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## **Lay Intuitions About Family Obligations: The Relationship between Alimony and Child Support**

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### Introduction

As a matter of formal law, the marital status of parents is today largely irrelevant in determining the amount of child support one parent may be ordered to pay the other. Equally irrelevant is the duration of their relationship. State child support guidelines make no distinction among cases in which the parental separation comes after 20 years of marriage or a month of cohabitation, or in which the parents couldn't separate because they had never lived together in the first place. At the same time, current American law makes a sharp distinction between married and unmarried partners with respect to alimony claims, and also gives important weight in alimony adjudications to relational duration: Alimony is possible when spouses divorce, and is more likely after a long marriage, but it is never allowed at the separation of unmarried cohabitants, no matter how long their relationship.

At a formal doctrinal level these very different rules can be explained and perhaps also defended. There is certainly widespread agreement today that it is wrong for the law to disadvantage children because their parents had not married. And while the sentiment is not as universal, it is usually assumed that many if not most Americans believe that those who have formally married should have greater legal obligations to one another than those who have not – at least where the unmarried partners have not made an

equivalently formal expression of mutual commitment such as the execution of a contract. That is to say, supporters of both the child support rule and the alimony rule may claim the rules properly express widely-endorsed societal norms, and may find support for them in both the law and the professional professional literature.

Yet as plausible as each rule may seem when they are considered separately, they are unavoidably incoherent when considered together. The reason is straightforward: the law may distinguish transfers of income between households by their label—alimony or child support—but the reality of household economics makes those labels largely meaningless. Households have joint consumption items, such as the bulk of housing and utility expenditures, which comprise a large portion of the total household expenditures. Parents and the children living with them inevitably share a common living standard. The cost of providing comfortable middle class housing for the child necessarily includes the cost of providing it for the custodial parent. And the custodial parent who uses alimony income for personal expenses, such as clothing or food, necessarily has more funds then left from other sources with which to buy clothes or food for the child.

So the reality is that child support payments will necessarily benefit the custodial parent, and alimony payments will necessarily benefit the children living with that parent. Child support payments made to the mother of a child born from a fleeting or casual relationship help that mother, despite any legal rule making her ineligible for alimony, while the rule denying her alimony disadvantages her child, even though the law otherwise insists that children should not suffer from their mother's marital status at their birth. While the law does not fully acknowledge this tension between the alimony and child support rules, one can see its impact on the legal rules for both. The support amounts provided in most state child support guidelines

are low,<sup>1</sup> and proposals for higher amounts are often met with objections that increased child support is not necessary for the child but would only provide the mother with “hidden alimony”. That is, the support awards provided by most state guidelines are likely suppressed by concerns that child support may provide an unjustified windfall for the mother, a view that implicitly recognizes that child support payments also confer a financial benefit on her. On the other hand, most child support guidelines take account of the alimony payments the mother receives, by adding them to her income (and subtracting them from the income of the child support obligor, if he is also the alimony obligor) before calculating the amount of child support. This reduces the child support payment to mothers who also collect alimony, in apparent recognition of the fact that the alimony she collects will be available, in part, to help the child. Turning the usual father’s group objection on its head, one can thus describe alimony awards as containing “hidden child support.”

Quite obviously, neither the effort to resist “hidden alimony” in child support, or the implicit recognition of “hidden child support” in alimony, resolves the tension between the economic realities of household finances and the legal fiction that alimony and child support dollars affect only the obligor’s former spouse or the obligor’s child, respectively, but never both. One of us has previously argued that this economic reality needs to be confronted when one constructs rules (guidelines) that set support amounts across parental income levels. One must recognize that such guidelines necessarily choose the proper tradeoff, for each case to which they apply, between the obligor’s valid interest in not supporting

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1. We know from our own prior work that citizens asked to make judgments about the appropriate amount of child support will choose higher support amounts than most income shares guidelines for the cases in which CP income is low and NCP is not. Ellman, Braver, and MacCoun, *Intuitive Lawmaking: The Example of Child Support*, 6 JOURNAL OF EMPIRICAL LEGAL STUDIES 69 (2009). Much academic commentary agrees. See, e.g., Ellman and Ellman, *The Theory of Child Support*, 45 HARVARD JOURNAL ON LEGISLATION 107 (2008) and the articles cited therein.

the custodial parent under the rubric of child support, and the custodial parent's and child's valid interest in a child support award that is sufficient to provide the child with a living standard not grossly disproportionate to the obligor's.<sup>2</sup> A question that arises, however, is whether the obligor's interest is properly treated as unvarying across support cases, or whether instead the obligor's interest, in resisting higher amounts, is weaker when the facts would justify an alimony award, than when they would not. If the obligor's interest does vary this way across cases, then perhaps the amount of child support should be determined by rules which take such alimony-relevant facts into account for child support as well. Opposition to higher child support amounts that is grounded in the belief they would provide the custodial parent an unwarranted windfall might lessen, if the higher amounts applied only to cases with facts that suggested the recipient might also have a good claim for alimony.

This could mean that higher child support amounts would be allowed when the parents were married, or had more than a short-term relationship. Such a proposal triggers the immediate objection that it violates the principle that marital and nonmarital children be treated identically. It may also be unwelcome for those who believe support amounts should be higher in *all* cases. They may not believe half a loaf is better than none if the price of a half-loaf is conceding that lower amounts are appropriate when the parents are not married or their relationship is short. These are legitimate concerns that may provide sufficient reason to reject any legal reform that would take marital status or relational duration into account in setting child support amounts. On the other hand, the current law was largely formed at time when the social reality

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2. *Ellman and Ellman, supra* n. 1.

to which it applied was very different than it is today.<sup>3</sup> It may be that the sharp distinction in alimony law between the married and the unmarried requires revisiting, so that a child support law that considered alimony-relevant factors might look a bit different than one might initially assume.

This paper is part of a larger project that tries to shed light on such questions by gaining a greater understanding of the intuitions of ordinary citizens as to what the law should require. We do that by asking a large random sample of Tucson residents how they believe a court should decide each of a series of cases the facts of which are systematically varied so as to reveal the underlying principles the respondents employ in resolving them. Prior papers have reported data on citizen beliefs with respect to both child support amounts and alimony awards.<sup>4</sup> In this paper we report new data on our respondent's resolution of child support claims across a series of cases that vary the marital status and relational duration of the

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3. For a recent and helpful review of many of these changes, see Andrew Cherlin, *Demographic Trends in the United States: A Review of Research in the 2000s*, 72 J. MARRIAGE AND FAMILY 403 (2010). As he reports, in 1950 only 4% of all children were born outside of marriage; by 2007 it was 39.7%. While the lifetime probability that a marriage will end in divorce has declined since divorce rates peaked in 1979-1980, the decline seems largely concentrated among the better educated, and the overall probability of that a recent marriage will end in divorce probably still exceeds 40%. The proportion of men and women who would cohabit outside marriage grew enormously, and now exceeds 50% even for the college educated. Not that long ago, unmarried cohabitation was a crime in many if not most states. See RICHARD A. POSNER AND KATHARINE B. SILBAUGH, *A GUIDE TO AMERICA'S SEX LAWS* (1996). Federal requirements that states make serious efforts to collect child support, including the adoption of guidelines and the use of mandatory wage assignment, did not come into place until the 1980's; before that time very little child that was ordered was collected, and often it was not even ordered. Effective programs to collect support from men who were not married to the mother only began in the last decade. See Paul Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 FAM.L.Q. 519 (1996).

4. We have previously reported on child support in two articles, Ellman, Braver, and MacCoun, *Intuitive Lawmaking: The Example of Child Support*, 6 JOURNAL OF EMPIRICAL LEGAL STUDIES 69 (2009) (hereinafter, Ellman, Braver, and MacCoun 1), available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1297588](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1297588)>, and Ellman, Braver, and MacCoun, *Abstract Principles and Concrete Cases in Intuitive Lawmaking*, forthcoming in LAW AND HUMAN BEHAVIOR (2011), available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1755707](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1755707)> (hereinafter, Ellman, Braver, and MacCoun 2). Our report on alimony is Ellman and Braver, *Lay Intuitions About Family Obligations: The Case of Alimony*, forthcoming in THEORETICAL INQUIRIES IN LAW (2011), and available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1737146](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1737146)>. We have also reported on respondent beliefs regarding the allocation of custodial time in Braver, Ellman, Votruba, and Fabricius, *Lay Judgments About Child Custody After Divorce*, forthcoming in PSYCHOLOGY, PUBLIC POLICY, AND LAW (2011).

parents—factors that are usually thought relevant to alimony awards but not child support awards.

To set the stage for understanding this data, the next two sections briefly review the recent history of the common current rule requiring no distinction in the child support award allowed for marital and nonmarital children, as well as the data on the beliefs of Americans about the import of marital status and relational duration in the setting of alimony awards.

