to pay support.\textsuperscript{156} Throughout most of this harrowing process parents are not entitled to any court-appointed counsel.\textsuperscript{157}

What happens all too often to these inexperienced litigants is a “bullying of opponents unschooled in legal intricacies.”\textsuperscript{158} Pro per litigants cannot afford attorneys to represent them and the system is so overcrowded that district attorneys often make mistakes, overcharging parents or charging the wrong person entirely.\textsuperscript{159} Despite California’s record of having the toughest child support laws in the nation, the

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{146} See id.
  \item \textsuperscript{147} See id.
  \item \textsuperscript{148} See id.
  \item \textsuperscript{149} See id.
  \item \textsuperscript{150} See id.
  \item \textsuperscript{151} See id.
  \item \textsuperscript{152} See id.
  \item \textsuperscript{153} See id.
  \item \textsuperscript{154} See id.
  \item \textsuperscript{155} See id.
  \item \textsuperscript{156} Id.
  \item California Penal Code section 270 makes willful failure to provide for one’s children a misdemeanor with a maximum sentence of one year in county jail. See \textit{Cal. Penal Code} § 270 (West 1999).
  \item \textsuperscript{157} See Krikorian & Riccardi, \textit{supra} note 140, at A1.
  \item \textsuperscript{158} Id.
  \item \textsuperscript{159} See id.
\end{itemize}
\end{footnotesize}
state also has one of the worst track records in collections. In 1996, over $8.2 billion in child support went uncollected, leaving many families on the brink of poverty.

2. California's Choice of Child Support Model Hurts Rather Than Helps

As noted, California uses an income-share child support model. This model takes a flat percentage of both parents' income and factors in how much time they spend with their child. While there is data to suggest that this model helps low-income families, its fundamental presumptions lead to unfairness. The formula not only presumes that as income increases the percentage devoted to the child decreases, but it also does not reflect the fundamental notion (present in other formulas) that supporting dependents is impossible until one's own basic support needs are met. For example, California's guideline does not take fundamental personal expenses into account (such as rent, mortgages, utilities, food, insurance, credit card, and loan payments), and thus a court could order a parent to pay over half of his or her disposable income to support his or her child. If a parent is making minimum wage, it becomes impossible to live up to his or her support obligations. The current child support model forces many parents into poverty and does not recognize that many parents have to default on their child support obligations because they cannot afford them.

3. Political Pressures on AFDC Are Integrally Tied with Child Support

When President Clinton took office in 1992, one of his first goals was to reform the welfare system. These efforts led to the Personal

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161. See id.
162. See Morgan, supra note 64, at 173–76; see also generally Venohr & Williams, supra note 93.
163. See Morgan, supra note 64, at 173–76.
164. See id. at 183–84.
165. See id.
166. See id. at 180.
168. See Krause, supra note 61, at 12–13.
Responsibility and Work Opportunity Reconciliation Act of 1996.\textsuperscript{170} The Act ended federal entitlement to AFDC and replaced it with block grants to states, making aid to poor families a local, and not national, responsibility.\textsuperscript{171}

Under the new system, “child support enforcement was incorporated within the broader welfare reform issue because it was viewed as an important element of a new system for single-parent families.”\textsuperscript{172} Despite this benign-sounding purpose, political concerns regarding the poor infiltrated the child support system through the new welfare reform act.\textsuperscript{173} Guided by a philosophy that parents, not the government, should be paying for their children’s support, and by the notion that if a parent cannot afford to support his or her children then he or she should not be having children, social agendas began to dictate the enforcement of child support obligations.\textsuperscript{174} Because California must comply with all federal requirements in order to receive much needed grants, nationwide attitudes about child support greatly affected what happened to the poor in this state.\textsuperscript{175}

a. The Focus on Deadbeat Dads

A fundamental impetus behind child support legislation is the fear that when children are not financially supported, then they, along with their custodial parent, will be forced to go on welfare and thus be supported by taxpayers.\textsuperscript{176} Therefore, when Congress decided in the 1990s that the number of people receiving welfare needed to be drastically reduced, legislators first looked to child support enforcement. Congress started with the Child Support Recovery Act of 1992.\textsuperscript{177} The Act provided for criminal sanctions (up to two years in


\textsuperscript{171} See Legler, supra note 169, at 519.