#### I. The traditional law on the relevance of marriage and relational duration on child support.

Can a state apply different rules for calculating the amount of support owed by a noncustodial parent who was never married to the custodial parent, from the rules it applies to divorced parents? The answer is not entirely clear. In *Gomez v. Perez*, 409 U.S. 535 (1973), the Supreme Court held that Texas violated the Equal Protection Clause by denying nonmarital children any claim for paternal support, given that it recognized such claims on behalf of marital children. It would be a further step to conclude, however, that no distinction may be drawn in the *amount* of support for each. Nonetheless, the Court's evident concern about discriminatory treatment in the support law governing nonmarital children, not only in *Gomez* but also in other cases concerning statutes of limitation for paternity claims,<sup>5</sup> has generally led state courts

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5. *Mills v. Habluetzel*, 456 U.S. 91 (1982), and *Pickett v. Brown*, 462 U.S. 1 (1983), held respectively that both one- and four-year limitation periods were too short to meet the state's constitutional obligation to allow "a reasonable opportunity" for a claim to be brought on the child's behalf. Later Justice O'Connor, writing for a unanimous Court, found unconstitutional a Pennsylvania rule barring most suits to establish the paternity of a nonmarital child brought more than six years after the child's birth. The Court relied on Equal Protection grounds, as the state allowed later actions on behalf of the children in certain situations, and allowed fathers to bring suits to establish their paternity without any statute of limitation. *Clark v. Jeter*, 486 U.S. 456 (1988). Taken together, these opinions suggest that the Constitution requires allowing a paternity action to be brought at any time during child's minority. The constitutional question seems unlikely to present itself again, however, because after *Pickett*, Congress enacted the Child Support Enforcement Amendments of 1984, which effectively eliminate all statutes of limitation in paternity actions by requiring every state "to have procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday." 42 U.S.C.A. § 666(a)(5).

to resist any distinctions in child support law between marital and nonmarital children. For example, the Supreme Court of Connecticut recently held that a statute giving nonmarital children the right to support until they had completed the twelfth grade or reached the age of nineteen should be applied retroactively to support orders issued before its effective date, since children of divorced parents had that same right to support. The Connecticut court believed it would violate the Equal Protection Clause to construe the statute as only having a prospective effect. *Walsh v. Jodoin*, 925 A.2d 1086 (Conn. 2007); see also *Doe v. Roe*, 504 N.E.2d 659 (Mass. App. 1987) (nonmarital child between 18 and 21 years of age was entitled to support while living at home and dependent upon a parent, because a marital child would be entitled to such support under state law).

The most important contrary authority arose in New York. In *Kathy G.J. v. Arnold D.*,<sup>6</sup> the court considered a support claim against a “world-famous entertainer” who had fathered a non-marital child with a woman on welfare.<sup>7</sup> New York (like many states) at that time had separate statutes governing child support for marital and nonmarital children, but the only “potentially significant difference” between them was the former’s reference to the “marital standard of living” as a relevant factor in fixing the support level. The court found this difference valid.<sup>8</sup>

The reason for this distinction is an important, valid and constitutional one. Using the marital standard of living as a guidepost in determining a marital child’s support decreases the possibility that such a child will have to face the additional trauma of adjusting to a new standard of living, while adjusting to all of the other changes engendered by the breakup

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6. 501 N.Y.S.2d 58 (App. Div. 1986).

7. *Id.* at 65.

8. *Id.* at 63.

of a marriage.<sup>9</sup>

The court agreed that if a nonmarital child had lived with his parents and established a “nonmarital family,” their standard of living would be relevant in setting support. This court thus found that a constitutionally permissible line could be drawn between children in either marital or “nonmarital” families on one side, and nonmarital children who had never lived with both parents in a family setting, on the other. In focusing on the *de facto* reality as well as the formal family status, the court took an approach quite similar to that which the Supreme Court later took in determining when a nonmarital father’s relationship to their children is protected by the Constitution: the relationship is protected if his paternity has a social reality as well as a biological one.<sup>10</sup>

One cannot tell whether the court in *Kathy G.J.* was also concerned that a generous child support award would unavoidably confer benefits on a nonmarital mother who had no claims for support in her own right. But that concern comes through more clearly in a similar Arizona case. In *Edgar v. Johnson*<sup>11</sup> the Arizona court held that once the nonmarital father conceded his income was sufficient to provide for the child’s needs, its precise amount was irrelevant because a larger support award could not be justified no matter how great his additional income. The court made clear its concern was with the unjustified benefits this nonmarital mother might reap from a higher support award, observing explicitly that

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9. *Id.*

10. Most particularly, *Quilloin v. Walcott*, 434 U.S. 246 (1978), in which the Court explained its conclusion that the Equal Protection Clause did not require the state to treat Mr. Quilloin’s paternal claims equivalently to those of a married father on the ground that Mr. Quilloin had not in fact acted like a father. It thus drew the constitutional line on the basis of the reality of the parental relationship rather than the formality that the parents had married. It later protected the paternal claims of a nonmarital father whose paternity was social as well as biological, *Caban v. Mohamed*, 441 U.S. 380 (1978).

11. 731 P.2d 131 (Ariz. App. 1986).

she, unlike a married mother, had no claim for support in her own right.<sup>12</sup>

*Edgar* and *Kathy G.J.* were both decided before either state had adopted child support guidelines by which to determine support amounts. After support guidelines were later put in place, later decisions in both states rejected these cases, on the ground that their respective child support guidelines made no distinction between married parents and unmarried parents (including those who have never lived together).<sup>13</sup> Left unresolved is whether the support guidelines *could* make such distinctions, or whether such a guideline rule would violate a Constitutional principle. It does appear, however, that New York may continue to follow *Kathy G.J.* in cases that deal with issues not governed by its guidelines.<sup>14</sup> And there is at least a plausible constitutional argument that the *Kathy G.J.* distinction is permissible. That would mean a state guideline could set lower support amounts for nonmarital children who had never lived with their parents in an intact family, on the ground that the “marital living standard” was not, for them, one of the relevant benchmark factors to be taken into account in setting the guideline amounts.<sup>15</sup>

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12. *Id.* at 132

13. *Ortiz v. Rapoport*, 820 P.2d 313, 314 (Ariz. App. 1991) (“The [child support] guidelines apply to all children whether they are born in or out of wedlock [and] . . . supersede any statements made in *Edgar*”); *Jones v. Reese*, 642 N.Y.S.2d 378 (App. Div. 1996) (rejecting *Kathy G.J.* on the basis that the child support guidelines are equally applicable to children born out of wedlock). See also *Shuba v. Reese*, 564 A.2d 1084 (Del. 1989) (rejecting nonmarital father’s claim that Melson Formula’s Standard of Living Adjustment should not be applied because parents had never cohabited).

14. See, e.g., *Merithew v. Tuper*, 601 N.Y.S.2d 671 (Fam. Ct. 1993) (relying on *Kathy G.J.* in rejecting argument that nonmarital child cannot be denied an order directing father to name child as life insurance beneficiary, where such an order might be issued for marital child); *Orna S. v. Leonard G.*, 599 N.Y.S.2d 285 (App. Div.1993) (similar).

15. One might object that the same principle would have to apply to marital children so that, e.g., where married parents separated before the child’s birth the same lower guideline amounts would apply. However, the Supreme Court had no difficulty in *Quilloin* with a rule that protected marital fathers who had never lived with their child but not nonmarital fathers in otherwise identical circumstances.

## II. The impact of marriage and relational duration on alimony.

### A. Current law

While child support amounts are today governed by presumptive guidelines that make the factors that determine awards transparent, and the amount of awards very predictable, the law of alimony is largely the opposite. The typical statute lists factors for a court to consider in deciding whether to allow an award, and in what amount, but leaves unspecified the relative weight the court should give the specified factors. The traditional statute makes the claimant's "need" an essential requirement of any alimony claim, but in this context the meaning of "need" is highly variable. The result is that the decision of whether to award alimony and in what amount is largely a matter of trial court discretion in the broadest sense, with appellate review playing a limited role.

All these features of the traditional alimony law have been reviewed and criticized in detail in the legal literature. Much of the critical literature is aimed at reforms meant to make the law more certain by imposing clearer standards, often by way of adopting alimony guidelines that would play a role similar to that which child support guidelines have played in changing child support law from the similar state it was in during the pre-guideline era.<sup>16</sup> While alimony guidelines have been adopted by courts or bar associations in local jurisdictions, they are not normally as comprehensive as child support guidelines, and they usually are advisory, unlike statewide child support guidelines which set out a specific dollar amount of child support which the court is bound to order unless it writes an opinion explaining why a "deviation" from the

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16. For an overview and survey of American alimony law and the criticisms of it, see ELLMAN ET. AL, FAMILY LAW: CASES, TEXT, PROBLEMS 419-462 (5<sup>th</sup> ed., 2010). For an early critique of the highly discretionary and unpredictable nature of the law, see Ellman, *The Theory of Alimony*, 77 CALIF. L. REV. 1 (1989). The American Law Institute has offered a comprehensive proposal to replace the traditional law with a more coherent and consistent set of rules in Chapter 5 of PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002).

guideline amount is appropriate in that particular case. The result is that the traditional criticisms of alimony law remain largely apt despite several decades of reform efforts.

Empirical studies generally fail to find any consistent principles of decision that explain the alimony awards actually allowed in judicial orders. Part of the difficulty is that the financial arrangements set out in these orders are overwhelmingly the product of a negotiated agreement rather than of a judge's decision after a hearing, and the parties' agreement about alimony is just one part of a larger financial package that also includes property allocation and perhaps child support. Looking at alimony terms in isolation may thus provide a distorted view because it does not take into account the tradeoffs among the various components of the financial package that may have formed the basis of the parties' agreement. Nonetheless, it seems clear, whether from agreement or judicial preference, that alimony awards are not the norm among all divorce cases. A Maryland study found that alimony was sought in 17.4% of divorce petitions filed statewide in 1999, and was granted to nearly half the wives who requested it.<sup>17</sup> The study found only three facts to be independent predictors of an alimony award: marital duration (but only when greater than twenty years); husband's income (but only when greater than \$80,000 annually), and disparity of income between the spouses (but only when greater than 100%).<sup>18</sup> A survey of Ohio judges found little consistency among them.<sup>19</sup> The American Law Institute, seeking to introduce more predictability and consistency in the provision of financial awards between divorcing spouses, recommended guidelines based on relational

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17. THE WOMEN'S LAW CENTER OF MARYLAND, INC., CUSTODY AND FINANCIAL DISTRIBUTION IN MARYLAND 17 (2004), available at <<http://www.wlcmd.org/pdf/publications/CustodyFinancialDistributionInMD.pdf>>. Alimony was allowed in two of the 42 cases in which it was requested by the husband, and in 125 of the 252 cases in which it was requested by the wife. *Id.* at 18.

18. *Id.* at 27. Marital duration was more than ten years in about half the cases in the study's sample. *Id.* at 16.

19. Leslie Herndon Spillane, *Spousal Support: The Other Ohio Lottery*, 24 Ohio N.U. L. Rev. 281 (1998)

duration and income disparity to determine both whether an award would be allowed, and in what amount.<sup>20</sup>

A separate question is whether alimony awards should be allowed at the dissolution of nonmarital cohabiting relationships. On this question American law is more clear: a nonmarital relationship cannot itself give rise to a claim for alimony. In principle contract claims between separating cohabitants are allowed in most states, but of course only if there is a contract. Express contracts are not common and implied contract claims are barred in some states and rarely if ever successful in the remainder.<sup>21</sup> There are a limited number of decisions recognizing equitable claims between separating cohabitants in the absence of a recognized contract, but even these few cases allow only claims to share in the property accumulated during the relationship, and not alimony-like claims to share in a former nonmarital partner's post-separation income. Cases in which an alimony-like claim is actually allowed, whether on implied contract or equitable grounds, are essentially nonexistent.<sup>22</sup> This American rule contrasts with the law in a number of other common law countries, including Canada, that make no distinction for this purpose between married couples and cohabitants who pass a threshold test that usually consists of either a minimum relationship duration or the couple's parentage of children.<sup>23</sup> The American Law Institute recommends such a rule but

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20. AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002), Chapter 4 (Ellman, Chief Reporter for the Principles, had primary responsibility for Chapter 4).

21. See Ann Estin, *Unmarried Partners and the Legacy of Marvin v. Marvin: Ordinary Cohabitation*, 76 NOTRE DAME L. REV. 1381 (2001); Ira Ellman, "Contract Thinking" Was Marvin's Fatal Flaw, 76 NOTRE DAME L. REV. 1365 (2001); and Marsha Garrison, *Social Revolution and Legal Regulation*, 42 FAM.L.Q. 309 (2008).

22. For a review of the case law and the legal literature, see ELLMAN ET. AL, FAMILY LAW: CASES, TEXT, PROBLEMS 936-940 (5th ed., 2010).

23. For a review of the Canadian law, see Noel Semple, *In Sickness and in Health? Spousal Support and Unmarried Cohabitants*, 24 CAN. J. FAM. L. 317 (2008).

its recommendation has not been adopted.

## B. The Views of Lay Respondents

While American law excludes nonmarital cohabitants from alimony claims, our lay respondents could have a different view. To understand the significance of the results we report in this paper, which examines how the alimony-relevant considerations of marital status and relationship duration affect their judgment as to the amount of child support to award, we need to know whether our lay respondents believe marital status and relationship duration are proper considerations in awarding alimony. We investigated that question in an earlier paper, the results of which we summarize here.<sup>24</sup>

The earlier study, like the current one, examined the views of a random sample of the Tucson, Arizona population called to jury service by asking them how they would decide each of a series of cases (vignettes) presented to them. The method employed was largely the same as the method employed in this study, which is described in more detail below, although of course the survey instruments used in the prior study asked respondents whether they would award alimony, and in what amount, rather than child support. The series of vignettes in the alimony study systematically varied relationship duration, partner incomes, the presence of children (young or grown) and marital status. For vignettes in which the separating partners were described as the parents of minor children, the facts not only stated that the alimony claimant was entitled to child support, but also provided the amount of the support award. (That amount was either taken from the then-current Arizona child support guideline, or was the higher award amount that we had found

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24. Ellman and Braver, *Lay Intuitions About Family Obligations: The Case of Alimony*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1737146](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1737146), and forthcoming in *THEORETICAL INQUIRIES IN LAW* (2011).

was favored by our respondents in an earlier study of child support.) As in this study, respondents were asked what they believe the law should require in each of the cases—should alimony be awarded, and if so, in what amount. Respondents were told explicitly that judges themselves disagreed as to the appropriate resolution of these cases, and that their job was not to guess what the law would provide but to tell us how they thought the court *should* decide the cases put to them.

We found that our respondents believed alimony should be allowed when there is a significant disparity in income between separating partners, even where the alimony claimant has sufficient income on her own to maintain a middle class living standard. Most favored alimony awards in at least some cases involving partners who had not married, although marriage led them to favor an award more often. They were particularly likely to make little distinction between married and unmarried couples, in their treatment of alimony claims, when the couple had children who were still young at the time of separation. They were more inclined to allow an alimony award when the relationship is longer, although a six year relationship is long enough for most respondents to allow an award in at least some cases, especially if the couple has young children.

Our respondents did not seem especially concerned about compensating the partner who was the primary caretaker of the couple's now-grown children for the earning capacity loss she may have thereby incurred, as the difference in award frequency between childless cases, and those with grown children, was small. But they are very concerned about ensuring an adequate income to the partner who remains the primary caretaker of the couple's young children at the time of separation, as award frequency was much higher when the alimony claimant was the primary custodian of minor children, even though respondents were told of the child support award. Neither the frequency nor size of the alimony award was affected by

whether respondents were told that the child support award was the guideline amount or the higher amount favored by prior respondents.

While marital status, the presence of young children, and relationship duration all affected the proportion of cases in which our respondents allowed an alimony award, they had little effect on the *amount* of the award once one is allowed. Award amounts were instead determined almost entirely by the partners' incomes, with higher awards being allowed when the claimant's income is lower and the disparity between partner incomes is higher.

Demographic information provided by our respondents revealed no important differences among them with respect to these patterns, which were equally true of men and women, higher and lower income individuals, conservative and liberals, Democrats and Republicans, those divorced and those not. While women, and older respondents, were somewhat more inclined than others to award alimony overall, the impact of the varying vignette factual patterns on their responses was not different than for other respondents.

### III. The Current Empirical Study

#### A. Method

##### *1. Respondent pool.*

The respondent pool and survey distribution closely resembled that of the earlier studies by Ellman, Braver & MacCoun (2009), and by Braver, Ellman, Votruba, and Fabricius (in press). The respondents were from the Pima County (Tucson, Arizona) jury panel. Those summoned to serve on a jury panel are citizens chosen from the voter and driver's license records. Using a computer generated random selection

process, the jury panel is chosen so as to represent a representative cross-section of the adult citizens in the county. Of those who are summoned by the county jury commissioner, over 90% eventually appear (Ellman, Braver & MacCoun, 2009). Because exemptions from jury service are only rarely granted and because of stringent enforcement and penalties, Pima County jury pools show less self-selection and bias than jury pools in some other jurisdictions. The survey was of course voluntary. The N of those completing all the child support questions was 326. The participation rate (the number completing the survey divided by the number to whom it was offered, but excluding from the latter figure those prevented from completing by being called to jury or lunch) was 53%, a bit less than the rate found by Ellman, Braver & MacCoun (2009). Past studies using this identical method and jury pool and obtaining approximately this response rate have found that the ultimate sample responding to the survey resembled the national population in age distribution, level of education achieved, and household income.