\textsuperscript{172} Id. at 524.

\textsuperscript{173} See Brito, supra note 67, at 240 n.45.

\textsuperscript{174} See id. at 229-30.

\textsuperscript{175} See Legler, supra note 169, at 558.


\textsuperscript{177} 18 U.S.C. § 228 (1994). The Act was challenged in United States v. Lopez, 514 U.S. 549 (1995), for exceeding Congress’ Commerce Clause power and also for violating the Tenth Amendment. The Supreme Court has so far refused to hear both challenges. See United States v. Black, 125 F.3d 454 (7th Cir. 1997), cert. denied, 523 U.S. 1033 (1998). The defendants in Black were convicted for willfully withholding child support payments. See id. at 456. They challenged the Act as unconstitutional for exceeding Congress’ authority under the Commerce Clause. See id. The Seventh Circuit rejected their claims. See id.
prison) for any parents who "willfully failed to pay their child support obligation."178 The Act was later amended and entitled the Deadbeat Parents Punishment Act of 1998.179 While the idea of stepping-up law enforcement efforts to collect child support payments is not inherently unsound, the idea ignores several major problems.

One such problem is that many low-income parents simply cannot pay, as the parents of most children on AFDC are likely to be impoverished themselves.180 According to Professor Henry Krause, "[m]any a defaulting father's obligation, even if originally assessed fairly, does not correspond to his current economic circumstances . . . . [O]ur current emphasis on enforcing the father's obligation clouds our judgment about how much money we can realistically expect the father to provide."181 California courts have little discretion to lower the presumptive guideline amount, especially when AFDC is involved.182 The only discretion courts do have is in awarding hardship deductions for subsequent children.183 Thus, fathers making as little as minimum wage can end up owing tens of thousands of dollars, money that "short of winning the lottery, the father has no hope of ever being able to pay."184

The other major problem with enforcement measures that target deadbeat dads is that the procedures for establishing paternity and giving notice of child support hearings are far from perfect.185 Prosecutors are given financial incentives to obtain judgments against parents of AFDC children quickly, often at the expense of justice.186 A recent report by the Judicial Council of California found that seventy percent of all child support orders are obtained by default judgment.187 "Very often by the time a support obligor receives actual notice of the support order the accumulated amount of arrearages totals tens of thousands of dollars. These arrearages amounts, particularly for a low

179. 18 U.S.C § 228 (Supp. IV 1998).
180. See Krause, supra note 61, at 12–13.
181. Id.
182. See Cal. Fam. Code § 4057 (West 1994). Under California Family Code section 4056, if a judge does want to deviate from the guideline he has to go through the laborious process of declaring for the record official findings as to why the guideline should be disregarded. See Cal. Fam. Code § 4056 (West 1994).
186. See id.
wage earner, are a significant obstacle to good faith compliance.\textsuperscript{188}
There are also fewer obstacles in the way of prosecutors seeking to obtain a wage garnishment against an AFDC parent than there are against a middle- or upper-class parent who has access to an attorney who can make the proper motions to a set aside or dismiss the judgment for lack of notice.