## *2. Survey design.*

This study used a mixed within-subjects and a between-subjects design. The within-subjects portion asked respondents the child support amount they judged appropriate in each of 15 cases that varied only in the parental incomes: the father's (obligor's) take-home pay was either two, four, six, nine or twelve thousand dollars per month; the mother's (obligee's) take-home pay was either one, three, or five thousand per month. There were thus 5 x 3, or 15 possible income combinations. The between-subjects portion employed 5 different versions of the family configuration. Jurors were thus randomly assigned one of the 5 survey versions, and were asked their judgment of the appropriate child support amount across the entire fifteen income combinations, but only for the single family configuration presented on the survey form they

received. The family configurations included a married couple who were divorcing after having been together for either 4 years or 15 years, and a couple who were not married but who had lived together for either 4 or 15 years and were now separating. These 4 configurations may thus be described as a 2 X 2 factorial. A fifth family configuration were parents whose child was conceived from their single act of intercourse, which took place the night they met: this couple never lived together nor subsequently continued their relationship. This fifth case might be considered a “trailer control” design.<sup>25</sup> To deal with possible order effects in the within-subjects income variable, four different versions of the survey form were distributed for each of the five family configurations, differing only in the sequence of the vignettes. In this way parental incomes were counterbalanced in 4 different orders. There were thus 20 distinct versions of the survey form altogether. All versions began with the following stage setting instructions:

When a couple who have had one or more children do not live together, the children will usually end up living more of the time with one parent than the other. In this situation, courts routinely order that child support be paid *to* the parent with whom the children live most of the time, *by* the other parent.

In *all* of the following stories, you should assume

- there is one child, a 3 year-old boy
- this child now lives mostly with Mom, but Dad sees him often,
- the child frequently stays with Dad overnight.

We want to know the *amount* of child support, if any, that you think Dad should be required to pay Mom every month all things considered,. What will change from story to story is how much Mom earns, and how much Dad earns. There is no right or wrong answer; just tell us what *you* think is right.

Try to imagine yourself as the judge in each of the following cases. Picture yourself sitting on the judge’s bench in a courtroom needing to decide about what should be done about ordering child support in the case and trying to decide wisely.

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25. Samuel Himmelfarb, *What Do You Do When the Control Group Doesn't Fit into the Factorial Design?*, 82 Psychological Bulletin 363 (1975).

An additional bullet point (that generally preceded the first one above) set out the family configuration. It said either that “the couple was married for 4 [15] years, but now is getting a divorce”; that “the couple was never legally married, but lived together for 4 [15] years, and is now separating”; or “the woman got pregnant by the man on the night they met, but they have never lived together, nor been in a relationship since”.<sup>26</sup> The within-subjects income variable was presented as part of the question the respondent was asked to answer, in this format:

**Mom's** monthly take-home pay is **\$5,000 a month**, and **Dad's** is **\$6,000**. How much should Dad be required to pay Mom every month for child support, all things considered? \$\_\_\_\_\_ per month?

## B. Results

The responses were analyzed by a mixed analysis of variance. Table 1 shows the mean child support awards arrayed by the within-subject factors (income of the two parents) averaged over the four family configurations in the 2x2 factorial (excluding the fifth “one night” relationship). (Only the linear trend component of the two parental incomes, not the higher trend orders, was ever significant in the 2 X 2, including when incomes were examined in interaction with duration and marital status. In other words, one can properly describe all the lines as essentially straight).

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26. In this condition, the bullet point describing the child’s age as 3 preceded the bullet point with this description of the family configuration.

**Table One: Mean Child Support Awards by Parental Income**

		<b>Father's Monthly Take Home</b>					
<b>Mother's Monthly Take Home</b>		<b>2,000</b>	<b>4,000</b>	<b>6,000</b>	<b>9,000</b>	<b>12,000</b>	<b>Average</b>
<b>1,000</b>		699	1011	1338	1706	2221	1395
<b>3,000</b>		669	851	1071	1485	1939	1203
<b>5,000</b>		612	780	936	1276	1631	1047
	<b>Average</b>	660	881	1115	1489	1930	1215

The ANOVA disclosed that the NCPIncome main effect (tested as a linear trend) was extremely significant,  $F(1, 251)=118.61, p<.01$ , indicating that the marginal means 660, 881, 1115, 1489, and 1930 increased regularly and reliably as NCP Income increased. The CPIIncome main effect, (also tested as a linear trend) was also extremely significant,  $F(1,251)=8.36, p<.01$ , indicating that the marginal means 1395, 1203, and 1047 decreased regularly and reliably as CP Income increased. The linear X linear interaction was also highly significant,  $F(1,251)=46.08, p<.01$ , suggesting that the lines displayed in Figure 1 (which chart the values in Table 1) significantly “fan apart” as one moves rightward. These results not only replicate the authors’ previous findings as to the impact of parental incomes on child support amounts, but also extends them to show that this pattern applies both across different family compositions, and up through NCP incomes of \$9,000 and \$12,000. (Previously reported studies used vignettes containing only the three lower NCP incomes.)

As discussed in our earlier work, this pattern provides three important insights into our respondents’ intuitions about how child support amounts should be set. First, they believe that as NCP’s income increases, the *amount* of child support should increase significantly, a result that is also true in current state guidelines. This means they reject the view that support amounts should be based on an estimate of the cost

of providing the child some basic or minimum living standard. Support amounts grounded on such an estimate of basic costs would not rise linearly with rising NCP income through to \$12,000 a month in net (take home) pay. Our respondents thus seem instead to share the principle implicit in most child support guidelines, that children should share, at least to some extent, in the living standard enjoyed by the higher-income obligor, even if that brings them above what they need to meet basic costs.

Second, the fact that three different lines are required for the three different CP incomes – that the three lines are not on top of one another – illustrates that our respondents reject “POOI” guidelines,<sup>27</sup> adopted in about ten American states, which set support amounts as a percentage of obligor income without regard to the income of the custodial parent. To the contrary, our respondents believe that, for any given level of NCP income, the amount of child support should decline as CP’s income increases. Third, not only are the three lines not congruent, they also are not parallel. They fan out as NCP income increases, as indicated by the significant interaction between the two parents’ incomes. This interaction shows that our respondents believe that support amounts should increase more rapidly with NCP income when CP income is lower, a principle about which state guidelines differ.

The present study extends these three findings from our earlier studies not only by showing that they persist through an NCP income range that is extended up to \$12,000 a month in take home pay, but also by showing that they are unaffected by whether the parents are married or cohabiting, or whether the duration of their relationships is 15 years or 4 years. Moreover, the present study also replicates the finding in our prior studies that these three basic attributes are pervasive across our respondents. That is, while there is considerable dispersion around the mean support amount for any given set of parental incomes,

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27. This acronym stands for Percentage of Obligor Income.

there is very little dispersion in the adjustment our respondents make to their preferred support amount in response to changes in either parent's income. The Y-intercepts of individual respondents' regression lines vary considerably, but the slope of the lines—and thus the coefficients for each income term—vary much less.<sup>28</sup> In sum, the three basic patterns we have replicated and extended here are highly robust: arising across an expanded income range, across different family compositions, and across respondent characteristics.

Of equal interest, however, are the additional effects of the family configurations on support amounts, which prior studies have also not examined. Turning first to the factorial portion of the family configuration factor, we consider the couple's relationship duration. Duration did not produce a significant overall (i.e., main) effect,  $F(1,251)=2.32$ ,  $p=.13$ , but there *was* a significant triple interaction of relationship duration with the two parental incomes,  $F(1, 251)=4.79$ ,  $p=.03$ . That interaction can be seen visually in Figures 2a and 2b, which present the data in the same format as Figure 1, but separate the cases by relational duration. (These figures combine married and unmarried partners of each duration, as there was no significant interaction of duration with marital status and parental income).

One can first see that in both figures the three lines representing the three CP incomes are quite close together at the lowest NCP income, \$2,000. That is, at the lowest NCP income the range of mean child support amounts across the three CP incomes is relatively small. Second, those amounts are about the same in both figures. For relationships of 15 years' duration the range is from \$619 to \$706, while for 4

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28. However, we did previously find that the slope was indeed steeper for women than for men, and for those with more education—meaning that the amount of support increased significantly more rapidly with NCP income for women and for the more educated—even though the variance in slope across all respondents was considerably smaller than the variance in Y-Intercept. See Ellman, Braver, and MacCoun, 2009, *supra* n. 4. A subsequent study also found that differences among respondents in both slope and Y-intercept could be predicted from their Likert ratings of statements setting out abstract principles by which child support amounts should be determined. See [LHB paper in press].

years' duration it is \$605 to \$714. Thus, neither relational duration nor CP income have much impact on the mean child support amount that our respondents believe appropriate in cases involving the lowest-earning NCP. As NCP income rises, however, the child support amount increases rapidly with NCP income for partners together for 15 years. It rises much less rapidly with NCP income for partners together for only 4 years, as illustrated by the fact that the slopes of the lines in Figure 2b are much steeper than in Figure 2a.

Thus, while the gap between the support amounts our respondents provide 4-year couples and 15-year couples is essentially zero for the lowest income NCP, it increases with NCP income and becomes quite considerable at the highest NCP incomes. Moreover, the steeper slope for the longer duration couples is steeper yet when CP income is lower: there is more “fanning out” of the three lines in consequence of the triple interaction of both parental incomes with duration. The result is that we find the largest gap in support awards, between the 15-year and 4-year durations, when the highest NCP income (\$12,000) is combined with the lowest CP income (\$1000). In that case the support award is over \$350 more for the longer duration relationship (\$2424 vs \$2069).

Perhaps at lower NCP incomes our respondents see the support amount as doing little more than ensuring the child a basic living standard, while at higher NCP incomes there is potential for a support award that will allow the child a more comfortable middle class living standard. If a basic living standard is the best that can plausibly be achieved for the child, there may be little room for our Respondents to distinguish between the longer and shorter relationships: on one hand they want to provide at least that minimal amount even for the short relationships, while on the other hand the NCP's income does not really allow them to provide much more than that minimal amount in the long relationships. At the higher NCP

incomes a support award that provides some extra comfort is possible, but the respondents are more inclined to provide it for the child—and the mother—when the parental relationship was longer. And of course, to provide the child a more comfortable middle class living standard requires a larger child support award when the CP has a lower income.

The impact of marital status on support awards was different than for duration. For marital status there was a significant (one-tailed) main effect,  $F(1, 251) = 3.32, p = .03$ ,<sup>29</sup> but no significant interactions with income. The pattern is revealed by Figures 3a and 3b, which are the equivalent of the two figures presented for relational duration. One can see that the support amounts for married couples start higher at even the lowest NCP income, and remain higher as NCP income increases, illustrating that marital status, unlike duration, is a main effect with a similar impact across parental incomes. Table 1 disclosed that the overall mean support amount, averaged over all 15 income combinations and the four 2x2 factorial family configurations, was \$1,215. But the mean support amount for the two conditions in which the couples were married was \$90 more, \$1,305, while for those cohabiting it was \$90 less, at \$1,125. Although significant, this main effect was thus fairly small. The absolute dollar amount of the “marriage premium” in support amounts does increase with rising NCP income, however, because the basic “fanning out” effect displayed in Figure 1 (the interaction of the two parental incomes) remains when one looks separately at married couples and cohabiting couples, but starts from a higher base at low NCP incomes when the couple is married.

Finally, Figure 4 displays the mean support amounts by parental incomes for the case in which there was no parental relationship beyond the single evening of sexual relations leading to the child’s conception.

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29. A one tailed test was justified because the direction of difference was predicted a priori: awards for married couples would exceed awards for cohabiters.

One can see that the lines in the chart do not display nearly so neat a linear pattern as do the lines for the other family configurations. While there is significant interaction between the parental incomes,  $F(1,70)=17.95, p<.01$ , (as well as a main effect of each parental income individually), this is the one case in which the increase with NCP income is not regular or linear. Thus, while the lines fan out they also bend upward, but with a downward “crease” for the middle NCP incomes. Overall, however, mean support amounts for the “one night” relationship case were significantly lower than for other family configurations,  $F(1, 321) = 4.07, p=.05$ . Because of the interaction of parental incomes in all analyses, however, that difference is much greater at higher NCP incomes and lower CP incomes. The point is illustrated by comparing that difference in the two bookend cases: a CP income of \$5,000 and an NCP income of \$2,000, and a CP income of \$1,000 and an NCP income of \$12,000. The mean child support amounts for the first case, in the 2x2 factorial and the one-night relationship respectively, are \$612 and \$596—hardly different at all—while for the second case they are \$2221 and \$1799, a difference of more than \$400. That same point is also made by comparing these two to the mean support values at the bookend cases for the 4-year relationship: \$605 and \$2018, and to the 15-year relationship, \$619 and \$2424. For the poorest NCP and wealthiest CP, it essentially does not matter whether the relationship is 15 years, 4 years, or 1 night in duration, but for the wealthiest NCP and poorest CP, it matters quite a bit.

None of the results reported thus far differ with demographic groups. That is, the basic patterns we found—a main effect for marriage, with no interactions; no main effect for duration, but a triple interaction with both parental incomes; lower mean support amounts for the one night relationship; main effect for each parental income and an interaction of parental incomes—are not only true for our respondents as a whole, but the patterns are not significantly different for any demographic subgroup. These patterns are thus

unaffected by respondent gender, education, income, age, current marital status, political party affiliation, or self-reported political philosophy on a scale from very conservative to very liberal. Nor did the pattern differ for those who had been divorced or had been ordered to pay child support or who had been the person to whom child support was ordered to be paid. While our respondents thus did not differ in the impact that marriage, relationship duration, or parental income had on their view of the appropriate child support amount, it was the case that women, and those with more education, generally favored higher support amounts than did men and those with less education.<sup>30</sup> There were no other demographic effects.<sup>31</sup> These findings are consistent with our two earlier child support studies, which also found no differences among demographic subgroups with respect to the basic pattern of their answers—how their support amounts changed in response to changing facts—but did find that women favored higher amounts than did men.<sup>32</sup>

#### IV. Discussion

We began by asking whether facts that are relevant in deciding on alimony claims might be taken into account in fixing child support amounts as well. We wondered in particular whether our lay respondents

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30. The effect of education was complex, however: while there was a significant positive relationship overall between education and child support amount, the trend was not linear.

31. Those who had paid child support favored lower support amounts than did those who had not, but this effect was not independent of gender. Those who had paid child support were overwhelmingly men, while those who had received child support were overwhelmingly women. Although men who have ever paid child support gave substantially lower awards in this study than did men who had not, the difference was not significant. Women who had received child support gave slightly higher support awards than did women who hadn't, but that difference was not close to significant.

32. The gender difference between men and women in the mean dollar amount of child support awards across all family configurations and incomes was \$318; recall from Table 1 that that the overall mean child support award was \$1218. Both figures are higher than we found in our two prior child support studies. This was to be expected, however, because none of the vignettes presented to respondents in the prior studies had NCP incomes exceeding \$6,000.

would adjust the support amounts they believed appropriate in response to the parents' marital status or the duration of their relationship. We find that they do. As a general matter they allow more child support when the vignette facts are more favorable to an alimony claim, a result that suggests both our respondents' intuitive understanding that child support payments will necessarily benefit the custodial parent as well as the child, and their greater acceptance of that collateral benefit when an independent financial claim by the custodial parent is easier to justify. Put another way, the size of the support payments our respondents favor is diminished by the extent to which the unavoidable collateral benefit to the custodial seems an undeserved windfall.

A distinction one can draw between two approaches to setting support amounts may provide conceptual benchmarks that inform our understanding of this response pattern. One approach takes the view that the parents' legal support obligation should meet but not exceed the cost of providing basic necessities to the child. A caring obligor may wish to contribute more, but in this view additional amounts should be voluntary rather than legally compelled, arrived at perhaps through discussions between the parents. Those with this view seem sometimes to assume that such a "basic cost" calculation of the support amount will ensure that the custodial parent realizes no benefit from it, although that is almost surely wrong.<sup>33</sup> But it does minimize the benefit to the custodial parent just as it minimizes the benefit to the child.

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33. Joint consumption hardly disappears in low income households. The difficulty of accounting for joint consumption complicates such a basic cost calculation, and probably render any effort to implement it ultimately incoherent. Because "basic necessities" unavoidably include the cost of important joint consumption items such as housing, there is no objectively correct measure of the *child's* share of those necessities. A child support amount that is based on an estimate of the additional ("marginal") cost that the custodial parent incurs to provide basic necessities for the child will often leave the custodial parent unable to provide those necessities, as the calculation effectively assumes the custodial parent can shoulder *all* the costs of joint consumption items. Thus, a principle that the support obligor pay enough to ensure that the child has basic necessities will, in some but not all cases, require a payment large enough to provide those necessities to the custodial parent as well, not only exceeding that marginal cost calculation but also providing benefit to the parent. So even a child support system based on the principle that the obligor pay only the amount needed to provide the child with necessities will necessarily require the obligor sometimes subsidize the custodial parent as well, unless one is prepared to see the child as well as the parent fall below the basic necessity level.

An alternative to the “basic cost” principle, which we might call a “shared living standard” principle, takes the view that the support amount should keep the child’s living standard in the custodial household from falling too far below some living standard benchmark. Two frequently mentioned benchmarks are the post-separation living standard of the higher-income support obligor, or the pre-separation living standard of the previously intact household in which both parents lived with the child. The first is more relevant when the support obligor’s income is indeed significantly higher than the custodial parent’s; the second is also relevant when the parental incomes are more equal but seems inapt where the parents had never lived together and thus had no pre-separation shared living standard. Other relevant considerations usually prevent adoption of support amounts high enough to bring the child the full way toward either benchmark, but these benchmarks still serve in some sense as an aspiration to guide the choice of support amount.<sup>34</sup> But it remains the case that a shared living standard principle normally thus calls for a support amounts that raises the living standard of the custodial household above the level needed to provide the child only basic necessities.