The Judicial Council further noted that "thousands of individuals each year are mistakenly identified as being liable for child support actions. As a result of erroneous child support actions, the ability to earn a living is severely impaired, assets are seized, and family relationships are often destroyed."\textsuperscript{189} Add to this the fact that a significant number of the accused cannot afford an attorney.\textsuperscript{190}

b. \textbf{The \textquotedblleft Family Values\textquotedblright\ Campaign}

Child support for AFDC families is also subjected to a \textquotedblleft family values\textquotedblright\ philosophy, popular among some legislators, which claims that single-parent families and the decline of traditional family structures cause poverty.\textsuperscript{191} While it is absolutely undeniable that, as a result of divorce, women and children see dramatic declines in their income,\textsuperscript{192} proponents of the political and moral ideology of welfare reform advocate that if these mothers would get married or stay married, they would not be in financial trouble.\textsuperscript{193} The fact that the new welfare reform proposals desire to regulate family behavior is obvious from the opening \textquotedblleft findings\textquotedblright\ of the Personal Responsibility Act. The Act states that \textquotedblleft [m]arriage is the foundation of a successful society . . . . Marriage is an essential institution of a successful society which promotes the interests of children . . . . Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children . . . .\textsuperscript{194}

Coupled with the idea that single-parent families are to be frowned upon is the idea that women receiving AFDC should have as few children as possible.\textsuperscript{195} The new welfare reform proposals have been criticized as maintaining a \textquoteleft;strings attached\textquoteright; tactic of condition-

\textsuperscript{188.} Id.
\textsuperscript{189.} Id.
\textsuperscript{190.} See Krikorian & Riccardi, \textit{supra} note 185, at A1.
\textsuperscript{191.} See Brito, \textit{supra} note 67, at 240 n.45; see also Abramovitz, \textit{supra} note 16, at 33–34.
\textsuperscript{192.} See Abramovitz, \textit{supra} note 16, at 352 (discussing the "feminization of poverty").
\textsuperscript{193.} See Brito, \textit{supra} note 67, at 234.
\textsuperscript{195.} See id.
ing receipt of public assistance on compliance with coercive and punitive behavioral regulations,” particularly towards family size and birth control.196 “[T]he measures are designed to discourage childbirth both by imposing a financial penalty on women who bear additional children and by providing a monetary incentive to women who use prescribed methods of birth control.”197 Often such measures are founded on the idea that welfare itself encourages poor women to have more children who will themselves continue to be on welfare.198 Procreation by welfare mothers is deemed irresponsible behavior on the theory that if they could not afford children, they should not have them to begin with.199

Several years ago, in a debate in the California Assembly over whether or not to allow welfare parents to claim hardship deductions and thus reduce the amount of their child support payments, one member stated that “an AFDC family has a ‘social contract’ with government to aid only those children in the family at the time the aid is approved.”200 Any adult that has further children is behaving “irresponsibly” and has violated his or her contract with the state.201 The state then should not be obligated to support these additional children.202 It is hard to imagine a similar statement being made about middle- or high-income families.

As recently as December of 1999, California had a provision which did not even allow parents of children receiving AFDC to claim hardship deductions.203 The provision was repealed by the Child Sup-

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196. Id. at 241.
197. Id. (referring to the birth control “Norplant”).
199. See Brito, supra note 67, at 242.
200. County of Orange v. Ivansco, 78 Cal. Rptr. 2d 886, 889 n.7 (Ct. App. 1998) (emphasis added) (citing Memorandum to the Members of Senate Democratic Caucus from Chairperson Diane E. Watson, Preliminary Analysis of Welfare Proposal).
201. See id.
202. See id.

For purposes of computing the minimum level of child support under Section 4070, no hardship shall be deemed to exist and no deduction from income shall be granted if aid payments are being made pursuant to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code on behalf of a child or children of the parent seeking the deduction, even if the payments are being received by the other parent.
port Enforcement Fairness Act of 2000, but only after it had limited
the resources of AFDC parents for five years. An appellate court found
the provision violated the Equal Protection Clause of the United
States Constitution. The provision was repealed before it reached
the California Supreme Court.

III. The Solution: Rethinking Welfare and the Societal
Obligation to Children

Tolstoy is frequently quoted as saying something about how all
happy families are the same . . . . Of course, he’s got it totally
wrong, completely . . . backward. Happiness is infinite in its vari-
ety . . . . [A]ll the unhappy families are pretty much the same . . . .
Listen to any unhappy person tell his tale of woe, and it sounds like
every other tale of woe. 