Although the dominant American child support system is called “income shares”, its reliance on marginal cost calculations has the effect of producing support amounts more consistent with the minimalist “basic cost” principle, when the custodial parent’s income is significantly less than the support obligor’s.<sup>35</sup> Our earlier studies show, however, that our respondents indicate more agreement with statements that

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For a more complete discussion of these issues, see Ellman and Ellman, *The Theory of Child Support*, *supra* n. 1.

34. Other relevant considerations include of course the claim of the higher earning support obligor to retain at least some of the living standard advantage his greater earnings provide, and the claim of the lower earning support obligor to retain enough of his own income to provide himself a reasonable living standard. For a fuller discussion of both these living standard benchmarks and the competing considerations that must be taken into account in setting support levels, see Ellman and Ellman, *supra* n.1.

35. See Ellman and Ellman, *supra* n.1.

express a shared living standard principle than with those that express a basic cost principle. More importantly, they are faithful to this preference in deciding on the child support amount to award in concrete cases.<sup>36</sup> It thus seems useful, in understanding our respondents' resolution of the cases we put to them here, to ask whether, and to what extent, the new variables of marriage and relational duration introduced in this study cause our respondents to retreat from their preference for the shared living standard principle.

In this sense, one can think of child support amounts in excess of the minimalist "basic cost" level as the measure of the "windfall" to the custodial parent. Virtually all the respondents in our earlier studies agreed the noncustodial parent ought to be required to pay at least the "basic cost" support amount, which one might regard as the least one can require consistently with any concern at all for the child's interests. Child support at that level can be seen as a floor below which it should never drop (unless the obligor is truly incapable of providing even this amount). The question then becomes how far above this floor one goes to vindicate the shared living standard principle that most of our respondents favor and which is more protective of the child's interest. The answer to that question requires one to choose the right tradeoff between protecting the child's interests in a living standard not too far below what he would have enjoyed had his parents stayed together, and protecting the obligor's interests in not being required to confer windfall benefits on the other parent under a child support rubric, given that child support rules do not consider facts that may bear on whether the recipient parent has a good claim for financial assistance in her

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36. As to their preference with respect to the abstract principles, see Ellman, Braver, and MacCoun 2, *supra* n.4, which gives our respondents' ratings of competing support principles set out in Likert items that employ a scale of 1 to 7. We report there that the mean rating our respondents give principles that limit the father's responsibility falls on the "disagree" side of that scale, while their mean rating of principles that favor ensuring the child a living standard not disproportionate to the support obligor's are well to the "agree" side. This same article also shows that the support amounts individual respondents favor in the cases are logically related to their preferences with respect to these principles. For a more complete explanation of how our respondents' resolution of cases yields support amounts that differ from typical state income shares guidelines in a pattern that systematically favors allowing more support to low income custodial parents, see Ellman, Braver, and MacCoun 1, *supra* n.4.

own right.

There is no doubt that the respondents in our prior studies consistently demonstrate a concern for the child's financial well-being. Our alimony experiments found that our respondents are more likely to award alimony to a former partner who has primary custody of the couple's minor children, even though that parent is already collecting child support. Our child support studies have consistently returned child support amounts well in excess of the "basic cost" floor, where the support obligor has the financial capacity to pay them.<sup>37</sup> But the earlier child support studies employed vignettes in which the parents were always married, and the duration of their relationship never varied.

Our introduction of new family configuration variables in this study reveals that our respondents are not willing to go as far above the basic cost floor when the parents are not married or have not been together very long. One can suggest the reason is their belief that the custodial parent is less deserving of the benefit in those cases, so that the obligor's interest in avoiding windfall benefits to the custodial parent is correspondingly stronger. This view is consistent with our earlier study showing that respondents are more likely to allow alimony when the couple had married, or had lived together for a longer period of

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37. The consistent difference between the child support awards favored by our respondents and those provided by most current support guidelines arises where the parental incomes are disparate. Our respondents favor higher support awards than do most state guidelines, in the more common case in which the support obligor's income is higher than the custodial parent's, and the difference increases with the income disparity. However, our respondents also favor lower support awards than most state guidelines where the custodial parent's income is relatively high or greater than the support obligor's. The results in the cases with a higher obligor income are thus consistent with a principle that is concerned primarily with ensuring that the child's living standard, and thus the custodial parent's as well, do not fall too far below the support obligor's. That principle has little to say about cases in which the custodial parent income is higher than the obligor's even before any child support transfer. The lower support awards favored by our respondents in such cases is consistent, however, with the view that where the obligor's income is substantially lower than the custodial parent's, we are not concerned so much with protecting the child's interests in an adequate living standard as we are with the principle that both parents should contribute to the child's support, whether or not the contribution is in fact essential for the child's financial well-being. That "dual-obligation" principle may be vindicated even by nominal support amounts, appropriate where obligor income is very low. For a fuller description of the differences between our respondents' award patterns and those found in typical state guidelines, see *Ellman, Braver and MacCoun 1*, *supra* n. 4. For a fuller description of the shared living standard and dual obligation principles, see *Ellman and Ellman*, *supra* n. 4.

time.<sup>38</sup>

It is also true that our respondents adjust their child support amounts to take account of marital status a bit differently than they do to take account of relational duration. Consider duration first. We saw that mean support amounts for 4-year and 15-year relationships are not very different at the lowest NCP income, but a substantial “duration premium” develops as NCP income increases. A basic cost calculation of child support would not increase with NCP income, of course, while a shared living standard calculation would. The greater the increase in support amounts as NCP income increases, the more the child support award reflects the shared living standard principle, with its “windfall” benefit to the custodial parent. Thus the increasing gap in award levels for different durations (the duration premium), as NCP income increases, reflects the importance that duration plays in our respondents’ judgments of the amount of windfall benefit to allow the custodial parent. At the longer durations our respondents are willing to allow more windfall benefit to the custodial parent, the price that the must be paid to lift the child’s living standard as well.

The duration premium is also greater at lower CP incomes. The greater income disparity at lower CP incomes means larger awards are needed to protect the child from falling too far below the chosen living standard benchmark (the intact household living standard, or the obligor’s living standard). The size of either living standard loss increases more rapidly with NCP income when CP incomes are lower. The interaction of duration with CP income reflects our respondents’ inclination to cover more of the loss—and thus confer more windfall benefit on the CP—when relational duration is longer.

In sum, the data suggests that the impact of shorter duration on our respondents’ judgments is not a simple reduction in support amounts, but rather reductions targeted on the cases that would otherwise

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38. Ellman and Braver, *Lay Intuitions About Family Obligations: The Case of Alimony*, *supra* n. 4.

provide the largest windfall benefits to custodial parents. This same pattern is also present in the case of the one-night relationship, but there we also have a main effect. Thus, even at the lowest NCP incomes, the mean support amount for the one-night relationship is below that for the 4-year duration. Recall that marital status also has a main effect, and it could be that effect which is also displayed here, since the parents who were together for only one night were also unmarried. In any event, the main effect results in reducing the windfall even when it is fairly low in the first place—a heightened intolerance of the windfall benefit for the one-night case in which there is really no relationship at all between the parents, not just a shorter relationship. On the other hand, the difference in mean support amounts between the 4-year and 1-night relationships is still greater at higher NCP incomes when the possible windfall is greater.<sup>39</sup>

Finally, we come to marriage. There is only a main effect with marriage, and a relatively small one. This means one sees a marriage premium at even low NCP incomes, where there is no duration premium, yet at high NCP levels the marriage premium is smaller than the duration premium. Marriage is of course a binary classification. The parents in our vignettes are either married, or not. Duration, by contrast, is a continuous variable, even if we sampled only three values for it. Four years is longer than one night, but 15 years is longer still. One might guess that the duration premium increases with the difference in duration. In that case one might imagine that had we sampled two durations that were closer together—say 4 years and 8 years—we would have found a smaller interaction effect such that the marriage premium exceeded the duration premium at even the higher NCP incomes. But in any event, the relatively consistent and modest effect of marriage does suggest it makes less difference than does duration, at least when we compare