Laws, particularly those pertaining to families, need continuity
and predictability, and they should not be based on popular ideolo-
gies and outmoded moralities. Family law needs to be completely sep-
parated from the ideologies of welfare law so that there can truly be a
uniform system of child support law. While parents should be respon-
sible for the maintenance of their children, child support needs to be
viewed in a dramatically different manner. Blaming deadbeat parents
will not solve the problem because the large majority of them can not
afford to pay. As one legal commentator noted, it is like trying to
get the proverbial “blood from a stone.” There needs to be a funda-
mental shift in the way American society views support for children.
Child support needs to be seen as both a private and a public
responsibility.

A. Changing the System from Within

Many judges, lawyers, and advocates have set forth proposals at-
temting to change the inequities in the current child support sys-
Id. (emphasis added).
205. See Ivansco, 78 Cal. Rptr. 2d at 892.
207. See Krause, supra note 61, at 12–13.
209. See Bridge, supra note 107, at 8.
with the hope that small changes to the California Family Code can solve the problem.\footnote{210}

1. **Removing the Punitive Aspects of Child Support**

   One positive change has been the phasing out of the district attorney's offices as local child support enforcement agencies.\footnote{211} As noted, the punitive aspects of child support and welfare law, codified since the first Elizabethan Poor Laws, have often been considered needlessly burdensome and oppressive.\footnote{212} California's decision to use the local district attorney's offices for what are routinely civil matters only increased the atmosphere of fear and hostility between parents and the state.\footnote{213} A look at the infamous situation in Los Angeles shows just how bullied and pressured many parents feel.\footnote{214} Removing a criminal enforcement agency from the equation certainly helps to limit the punitive nature of the system.

2. **The Family Law Facilitators' Program—Creating Parity Within the System**

   So far, the most successful state program has been the creation of Family Law Facilitators' offices in each county.\footnote{215} These offices take federal money, given to the state for child support collection, and use the money to educate pro per litigants on how to represent themselves and protect their own rights.\footnote{216} The Facilitators' program has not only eased the burden on overworked family court staff but has vastly increased the chances that the due process rights of low-income litigants will be protected.\footnote{217}

B. **Changing Perspective—Alternative Models**

   One of the primary problems plaguing child support law is the myriad of artificial concerns and motives society places on it. As ten-Broek noted,\footnote{210} See id. at 8–9. Ironically, many of these bills are blocked by the lobbying efforts of the family law bar. See id.


\footnote{212} See, e.g., Hansen, supra note 14, at 1147–51; see also Quigley, supra note 5, at 103.


\footnote{214} See Krikorian & Riccardi, supra note 140, at A1.

\footnote{215} See id.

\footnote{216} See id.

\footnote{217} See Bridge, supra note 107, at 8.
[The] fundamental [fiscal] motive from time to time has been augmented by the punitive, the moralistic, the political and restrained by the humane and rehabilitative, [which have] been determinative in molding the character and fixing the features of the law of the poor in general and the family law of the poor in particular.218

In order to get away from a tiered system, all of these motives—the punitive, moralistic, political, and especially the financial—need to be questioned and possibly abandoned. The following models explain possible suggestions scholars have made for doing so that look at child support as both a public and private responsibility.

1. The European System

Many European countries and most industrialized nations provide child allowances for their citizens (usually financed by taxation) through “advanced maintenance payment systems.”219 In England, for example, “all families receive a ‘child benefit’ to defray the costs of raising children.”220 Single-parent families receive an additional “One Parent Benefit.”221 Sweden has the “oldest and most generous system,” giving single mothers who are not employed outside the home “an advanced maintenance payment, plus a family allowance, a housing subsidy and social assistance equal to 94% of the average worker’s wage.”222 Single working mothers get wages and benefits equal to 123% of the average wage.223

A somewhat similar program was attempted in Wisconsin, and for a while this experiment was the subject of much debate among family law advocates.224 However, this system soon showed that it could not realistically be compared with the European models. It retained many of the more restrictive provisions of the Federal AFDC programs and, in order to keep costs down, it was applied only to selected AFDC recipients.225 No real attempt to duplicate the “advance maintenance payment system” has ever been made in the United States.
Implementing the European model would solve many problems in the child support system by removing the moral and political philosophies that serve only to hinder AFDC and thus child support for the poor.\textsuperscript{226} If all families could be assured of getting enough money to truly support their children, the problems of trying to extract money from most poor deadbeat parents would also disappear.\textsuperscript{227} While the European model may still be the best option, some scholars have offered other solutions closer to more traditional American philosophies.