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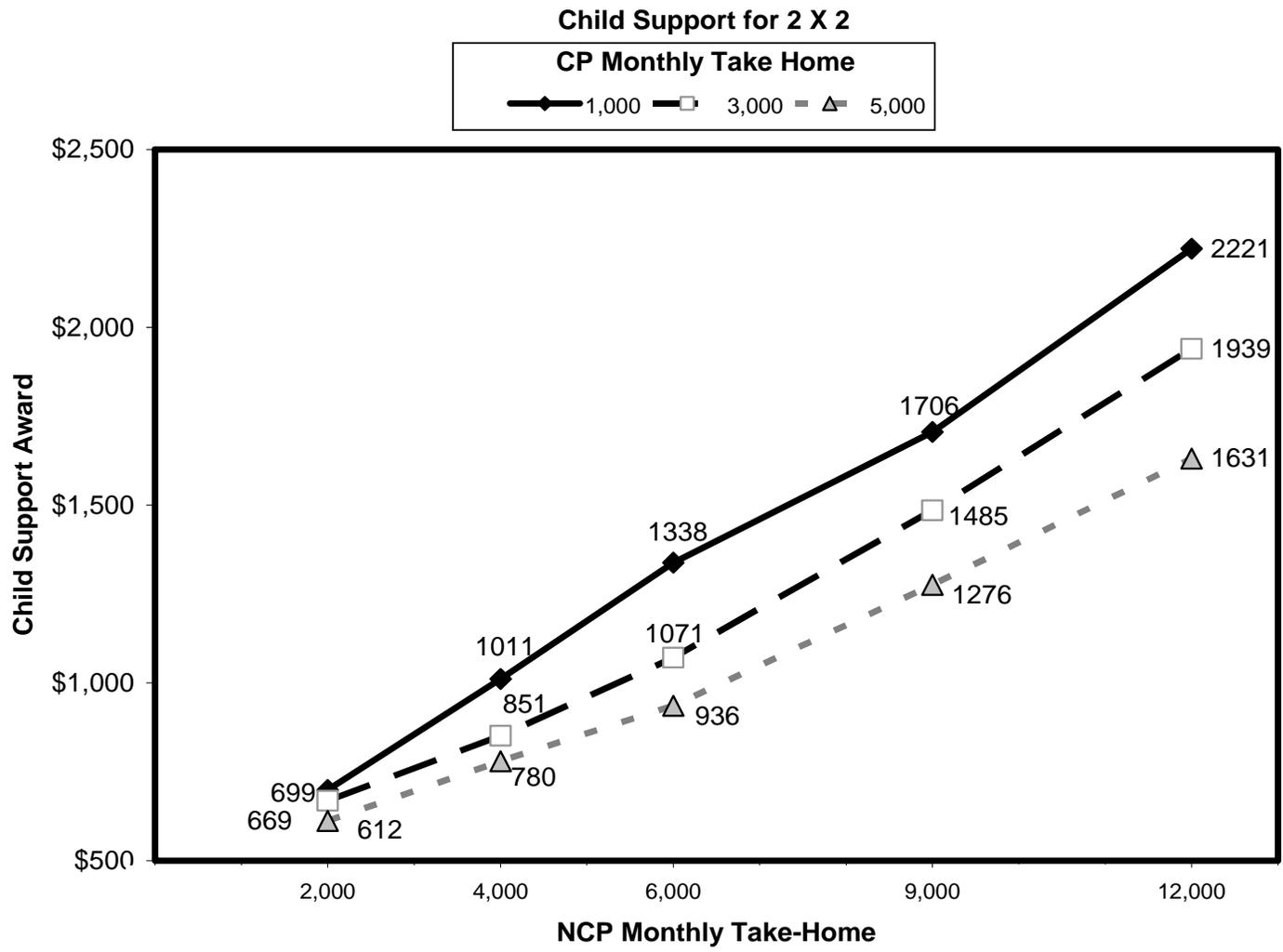
39. At the lowest NCP income, mean support amounts for the four-year duration, across the three CP incomes, range from \$605 to \$714, while the range for the one-night relationship is slightly lower, \$596 to \$664. (In both cases, of course, the biggest difference arises at the lowest CP income.) But at the highest NCP income, the range of mean support amount for the one-night relationship is dramatically lower than for 4 years (\$1558 to \$2018 for the four-year relationship, \$1328 to \$1799 for one night relationship).

relationships where the difference in duration is not modest.

We thus conclude that: a) it matters to our respondents, in setting child support amounts, whether the parents were married and how long they were together, and, b) at least one important reason it matters is that they appreciate intuitively that child support payments confer a benefit on the custodial parent as well as the child, and that they are more tolerant of providing that benefit when the facts of the parental relationship provide more justification for it. At the same time, we must also note that neither nonmarital status nor short duration—not even to one night—eliminate the windfall entirely. Support amounts generally rise with NCP income in all durations, and for the cohabiting as well as married parents, even if they rise less rapidly than for shorter ones. This tells us that while our respondents' choice of tradeoff point (between the child's interest and the father's interest) is more favorable to the father when durations are shorter or the parents had not married, there is no case we asked about for which our respondents are unwilling to provide *any* standard of living protection to the child at higher NCP incomes. Even in the case of the one-night relationship, our respondents favor child support orders for at least some income combinations that confer a living standard benefit on the custodial parent, presumably because it is the only way they can provide it for the child as well.

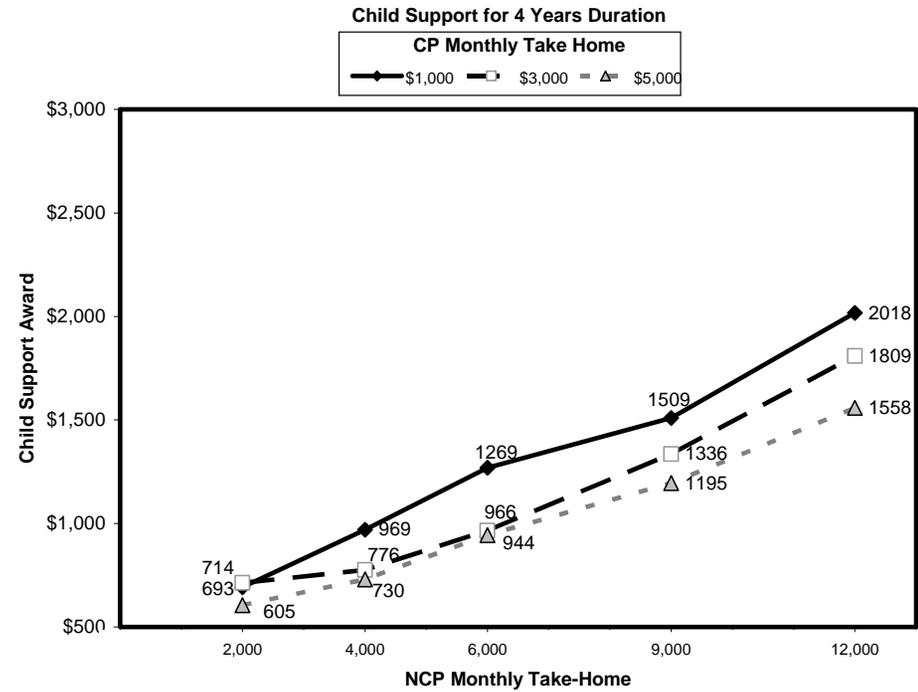
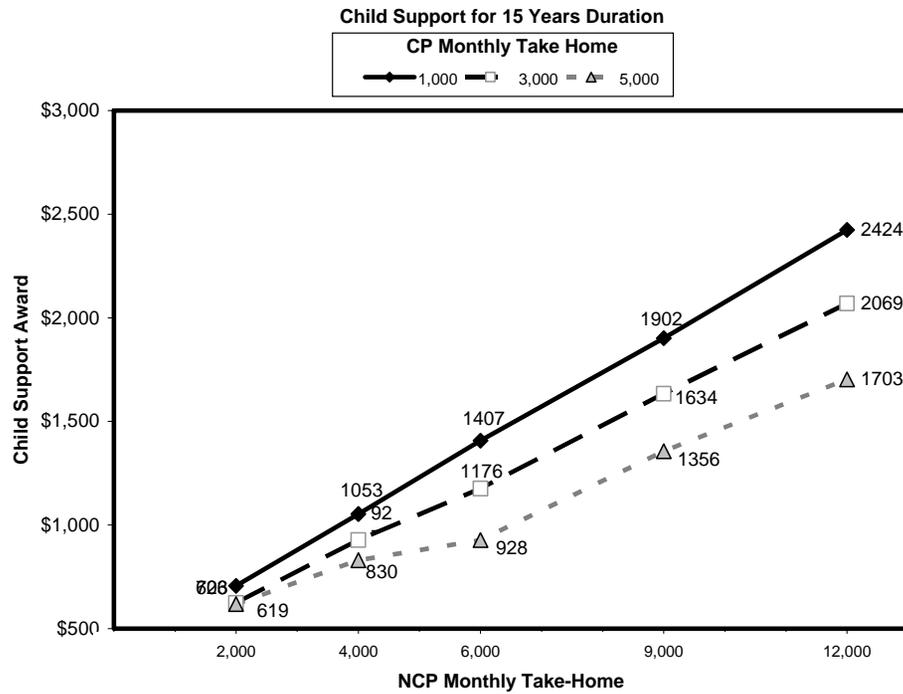
Our data thus suggests that a child support system that provided some modest difference in the support amounts allowed to married and unmarried custodial parents would find support among citizens, but only if it also had two other attributes. First, that it took duration into account, and provided more robust support amounts in the case of unmarried parents as well, when the duration of their relationship was longer. Second, support for lower support amounts for unmarried parents in relatively short durations is premised the assumption that the basic support schedule from which those reductions are made is, in the

first instance, more generous to the lower income custodial parent than are the schedules found in most states today.

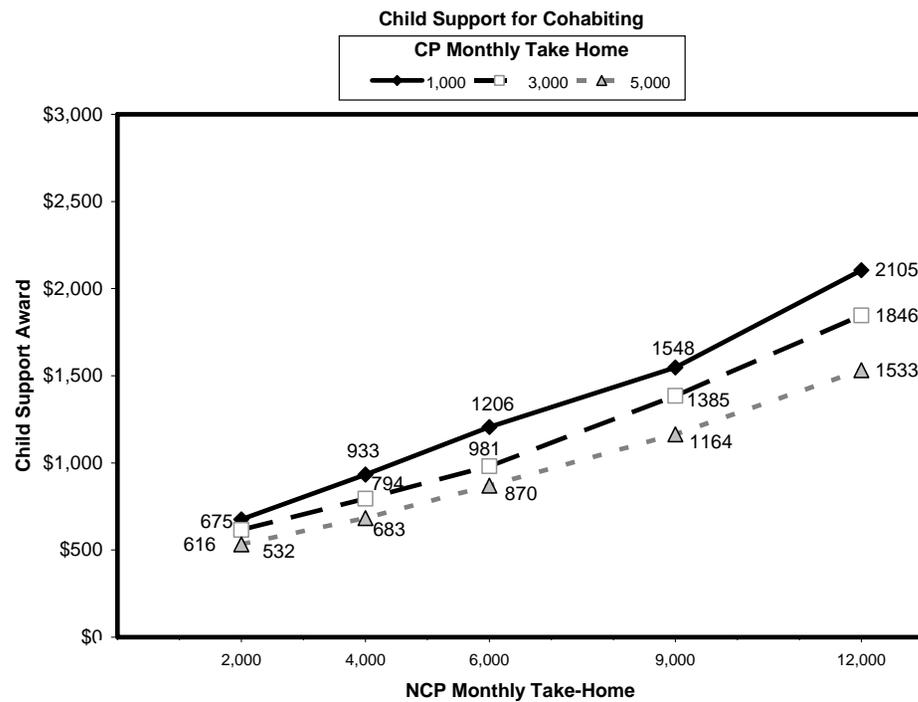
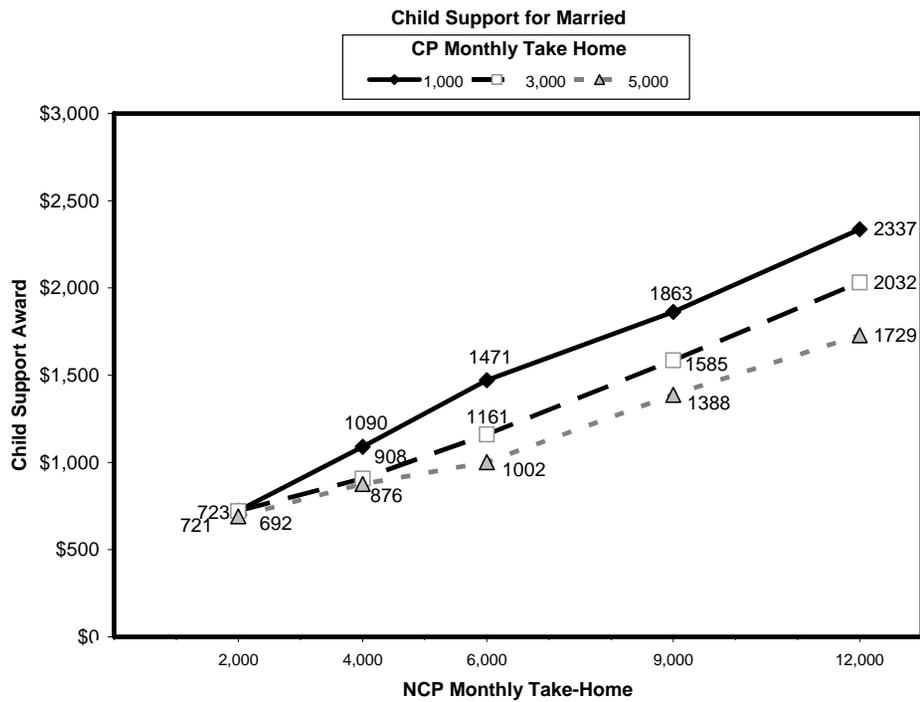


**Figure 1**

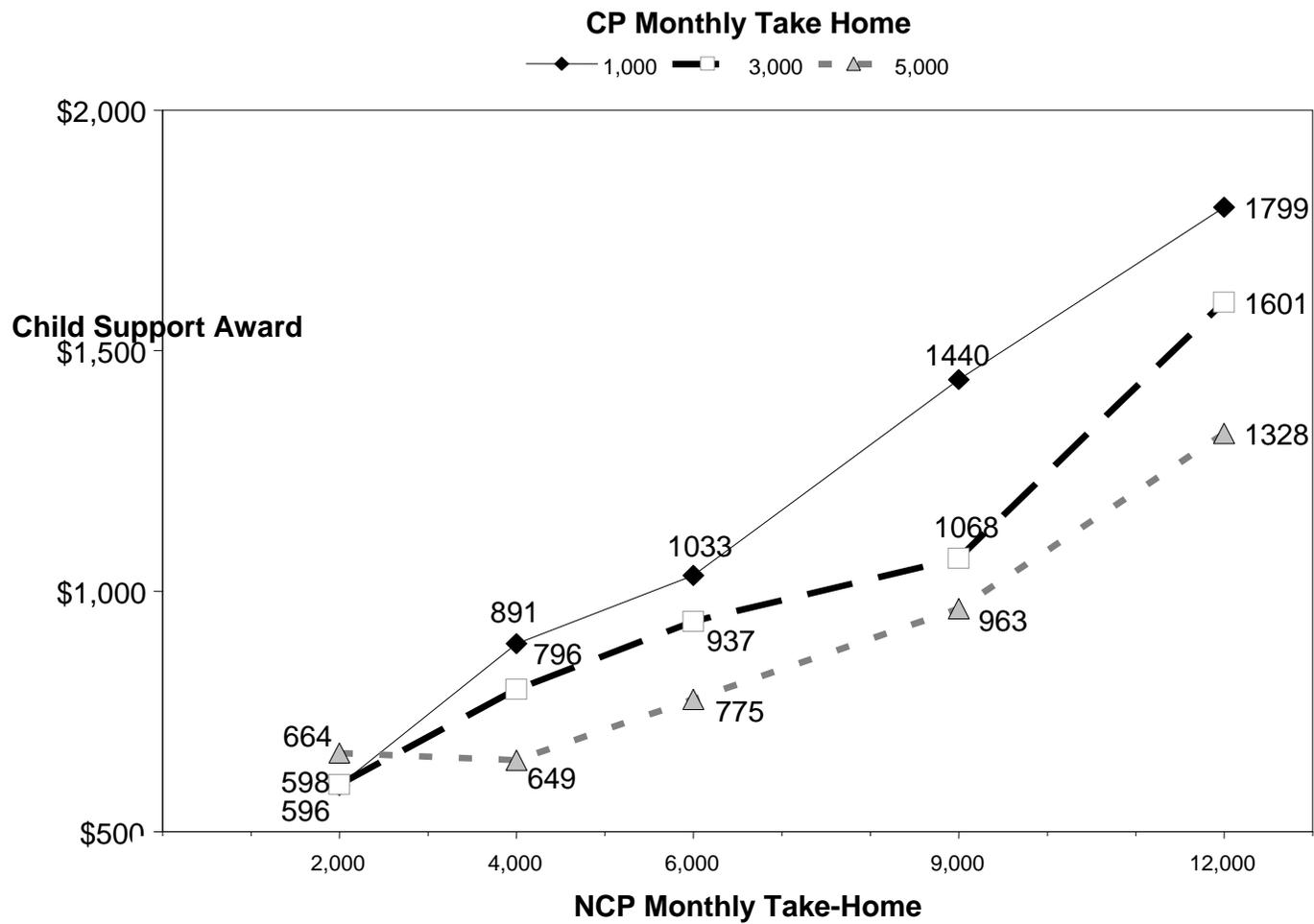
**Mean Child Support Amounts by Income, Averaged Over the Four Family Configurations in the 2x2 Factorial**



**Figures 2a and 2b.**  
**Mean Child Support Amounts by Income for Relationships of 15 and 4 Years' Duration,**  
**(Married and Cohabiting Combined)**



**Figures 3a and 3b.**  
**Mean Child Support Amounts by Income for Married and Cohabiting Relationships**  
**(4 Year and 16 Year Durations Combined)**



**Figure 4.**  
**Mean Child Support Amounts by Income for One-Night Relationship**