2. The Social Security Model

It has been suggested that child support could be revolutionized by making it more similar to Social Security.\textsuperscript{228} "While the United States has generous, publicly funded benefits for elderly Americans, no comparable program exists for children."\textsuperscript{229} The modern system of Social Security provides old-age support for all retired workers based on the idea that younger generations will pay support for the elderly through Social Security taxes.\textsuperscript{230} This system pays for all retirees and their spouses, not just those who have children who will later pay into the Social Security system.\textsuperscript{231} Taxation for Social Security removes the burdens of providing for old age from the family context.\textsuperscript{232}

The argument is that child support should be construed the same way. A separate child support tax could be taken out of all workers' paychecks regardless of whether or not they have children.\textsuperscript{233} The tax would be justified on the theory that children are valued members of society who will later contribute when they join the work force by paying their own taxes.\textsuperscript{234} According to Professor Henry Krause, a taxpayer should "reciprocate" by bearing an appropriate share of the cost of supporting those who will later bear the burden of old-age support for all.\textsuperscript{235}

Arguably a system of support through taxation already exists in the AFDC/TANF programs. However, it is not the taxation that makes

\textsuperscript{226} See id. at 635.
\textsuperscript{227} See id.
\textsuperscript{228} See Krause, supra note 61, at 25.
\textsuperscript{229} Hansen, supra note 14, at 1152-53.
\textsuperscript{230} See Krause, supra note 61, at 25.
\textsuperscript{231} See id.
\textsuperscript{232} See id.
\textsuperscript{233} See id.
\textsuperscript{234} See id.
\textsuperscript{235} See id.
Krause’s suggestion different, but its social context.236 Making child support a payment due to all children based on their future participation in the work force and potential financial contributions through taxes would remove the moralistic and punitive elements of current child support programs.237 Moving to such a system would have all the benefits of aid for the underprivileged children without the structure and rules that hamper current AFDC policy.

3. The Community Support Model

Yet another professor has suggested that child support could be revolutionized by creating a system of community support similar to community property laws.238 Marsha Garrison argues that rather than relying on egalitarian laws to give money to children in need of support, parents should share in supporting their children so that there is a complete “equality in living standards.”239 While traditional “model[s] might focus narrowly on welfare prevention or more broadly on poverty; a community model might seek full equality between parent and child or a more limited equality of basic resources.”240 The goal would be for all members of the family to have equal standards of living even after divorce.

The problem with this model, aside from its complexities, is that it does not address the problem of parents who completely abandon their families and will not be available to share resources. It also ignores the fact that just as with community property, many families are so poor that upon dissolution there is nothing to share. Everyone in such a situation remains in need of financial assistance. While this model is unique in showing that it is capable of creating a uniform system that treats everyone equally,241 it ignores the fact that additional child support is often needed in families where resources are scarce.

Conclusion

Since their inception, California’s child support laws have been based on the outmoded and ill-equipped tenets of Elizabethan Poor
Law. The inequities caused by having multiple systems of family law are devastating. To solve this problem, the issue of child support needs to be addressed by our society in a dramatically different way. Child support must be recognized as both a public and a private responsibility, a payment that society helps make when parents are financially unable to do so. Children in poverty should not be punished because of societal or legislative feelings about the actions of their parents. The only way to achieve a truly fair system of child support is to remove the vestige of archaic poor laws and have one uniform system that provides the same solutions for everyone.